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Benedict on Admiralty

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Volume 4: Practice and Procedure: Forms
CHAPTER I COMPLAINTS
GENERALLY

4-1 Benedict on Admiralty FORM No. 1-1

FORM No. 1-1 Complaint--Caption and Jurisdictional Statement

_____, Plaintiff(s),)	
[identify as an individual, partnership, corporation,)	Docket No. _____
etc.] v. _____, Defendant(s),)	
[identify as a vessel, entity or person] n1)	
)	

COMPLAINT

1. This is a case of admiralty and maritime jurisdiction, as will more fully appear, and is an admiralty or maritime claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*. n2

or

or

COUNTERCLAIM

1. This is a counterclaim within the admiralty and maritime jurisdiction of this Court and within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*.

FOOTNOTES:

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(n1)Footnote 1. If the complaint is *in rem*, the defendant vessel should be identified, *i.e.*, "the Vessel (M.V.) _____ [*name*, her engines, tackle, equipment and furnishings."

If the complaint is *in personam* rather than *in rem*, substitute the name of the defendant for the vessel, *i.e.*, "_____ Corporation, defendant," in lieu of "the Vessel _____, Her Engines, Tackle, etc." If the complaint is both *in rem* and *in personam*, add "and _____ Corporation, defendant." If a third party has intervened in the action pursuant to *Fed. R. Civ. P. 24*, add "_____, Plaintiff in Intervention."

(n2)Footnote 2. This is substantially the jurisdiction statement in Form 2 of the Official Forms annexed to the Federal Rules of Civil Procedure. The latter half of the sentence should only be included if the pleader wishes to invoke the distinctively maritime procedures referred to in *Rule 9(h)*.



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4-1 Benedict on Admiralty FORM No. 1-2

FORM No. 1-2 Complaint In Rem--Allegations Concerning Partiesⁿ¹

[*Caption and Jurisdictional Statement*] ⁿ²

2. At all times which shall be mentioned the plaintiff, _____, was and still is a _____ duly organized and existing under and by virtue of the laws of _____, with an office and principal place of business at _____.

3. At all material times, the plaintiff [*choose one of the following*]:

(a) _____ was and still is a corporation duly organized and existing under and by virtue of the laws of the State of _____, with an office and principal place of business located at _____ [*address*].

(b) _____ was and still is a partnership duly organized and existing under and by virtue of the laws of the State of _____ with an office and principal place of business located at _____ [*address*].

(c) _____ an individual residing at _____ [*address*].

4. On information and belief, the _____ [*vessel*] is now, or during the pendency of this action will be, within this district. ⁿ³

FOOTNOTES:

(n1)Footnote 1. If the complaint is both *in rem* and *in personam*, modify this form by adding paragraph "3" from Form Nos. 1-5 or 1-7 *infra*.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. Supplemental Rule C(2) provides that "[i]n actions in rem the complaint ... shall describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action."



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4-I Benedict on Admiralty FORM No. 1-3

FORM No. 1-3 Complaints In Rem and In Personam--Prayers for Process and Relief

[Complaint In Rem--Prayer for Process and Relief]

Wherefore plaintiff prays:

1. That a warrant for the arrest of the _____ [vessel] may issue, and that all persons claiming any interest therein may be cited to appear and answer the matter aforesaid;
2. That a judgment may be entered in favor of plaintiff for the amount of its claim, with interest and costs, and that the _____ [vessel] may be condemned and sold to pay the same; and
3. That plaintiff may have such other and further relief as the court and justice may deem just and appropriate under the circumstances of the cause.

or

[Complaint In Rem and In Personam-- Prayer for Process and Relief] n1

Wherefore plaintiff prays:

1. That process in due form of law, according to the practices of this Honorable Court in causes of admiralty and

4-I Benedict on Admiralty FORM No. 1-3

maritime jurisdiction, may issue against the _____ [vessel], her engines, tackle, equipment and furnishings, etc., and that all persons having or claiming any interest therein be cited to appear and answer, under oath, all and singular the matters aforesaid; that plaintiff have a decree for its damages aforesaid, with interest and costs; and that the _____ [vessel] be condemned and sold to satisfy plaintiff's judgment;

2. That process in due form of law may issue against _____ [non-vessel defendant], citing it to appear and answer, under oath, all and singular, the matters aforesaid;

3. That the Court order, adjudge and decree that plaintiff have a decree against _____ [non-vessel defendant], for the claim asserted by plaintiff herein, together with interest and costs; and

4. That plaintiff have such other and further relief as this court and justice may deem just and appropriate under the circumstances.

Dated: _____

Attorney for Plaintiff n2

FOOTNOTES:

(n1)Footnote 1. If the complaint is both *in rem* and *in personam*, a prayer for process and relief may be combined with Form Nos. 1-6 and 1-8 *infra*.

(n2)Footnote 2. *Fed. R. Civ. P. 11* provides that the complaint (and all other pleadings) "of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated."



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4-I Benedict on Admiralty FORM No. 1-4

FORM No. 1-4 Instructions to United States Marshal Regarding Service¹

Instructions to United States Marshal:

Serve defendant _____:

(1) through its agent, _____.

(2) through the Secretary of State
State of _____

_____, _____ [address for service]

Please withhold service *in rem* against
the _____ [vessel] until further
notice from attorneys for plaintiff.

Dated: _____

Attorney for Plaintiff n2

FOOTNOTES:

(n1)Footnote 1. This form contains an instruction to the United States Marshall regarding service on an agent of the defendant or on a state's Secretary of State as permitted under the rules; or is an instruction not to serve a vessel. This form should be used in conjunction with the summons form or simply typed onto the summons form.

(n2)Footnote 2. *Fed. R. Civ. P. 11* provides that the complaint (and all other pleadings) "of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated."



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4-I Benedict on Admiralty FORM No. 1-5

FORM No. 1-5 Complaint In Personam--Allegations Concerning Various Particular Parties¹

[*Caption and Jurisdictional Statement*] n2

2. At all times hereinafter mentioned the plaintiff, _____ Corporation, was and still is a corporation duly organized and existing under and by virtue of the laws of the State of _____, with an office and principal place of business at _____.

or

2. At all times hereinafter mentioned the plaintiff, _____ Corporation, was and still is a corporation duly organized and existing under and by virtue of the laws of the State of _____, and is authorized to carry on the business of marine insurance within the State of _____. Plaintiff had legal authority and corporate capacity to make the contract of insurance hereinafter set forth.

3. On information and belief, at all times hereinafter mentioned the defendant, _____ Corporation, was and still is a corporation organized and existing under and by virtue of the laws of the State of _____, with an office and place of business at _____ [address], and owned and operated the _____ [vessel].

or

3. At all times hereinafter mentioned, defendant, United States of America, was and still is a sovereign state which, by Act of Congress of March 9, 1919 (46 U.S.C. § 741 *et seq.*), as amended, known as the Suits in Admiralty Act, has

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consented to be sued in this Honorable Court on the Cause or Causes of Action set forth herein, and said defendant owned, operated, controlled and/or chartered the vessel _____ which was and still is a public vessel of said defendant or was employed by said defendant, and said defendant is suable herein under and pursuant to the provision of an Act of Congress of March 3, 1925 (46 U.S.C. § 781 *et seq.*), as amended, known as the Public Vessels Act.

or

3. At and during all times mentioned herein, defendant, _____, was and now is a corporation organized and existing under and by virtue of the laws of the Republic of _____ [identify country], with agents for the conduct of its business within this district, *i.e.*, _____ [identify the agents], located at _____ [address].

or

3. At and during all times mentioned herein, defendant, _____, was the United States manager and _____ [state name] operator of the _____ [vessel] for the defendant, _____ [state name], and/or otherwise operated or managed _____ [identify vessel].

or

3. At and during all times mentioned herein, defendant, _____ Corporation, was and now is a corporation organized and existing under and by virtue of the laws of a foreign nation, the exact nature of the corporate structure of said corporation being unknown to plaintiff, with agents for the conduct of its business within this district, *i.e.*, _____ [identify agent] located at _____ [address].

or

4. At and during all times mentioned herein, defendant, _____ Corporation, operated, managed and/or otherwise controlled the _____ [vessel].

or

4. During all the times herein mentioned defendant, _____, was the owner and operator of the _____ [vessel], and operated it in the common carriage of goods by water for hire between _____ and _____.

or

4. At and during all times mentioned herein, defendants, Doe Corporation, Doe Corporation A, Doe Corporation B, and Doe Corporation C were and now are corporations existing under and by virtue of the laws of a state of the United States or a country of the world, and defendant, John Doe, is an individual. Defendants, Doe Corporation, Doe Corporation A, Doe Corporation B, and Doe Corporation C and/or John Doe, operated, managed or controlled the said _____ [vessel] in some manner, as yet unascertained, and are being sued herein by fictitious names,

their true names being unknown to plaintiff at this time.

FOOTNOTES:

(n1)Footnote 1. If the complaint is both *in rem* and *in personam*, modify this form by adding paragraph "3" from Form No. 1-2 *supra*.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.



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4-I Benedict on Admiralty FORM No. 1-6

FORM No. 1-6 Complaint In Personam--Demand for Judgment¹

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars, in addition to interest and costs.

or

Wherefore plaintiff prays:

1. That process in due form of law according to the practice of this Honorable Court issue against the defendants, citing them to appear and answer under oath all and singular the matters aforesaid;
2. That plaintiff may have judgment for its damages in the amount of \$ _____, with interest and costs, against the defendants; and
3. That the Court grant plaintiff such other and further relief as the Court and justice may deem just and appropriate under the circumstances.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. If the complaint is both *in rem* and *in personam*, a demand for judgment against defendant may be combined with Form No. 1-3 *supra*.



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4-I Benedict on Admiralty FORM No. 1-7

FORM No. 1-7 Complaint In Personam With Maritime Attachment--Allegations Concerning Partiesⁿ¹

[*Caption and Jurisdictional Statement*] ⁿ²

2. At all times hereinafter mentioned the plaintiff, _____ Corporation, was and still is a corporation duly organized and existing under and by virtue of the laws of the State of _____, with an office and principal place of business at _____ [*address*].

3. On information and belief, at all times hereinafter mentioned the defendant, _____ Corporation, was and still is a corporation organized and existing under and by virtue of the laws of the State of _____, with an office and place of business at _____ [*address*] and owned and operated the _____ [*vessel*]. The plaintiff is informed and believes and therefore alleges that none of the officers of the defendant is now within this district and that the defendant does not maintain an office within this district; but that there are now or will be during the pendency of this action certain goods, chattels, credits and effects belonging to or claimed by the defendant within this district, to wit: the _____ [*vessel*], owned by the defendant and in the charge of a master on board. ⁿ³

FOOTNOTES:

(n1)Footnote 1. If the complaint is both *in rem* and *in personam*, modify this form by adding paragraph "3" from Form No. 1-2 *supra*.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. Rule B(1) requires that such complaint be verified and "be accompanied by an affidavit signed by the plaintiff or his attorney that, to the affiant's knowledge, or to the best of his information and belief, the defendant cannot be found within the district." Such an affidavit is reproduced in Form No. 1-9 *infra*.



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4-I Benedict on Admiralty FORM No. 1-8

FORM No. 1-8 Complaint In Personam With Maritime Attachment--Prayer for Process and Relief¹

Wherefore plaintiff prays:

1. That a summons with process of attachment and garnishment may issue against the defendant, _____; and if defendant cannot be found, then that its goods, chattels and credits within the district, and particularly the _____ [*vessel*], and all monies and/or credits in the hands of _____ [*identify holders of assets*] may be attached in an amount sufficient to answer plaintiff's claim.
2. That a judgment may be entered in favor of plaintiff for the amount of its claim, with interest and costs, and that a decree of condemnation may be issued against the property and credits of the defendant, _____, for the amount of plaintiff's claim, with interest and costs; and
3. That plaintiff may have such other and further relief as the justice of the cause may require.

or

Wherefore plaintiff prays:

1. That process issue against defendants and that said defendants be cited to appear and answer the allegations of this Complaint;
2. That if defendants cannot be found within this district, then all of their property within this district be attached in the sum of \$ _____, with interest thereon and costs, the sum sued for in this Complaint;
3. That judgment be entered against the defendants in the sum of \$ _____, together with interest and

4-I Benedict on Admiralty FORM No. 1-8

costs; and

4. If for any reason it is alleged and/or found that plaintiff is not entitled to the attachment of the defendants' property under Admiralty principles of foreign attachment, then in the alternative, plaintiff invokes the provisions of _____ [*insert appropriate state statutes*] and *Federal Rule of Civil Procedure 4(e)* and Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and

5. That plaintiff may have such other and further relief as in law and justice it may be entitled to receive.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. If the complaint is both *in rem* and *in personam* with a clause of maritime attachment, this form may be combined with Form No. 1-3 *supra*.



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4-I Benedict on Admiralty FORM No. 1-9

FORM No. 1-9 Complaint In Personam With Maritime Attachment--Affidavitn1

STATE OF _____,)
COUNTY OF _____,) SS:
)
)

_____, being duly sworn, deposes and says:

I am the _____ [insert title of officer of plaintiff or that affiant is the attorney for the plaintiff] of _____ Corporation, the plaintiff herein.

To my knowledge [or to the best of my information and belief] the defendant cannot be found within this district.

[*name typed*]

Subscribed and sworn to before me this _____ day of _____, 20 _____

Notary Public

[Seal]

FOOTNOTES:

(n1)Footnote 1. As required by Rule B(1). *See* Form No. 1-7 n.3 *supra*.



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4-I Benedict on Admiralty FORM No. 1-10

FORM No. 1-10 Complaint In Rem and/or In Personam With Maritime Attachment--Verification by Individualn1

STATE OF _____,)
COUNTY OF _____,) ss:
_____)
_____)

_____, being duly sworn, deposes and says:

I am the plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true to my knowledge, except as to the matters therein stated on information and belief, and as to those matters I believe it to be true.

[name typed]

Subscribed and sworn to before me this _____, day of _____, 20 _____.

Notary Public

[Seal]

FOOTNOTES:

(n1)Footnote 1. Rule C(2) provides that "[i]n actions in rem the complaint shall be verified on oath or solemn affirmation." Rule B(1) provides that "[w]ith respect to any admiralty or maritime claim in personam a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or credits and effects in the hands of garnishees to be named in the process to the amount sued for, if the defendant shall not be found within the district."

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FORM No. 1-11 Complaint In Rem and/or In Personam With Maritime Attachment--Verification by Corporationnn1

STATE OF _____,)
COUNTY OF _____,) SS:
)
)

I am the _____ [state title or titles] of _____ Corporation, the plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true of my own knowledge, except as to the matters therein stated upon information and belief and as to those matters I believe it to be true.

The reason I make this verification is that _____ Corporation is a corporation and I am an officer thereof, to wit, its [state title or titles].

The sources of my information and the grounds of my belief as to all matters not stated in the complaint to be alleged upon my own knowledge are reports made to me by employees and the records of the corporation.

[*name typed*]

Subscribed and sworn to before me this _____ day of _____, 20 _____.

Notary Public

[*Seal*]

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-10 n.1 *supra*.



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4-I Benedict on Admiralty FORM No. 1-12

FORM No. 1-12 Complaint In Rem and/or In Personam with Maritime Attachment--Verification by Attorney

STATE OF _____,)
COUNTY OF _____,) SS:
)
)

_____, being duly sworn, deposes and says:

I am the attorney for the plaintiff herein. I have read the foregoing complaint and know the contents thereof and the same is true to the best of my knowledge, except as to the matters therein stated to be on information and belief, and as to those matters I believe it to be true.

The sources of my information and the grounds of my belief are statements and records furnished me by the plaintiff, its officers and agents.

The reason this verification is not made by the plaintiff is that it is a corporation, none of the officers of which is now within this district.

or

_____, being duly sworn, deposes and says:

I am a member of the firm of _____, attorneys for the plaintiff in this action.

4-I Benedict on Admiralty FORM No. 1-12

I have read the foregoing complaint, know the contents thereof, and the same are true to the best of my knowledge, information and belief.

The sources of my information and the grounds of my belief are documents in the possession of my firm.

The reason this verification is made by deponent and not by plaintiff is that plaintiff is a corporation, no officer of which is now within this district.

[*name typed*]

Subscribed and sworn to before me this _____ day of _____, 20 _____

Notary Public

[*Seal*]

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-10 n.1 *supra*.



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4-I Benedict on Admiralty FORM No. 1-13

FORM No. 1-13 Complaint In Rem and/or In Personam with Maritime Attachment--Verification on Behalf of Foreign Plaintiff by Its Agent

STATE OF _____,)
COUNTY OF _____,) ss:
)
)

_____, being duly sworn, deposes and says that deponent is the Vice President of _____ Corporation, the Agents for _____ Shipping Company in the United States, with offices located at _____ [address], and is authorized to execute this verification on plaintiff's behalf. Deponent has read the foregoing complaint and knows the contents thereof and that same is true to deponent's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because plaintiff is a foreign corporation and does not maintain an office in this jurisdiction. The grounds of deponent's belief as to all matters not stated upon deponent's personal knowledge are books, records, and papers of plaintiff in deponent's possession.

[name typed]

Subscribed and sworn to before me this _____ day of _____, 20 _____

Notary Public

[Seal]

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-10 n.1 *supra*.



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4-I Benedict on Admiralty FORM Nos. 1-14-1-35

RESERVED

FORM Nos. 1-14RESERVED



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ADVANCES *

4-I Benedict on Admiralty FORM No. 1-36

FORM No. 1-36 Complaint In Rem--Advances To Pay Repairs

[Caption, Jurisdictional Statement, and Allegations Concerning Parties] n1

4. The _____ [vessel], sometime in the early part of _____, 20 _____, sailed from the port of _____ bound to the port of _____ under the command of the master, _____. In the course of her voyage, and on or about the _____ day of _____, 20 _____, she went ashore at _____, [location] and suffered great damage. She was subsequently taken off and carried into _____ [port], where it was found that it was necessary that she should undergo a course of thorough and expensive repairs, and be furnished with certain supplies, in order to render her seaworthy and fit to go to sea.

5. The master accordingly went on and repaired the _____ [vessel] and purchased said supplies, the expenses of such repairs and supplies necessarily amounting to about \$ _____. The master, not having the funds to pay for the said repairs and supplies, applied to the plaintiff at _____ for a loan of part of the amount necessary for that purpose. The plaintiff accordingly advanced to the master, for the use of the _____ [vessel], and on her credit, on the _____ day of _____, 20 _____, the sum of \$ _____, to be repaid to the plaintiff on the arrival of the _____ [vessel] at _____ [address], and the said sum of \$ _____ was applied by the master toward payment of the said repairs and supplies.

6. Shortly after the advance was made by the plaintiff, the _____ [vessel] sailed from _____ to _____ where she arrived on the _____ of _____, 20 _____. After her arrival the plaintiff applied to the master for repayment of the amounts advanced, which the master declined to make. The _____ [vessel] has now been taken possession of by one of her owners, who refused to recognize the debt, or make any provision therefor, to the damage of the plaintiff in the full sum of _____

\$_____.

7. The _____ [vessel], on her voyage from _____ to _____, brought a cargo, the whole or greater part of which is now on board the _____ [vessel], and the freight thereof is still uncollected.

[Prayer for Process and Verification] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-2 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-10, 1-11, 1-12 and 1-13 *supra*.

* *See* 2 Benedict on Admiralty, § 34 (Matthew Bender 7th ed.).



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ADVANCES *

4-I Benedict on Admiralty FORM No. 1-37

FORM No. 1-37 Complaint In Rem and In Personam--Advances by Charterer for Bunkers and Transit Chargesⁿ¹

[Caption and Jurisdictional Statement] ⁿ²

2. With respect to defendant _____ [vessel], her engines, tackle, equipment and furnishings, this is a complaint *in rem* with a prayer for process of arrest of the vessel pursuant to Supplemental Rule C of the Federal Rules of Civil Procedure.

3. With respect to defendants _____ Steamship Co., Ltd. and _____ Shipping Agency, Inc., this is a complaint *in personam* with a prayer for process of maritime attachment and garnishment pursuant to Supplemental Rule B of the Federal Rules of Civil Procedure as to those defendants not found within the district.

4. Plaintiff _____ Shipping Limited is a corporation organized and existing under the laws of the State of _____ with its principal place of business at _____ [address].

5. Upon information and belief, at all times relevant herein, defendants _____ Steamship Co., Ltd. and _____ Shipping Agency, Inc. are foreign corporations. Upon information and belief, _____ Shipping Agency, Inc. has its principal place of business located at _____ [address] within this jurisdiction.

6. Upon information and belief, at all times relevant herein, defendant _____ Steamship Co., Ltd. owned and controlled the _____ [vessel], which vessel now is, or will be, within the jurisdiction of this court during the pendency of this action.

4-I Benedict on Admiralty FORM No. 1-37

7. Upon information and belief, at all times relevant herein defendant _____ Shipping Agency, Inc. acted as agent for the owner.

8. On or about _____, 20 _____, plaintiff entered into an agreement to charter the _____ [vessel] from defendants.

9. Subsequent to the commencement of the charter party, defendants, on or about _____, 20 _____, requested that plaintiff advance funds to supply bunkers for the vessel.

10. In accordance with defendants' request, on or about _____, 20 _____, and _____, 20 _____, plaintiff advanced the aggregate sum of \$ _____ to supply said bunkers.

11. In addition, on or about _____, 20 _____, defendants requested that plaintiff advance certain transit charges or dues on behalf of said vessel.

12. In accordance with defendants' request, on or about _____, 20 _____, plaintiff advanced the sum of \$ _____ to pay said charges or dues.

13. On or about _____, 20 _____, defendants agreed in writing to reimburse plaintiff for the sums advanced together with interest at the rate of _____ % over prime and to pay any attorneys' fees incurred by plaintiff in attempting to recover said funds.

14. Plaintiff has demanded reimbursement of said advances due from defendants.

15. Despite said demand, no funds have been reimbursed by defendants to date.

[Prayer for Process and Verification] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Laguna Shipping Limited v. M/V Oceanus Countess, Civ. No. 84-2664 (E.D.N.Y. 1984).

(n2)Footnote 2. See Form No. 1-1 *supra*.

(n3)Footnote 3. See Form Nos. 1-3, 1-10 through 1-13 *supra*.

* See 2 Benedict on Admiralty, § 34 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-44

RESERVED

FORM No. 1-44RESERVED



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ARBITRATION *

4-I Benedict on Admiralty FORM No. 1-45

FORM No. 1-45 Complaint In Personam--Recovery of Arbitration Award

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. Plaintiff _____ and defendant _____ made and entered into a charter party contract or agreement, in writing, at _____ [state location] under the date of _____, 20 _____, a copy of which is attached hereto and incorporated herein as Exhibit "A" [exhibit omitted].

5. Said charter party (Exhibit "A") provides, in part, as follows:

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons in London, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

6. Plaintiff duly performed all terms and conditions of said charter party contract or agreement on its part to be performed.

7. Disputes arose between plaintiff and defendant under said charter party and both parties hereto duly submitted said disputes to arbitrators by them appointed, in London, England, and an arbitration proceeding was thereupon conducted in accordance with English law.

8. Thereafter and on or about, and under date of _____, 20 _____, an Award was made in said arbitration proceedings, a copy of which is attached hereto and incorporated herein as Exhibit "B" [exhibit omitted].

9. By said Award there was awarded to plaintiff, and against said defendant, the principal sum of \$ _____ United States dollars, together with interest thereon at the rate of _____ % per annum from _____, 20____ until _____, 20____, which interest amounts to \$ _____, totalling \$ _____.

10. Additionally, plaintiff disbursed, paid and advanced, as provided in paragraph "11" of said Award (Exhibit "B") the sum of \$ _____ and by reason thereof plaintiff is entitled to reimbursement in full of said sum amounting to \$ _____.

11. Defendant, despite due demand by plaintiff, has wholly failed and refused to pay any part of said monies to plaintiff.

12. By reason thereof there is due and owing by said defendant to plaintiff the sum of \$ _____ and the sum of \$ _____, with legal interest therein from _____, 20____, the date of said Award.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty, ch. VIII (Matthew Bender 7th ed.).



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ARBITRATION *

4-I Benedict on Admiralty FORM No. 1-46

FORM No. 1-46 Complaint In Personam--Order To Compel Arbitration

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

1. On or about _____, 20 _____, in the City of _____, plaintiff, as owner of the _____ [vessel], entered into a certain charter party with defendant, as charterer. A copy of said charter party is attached hereto and incorporated herein as Exhibit A [exhibit omitted].
 2. Clause _____ in the aforementioned charter party provides as follows: _____ [insert charter party clause compelling arbitration].
 3. In the course of the performance of the subject charter party, certain disputes arose between plaintiff and defendant. Specifically, plaintiff claimed that the vessel incurred demurrage and demanded payment thereof; however, defendant refused and neglected to effect payment for the full amount of the demurrage as demanded by plaintiff.
 4. As the parties were therefore unable to settle their differences amicably, plaintiff's counsel, by letter dated _____, 20 _____, appointed an arbitrator in accordance with the provisions of Clause _____ in the aforementioned charter party (Exhibit A) and demanded that defendant also appoint an arbitrator within _____ days from the receipt thereof. A copy of said letter is attached hereto and incorporated herein as Exhibit B [exhibit omitted].
 5. Defendant failed and neglected to appoint an arbitrator as demanded by plaintiff's counsel therein. A reasonable time has elapsed since demand to submit to arbitration and appoint an arbitrator was made upon defendant herein.
- Wherefore plaintiff prays for an order directing defendant to appoint an arbitrator not later than _____ (_____) days after the entry of the Court's order to that effect and upon its failure to comply

with such order, that the Court shall appoint an arbitrator on behalf of defendant upon the *ex parte* affidavit by plaintiff's counsel.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

* *See* 2 Benedict on Admiralty, ch. VIII (Matthew Bender 7th ed.).



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FORM No. 1-57RESERVED



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ASSAULT AND BATTERY *

4-I Benedict on Admiralty FORM No. 1-58

FORM No. 1-58 Complaint In Rem and In Personam with Maritime Attachment by Seaman Against Master and Mate--Assault and Battery

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. In the month of _____, 20 _____, plaintiff shipped on board the said _____ [vessel] as a _____ [crew position] for a voyage from _____ to _____, and back to _____ in furtherance of the business of the _____ [vessel].

5. On or about the _____ day of _____, 20 _____, while on the high seas, plaintiff was lying in his berth in the forecastle while it was his watch below, and while there heard the mate, _____, call him to come upon deck, whereupon he immediately arose, but before he had fairly got out of the berth the mate sprang down into the forecastle, and seizing plaintiff by the throat began to drag him along the floor, and the said master, _____, having come down with an iron belaying pin, struck plaintiff with the same, whereby plaintiff was much injured, and to this day bears the marks of the blows so received; upon another occasion to-wit, on the _____ day of _____, 20 _____, the said mate, without the least cause or provocation, and without the slightest warning to plaintiff, fell upon plaintiff and beat him severely with his fist about the head and face, and the said master, coming from the other side of the deck, took a wooden belaying pin from the rail, and holding plaintiff by the neck, struck plaintiff five or six times on the head with the belaying pin, and with the assistance of the mate, then beat him with the same about his legs and body for some minutes; by reason of which beating, the face and head of plaintiff were very much bruised, and his body also injured; and he still feels the effects of such beating. And plaintiff by reason of the premises claims to be entitled to recover of the said master and mate damages to the amount of \$_____.

6. The said defendants _____ [mate] and _____ [master] at the present time have either fled from the jurisdiction of this court, or have concealed themselves so that they cannot be found but, upon information and belief, plaintiff alleges that they have goods and chattels in this district, and credits in the hands of _____ [holder of goods] in the City of _____.

[Prayer for Process, Verification and Affidavit in Maritime Attachment] n2

FOOTNOTES:

(n1)Footnote 1. See Form Nos. 1-1, 1-2 and 1-7 *supra*.

(n2)Footnote 2. See Form Nos. 1-3, 1-8, 1-9, 1-10 and 1-12 *supra*.

* See 1B Benedict on Admiralty, § 31 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-59

FORM No. 1-59 Complaint In Personam by Seaman Against Vessel Owner--Assault and Battery--Negligence

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. On or about _____, 20 _____, the plaintiff was employed by defendant aboard the aforementioned vessel as a seaman, and by reason of the said relationship between plaintiff and defendant, it was the duty of the defendant to provide for plaintiff's safety aboard the said vessel and to maintain the said vessel and its appurtenances in a seaworthy condition.

5. On or about _____, 20 _____, the defendant failed to so provide for plaintiff's safety and failed to maintain the said vessel and its appurtenances in a seaworthy condition, in that one of the defendant's employees aboard the said vessel and a superior in rating to the plaintiff, to wit, the boatswain aboard the said vessel, did on said date, assault and beat the plaintiff aboard the said vessel and while the plaintiff was serving as aforesaid aboard the said vessel as an able-bodied seaman.

6. As a direct and proximate result of the carelessness and negligence of the defendant(s), plaintiff suffered injuries and damages, to wit: _____ *[describe injuries alleged and damages suffered]*.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 1B Benedict on Admiralty, § 31 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-60

FORM No. 1-60 Complaint In Personam by Seaman Against Vessel Owner--Assault and Battery by Fellow Crew Member with Claim Under Jones Actn1

[Caption and Allegations Concerning Parties] n2

COUNT I n3

2. Plaintiff brings this action pursuant to Section 33 of the Merchant Marine Act of 1919, commonly known as the "Jones Act," and all statutes amendatory thereof and supplementary thereto.

3. On or about the ____ day of _____, 20 ____, the plaintiff was employed by defendant as a member of the crew of the _____ [vessel] in the capacity of deckhand and, except as otherwise indicated, was a member of the said crew at all the times hereinafter mentioned and was engaged in the furtherance of his duties and of the interests of the defendant.

4. It was the obligation and duty of the defendant to furnish plaintiff with an adequate number of officers and co-employees and Master and other officers, to furnish plaintiff with a safe place in which to do his work, to supply him with suitable and safe means, materials, and appliances in and for the performance of his work, to maintain the same in proper condition for the proper performance of the said work, to promulgate and enforce proper rules in relation to the foregoing, and to inspect the aforesaid materials, appliances, and means, to provide plaintiff with a safe and seaworthy vessel, and to warn plaintiff of the dangers to be encountered in the performance of his work.

5. On or about the ____ day of _____, 20 ____, while plaintiff was acting within the scope of his employment and in the interests of the defendant herein, he was seriously injured, as hereinafter more fully described, all by reason of the carelessness and negligence of the defendant, its officers, agents, servants, employees, and other persons for whom defendant was responsible, and in violation of the aforesaid duties and obligations, without any fault or negligence upon the part of plaintiff herein.

6. On or about the ____ day of _____, 20 ____, while plaintiff was actually engaged in the course of his duties aboard the _____ [vessel], he was deliberately struck in and about his face by a deckhand from the _____ [vessel] who was also employed by defendant, and who had known vicious, evil, and belligerent propensities and who was known to be unequal in temperament to other men of his calling; and plaintiff did thereby sustain severe permanent injuries to his _____ [describe injuries]. Plaintiff has suffered and will suffer great pain, agony, and mental anguish, has paid out and will pay out large sums of money for medical and surgical attention and medicines, has lost and will lose large sums of money which he otherwise would have earned as wages and in the form of board and lodging, and has been forced to defray the cost of his maintenance and cure. Plaintiff verily believes he has been permanently injured, all to his damage, in the sum of \$ _____.

[Demand for Judgment] n4

COUNT II

7. Plaintiff realleges and incorporates herein each and every allegation contained in paragraphs 1 through 6, inclusive of Count I, as fully and completely as though herein repleaded at length.

8. That it was the absolute and non-delegable duty of the defendant to furnish plaintiff with safe and seaworthy vessels, which duty defendant failed to carry out, thereby causing plaintiff to sustain the injuries hereinbefore described, to his damage in the sum of \$ _____.

[Demand for Judgment] n5

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Diamond v. Turecamo Coastal & Harbor Towing Corp.*, Civ. No. 83-4061 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. *See* Form Nos. 1-1 and 1-5 *supra*.

(n4)Footnote 4. *See* Form No. 1-6 *supra*.

(n5)Footnote 5. *See* Form No. 1-6 *supra*.

* *See* 1B Benedict on Admiralty, § 31 (Matthew Bender 7th ed.).



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FORM No. 1-65RESERVED



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4-I Benedict on Admiralty FORM No. 1-66

FORM No. 1-66 Complaint In Personam Against Vessel Owner--Nondelivery of Cargo

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. On _____, 20 ____, defendant issued its negotiable bill of lading, dated _____, 20 ____, numbered _____, and naming plaintiff as consignee of the goods described as follows:

5. Defendant had full knowledge that the goods conformed to the description contained in the bill of lading.

6. On _____, 20 ____, plaintiff tendered the bill of lading and demanded delivery of the goods.

7. Defendant failed and refused to deliver the goods to plaintiff in spite of plaintiff's demand.

8. Plaintiff had purchased the goods in good faith, for value from _____ and had paid the sum of \$ _____ as the price of the same.

9. Plaintiff has been damaged in the sum of \$ _____ by reason of the defendants failure and refusal to deliver the goods.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (Matthew Bender 7th ed.); *see also* 2 Benedict on Admiralty, §§ 43, 106, 186 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-67

FORM No. 1-67 Complaint In Personam by Transferee of Bill of Lading Against Vessel Owner--Nondelivery of Cargo

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. On or about _____, 20____, _____ *[third party]* delivered to defendant goods consisting of _____ *[description of goods]*, to be transported by defendant from _____ to _____.

5. _____ *[third party]* paid defendant the required weight charges and defendant received and accepted the goods for transportation and gave a bill of lading for goods to _____ *[third party]*. A copy of the bill is attached hereto and incorporated herein as Exhibit A *[exhibit omitted]*.

6. On or about _____, 20____, _____ *[party]* endorsed the bill of lading and delivered and transferred it to plaintiff for value.

7. On or about _____, 20____, plaintiff presented the bill of lading to the defendant at the City of _____, and demanded that the defendant deliver the goods to the plaintiff. The defendant failed and refused and still fails and refuses to deliver the goods to plaintiff.

8. Within _____ months after the delivery of the goods to the defendant, plaintiff made a claim in writing against the defendant pursuant to the bill of lading for the loss of the goods and the value thereof and delivered the claim to the defendant at _____, the place where the goods were shipped from as provided and required by the bill of lading and demanded payment of his claim.

9. By reason of the foregoing plaintiff has sustained damages in the sum of \$ _____

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (Matthew Bender 7th ed.); *see also* 2 Benedict on Admiralty, §§ 43, 106, 186 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1--68

FORM No. 1--68 Complaint In Personam by Carrier Against Shipper--Failure To Obtain Customs Clearancenc1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. Defendant was the shipper, owner and/or consignee of a shipment of _____ for which a bill of lading was issued to be transported from _____ to _____, aboard a vessel owned and/or operated by defendant.

5. After the loading of said cargo and the departure of plaintiff's vessel, it became known that defendant had failed to prepare, obtain and/or lodge proper export documentation and/or failed to obtain an inspection of said cargo prior to loading, which failures were in violation of the laws, regulations and practices of the United States regarding export and would have resulted in rejection of the cargo at destination and necessitated its return to the United States or its destruction.

6. Plaintiff arranged for the discharge of said cargo at the port of _____, pursuant to agreement with defendant and there delivered said cargo to defendant.

7. Plaintiff incurred wharfage, transfer, stevedoring and customs expenses of \$ _____ in connection with the carriage to and discharge at _____, no part of which has been paid by defendant, although duly demanded.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Sea-Land Service, Inc. v. Eurex Int'l Corp.*, 80 Civ. 3007 (E.D.N.Y. 1980).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (Matthew Bender 7th ed.); *see also* 2 Benedict on Admiralty, §§ 43, 106, 186 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-69

FORM No. 1-69 Complaint--Common Carrier's Untimely Delivery of Cargo

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

Plaintiff _____, by its attorneys, _____, alleges upon information and belief as follows: n2

1. At all material times, the said vessels were and now are employed in the common carriage of merchandise by water for hire, and now are or during the pendency of this action will be within this District and within the jurisdiction of this Court.

2. On or about _____, 20 _____, plaintiff, through its division, _____, contracted with defendant for defendant to carry a cargo of _____, in containers, from _____ to _____, at a freight rate of \$ _____ per container _____ [state time(s) of shipment(s)].

3. Defendant promised to ship the first container on its vessel, _____, on or about _____, 20 _____, but for reasons known only to defendant, failed to do so.

4. Instead, the first container, Number _____, was shipped on defendant's _____ [vessel], pursuant to defendant's bill of lading Number _____ dated _____, 20 _____, which provided for house to house carriage, with discharge in _____ and transshipment to _____.

5. Defendant notified plaintiff of an estimated date of arrival in _____ of _____, 20 _____ and a transit time to _____ of _____ days. However, for reasons known

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only to defendant, the first container arrived in _____ substantially later. Further, although plaintiff remitted freight in the agreed sum of \$ _____, defendant refused to release the cargo to plaintiff's purchaser unless plaintiff paid a greater sum of \$ _____, the basis of which defendant never explained.

6. The additional _____ containers were lifted by defendant on its _____ [vessel] pursuant to bill of lading Number _____ dated _____, 20 _____, contrary to defendant's obligation to lift these containers by _____. This bill of lading provided for house to house carriage, with discharge in _____ and transshipment to _____.

7. On or about _____, 20 _____, plaintiff had sold the goods to _____, of _____ at a price of U.S. \$ _____ per metric ton, for delivery of one container promptly and the balance for _____ shipment from _____.

8. _____ maintained the purchase contract until on or about _____, 20 _____, when they cancelled for nondelivery of the goods within the agreed time.

AS A FIRST CASE OF ACTION

9. Plaintiff was able to sell the first container load carried on the _____, on or about _____, 20 _____, without a material reduction in the net sale price per ton. However, the contents of the container were short delivered by _____ [amount of weight short], having a value of \$ _____ at \$ _____ per metric ton. Plaintiff was the owner of the cargo and holder of the bill of lading at the time the shortage was incurred, and incurred damages of \$ _____.

AS A SECOND CASE OF ACTION

10. Some _____ tons of product carried in one container on the _____ [vessel] was delivered damaged by water. This cargo was shipped in container Number _____ according to _____ bill of lading Number _____. However, the cargo was delivered in a different container, Number _____.

Therefore, defendant deviated from the bill of lading contract by placing the cargo into a different container than that in which it was originally shipped.

11. The sound market value of the cargo in this container, at \$ _____ per _____ [weight] was \$ _____. By reason of the damage, plaintiff was obliged to sell this cargo on or about _____, 20 _____ at a net price of \$ _____ and, therefore, sustained a loss in the amount of \$ _____. Plaintiff was the owner of the cargo and holder of the bill of lading when the loss was sustained, and incurred the damages as stated.

AS A THIRD CAUSE OF ACTION

12. By reason of defendant's failure to lift the cargo and deliver it at the time defendant undertook to do so, and by reason of a falling market, plaintiff sold the remaining four containers on or about _____, 20 _____ at a price of \$ _____ per _____ [weight], less commissions and inland freight charges. However, defendant released only one of those containers, No. _____, containing _____ [weight], which plaintiff sold for a net realization of \$ _____. But for defendant's breach of contract and/or deviation from the bill of lading contract and/or negligence, plaintiff would have realized \$ _____ on the sale of this containerload to its original customer. Therefore, plaintiff has sustained damages in the sum \$ _____.

13. Defendant's agent, _____, has refused and continues to refuse the remaining three containers to plaintiff, as holder of the bill of lading, or to its designees, ostensibly because of disputes between defendant and _____ unrelated to plaintiff. These containers contain _____ [weight] of cargo, which, had they been timely delivered, would have had a value of \$ _____, for which amount defendant is liable to plaintiff.

AS A FIFTH CAUSE OF ACTION

14. By reason of defendant's wrongful conversion of the remaining three containers, plaintiff is entitled to recovery of punitive damages and legal fees in an amount to be determined.

AS A SIXTH CAUSE OF ACTION

15. By reason of defendant's failure to lift and to deliver plaintiff's cargo within the time agreed by defendant, the consequent cancellation of plaintiff's original contract of sale and prevailing market conditions, plaintiff was not able to obtain substitute contracts of sale for several months, and, of course, has not resold the three containers now held by defendant's agent, by reason of which plaintiff suffered damages in the nature of lost interest on the original sales price of the cargo until each lot was sold or will be sold, in the sum of \$ _____ and insurance premiums in the sum \$ _____ as best as can be estimated.

Wherefore plaintiff requests:

1. That process in due form of law according to the practice of this Court may issue against the vessel _____ and the vessel _____ to appear and answer the matters aforesaid;
2. That plaintiff have judgment for its damages in the sum of \$ _____ plus punitive damages, attorney's fees, interest and costs;
3. That the vessel _____ and vessel _____ be condemned and sold to satisfy plaintiff's damages; and
4. That the Court grant to the plaintiff such other and further relief as the Court may deem just.

Dated: _____

Attorneys for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (Matthew Bender 7th ed.); *see also* 2 Benedict on Admiralty, §§ 43, 106, 186 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-70

FORM No. 1-70 Complaint--Common Carrier's Refusal To Release Cargo

[Caption, Jurisdictional Statement and Allegations Concerning Party] n1

Plaintiff, _____ by its attorneys, _____, as and for its Complaint alleges upon information and belief as follows: n2

SUBSTANTIVE ALLEGATIONS

4. On or about _____, and _____, 20 _____, _____ [party] delivered to the Defendant for shipment on _____ [vessel] the certain merchandise. On or about _____ and _____, 20 _____, Defendant issued negotiable Bills of Lading numbered _____ and _____ (copies of which are annexed hereto as Exhibit "A" [exhibit omitted]) respectively, naming _____ as consignee and owner of the goods. Defendant accepted said shipment which was delivered to it and, in consideration of certain agreed freight charges thereupon paid, agreed to transport the shipment on board the _____ [vessel] to _____ [destination] and there deliver the same in like order and condition as when received by the Defendant.

5. On or about _____, 20 _____, _____ delivered to the Defendant for shipment on the _____ [vessel] certain merchandise. On or about _____, 20 _____ Defendant issued its negotiable Bill of Lading numbered _____ (a copy of which is annexed hereto as Exhibit "B" [exhibit omitted]) naming _____ as consignee and owner of the goods. Defendant accepted said shipment which was delivered to it and, in consideration of certain agreed freight charges thereupon paid, agreed to transport and carry the said shipment to _____, and there deliver the same in like order and condition as when received by Defendant.

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6. Defendant had full knowledge that the goods conformed to the description contained in the aforesaid Bills of Lading.

7. On or about _____, 20 _____, a Complaint was brought in the United States District Court, _____, against Defendant, and a Warrant of Arrest was issued against the vessel _____ owned by Defendant.

8. On or about _____, 20 _____ and subsequent thereto, several other Complaints and Warrants of Arrest were issued against _____ and against the aforementioned vessel _____.

9. By Order dated _____, 20 _____, (a copy of which is annexed hereto as Exhibit "C" [*exhibit omitted*]) the Honorable _____ of the United States District Court for the _____ District of _____ ordered that Defendant and the United States Marshal allow the aforesaid vessels to discharge and release the cargoes laden on board. That Order also provided that Defendant was to use its best efforts to deliver an original copy of the cargo manifest, storage plan and schedule of freights paid and not paid, on or before _____, 20 _____ at _____ [time].

10. Thereafter by Order dated _____, 20 _____, (a copy of which is annexed hereto as Exhibit "D" [*exhibit omitted*]) the Honorable _____ permitted Plaintiff _____ to intervene in said action solely for the purpose of obtaining the release of their cargo.

11. By further Order of the Honorable Judge _____ dated _____, 20 _____ (a copy of which is annexed hereto as Exhibit "E" [*exhibit omitted*]) it was ordered that "(1) _____ shall forthwith commence orderly and proper discharge, on a straight time basis, of the cargoes of the vessel _____ and that upon completion of discharge as aforesaid to deliver the cargoes to cargo owners of the parts or places as set forth in the pertinent bills of lading for said delivery" Said Order further provided that certain funds were to be loaned by the cargo owners, including _____ which funds were to be deposited into various escrow accounts to be held by the United States Marshal, but that said loans and the other provisions of said Order would not constitute a waiver of any rights by cargo interests against the aforesaid vessels *in rem* or against Defendant *in personam* (paragraph _____, Exhibit E). In the Order, Judge _____ noted that "Defendant has utterly refused to perform its obligations to cargo owners to discharge and deliver the cargoes without any cause or justification whatsoever."

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

12. Plaintiff repeats, reiterates and realleges Paragraphs One through, and including, Eleven with the same force and effect as if set forth fully herein.

13. Although Plaintiff has tendered the Bills of Lading and demanded delivery of the goods, Defendant has failed and refused to deliver, discharge and off load the goods to Plaintiff after due demand.

14. In contravention of the Order of the Honorable _____ dated _____, 20 _____, Defendant has failed to timely deliver the documents and cargo as so ordered.

15. Defendant continues to refuse to arrange and/or pay for the discharge of cargo from the vessels _____ and _____ or otherwise comply with the Bills of Lading.

16. By reason of the foregoing Plaintiff _____ was caused to undertake additional expenses to secure the release of the aforementioned cargo, including but not limited to payment of stevedoring charges in _____, and the retention of legal counsel to secure the release of said cargo.

17. The Officers and Directors of Defendant _____ including its [Chief Executive Officer], knew or should have known that the Defendant would be unable to honor the terms of its contract with Plaintiff _____ at the time the contract was entered into.

18. The Defendant, by failing to deliver the goods in conformance with the Bills of Lading, has breached its contract with Plaintiff.

20. As a direct and proximate result of the foregoing the Plaintiff _____ has suffered and will continue to suffer pecuniary loss and damage in an amount as yet undetermined but believed to be in excess of _____ (\$ _____). Plaintiff also prays for _____ Dollars (\$ _____) in punitive damages.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF

20. Plaintiff repeats, reiterates and realleges Paragraphs One through and including Nineteen with the same force and effect as if set forth at length herein.

21. The aforesaid failures by the Defendant _____ to deliver the goods and to comply with the lawful Orders of the Court were due solely to the fault, and negligence of the Defendant _____ with no fault or negligence of the Plaintiff contributing thereto.

22. The Officers and Directors of Defendant _____ including its Chief Executive Officer, knew or should have known of the aforesaid failure(s), fault and negligence.

23. As a direct and proximate result of the foregoing the Plaintiff _____ has suffered and will continue to suffer pecuniary loss and damage in an amount as yet undetermined but believed to be in excess of _____ Dollars (\$ _____). Plaintiff also prays for _____ Dollars (\$ _____) in punitive damages.

Wherefore Plaintiff _____ demands judgment in an amount of at least \$ _____ in compensatory damages and \$ _____ in punitive damages on the First Cause of Action, and of at least \$ _____ in compensatory damages and \$ _____ in punitive damages on the Second Cause of Action together with such further relief as this Honorable Court may deem just and proper under the circumstances.

Dated: _____

Attorneys for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (Matthew Bender 7th ed.); *see also* 2 Benedict on Admiralty, §§ 43, 106, 186 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-81

FORM No. 1-81 Complaint In Rem and In Personam by Single Shipper--Cargo Damage

[Caption, Jurisdictional Statement and Allegation Concerning Parties] n1

3. On or about _____, 20 _____, the plaintiff delivered to the defendant at the port of _____, _____ [cargo] in good order and condition, to be carried from the port of _____ to the port of _____, there to be delivered in like good order and condition as when shipped to the order of the plaintiff, in consideration of an agreed freight and in accordance with the valid terms of a certain bill of lading then and there signed and delivered to the shipper by the duly authorized agent/or representative of the defendant _____, a copy of which is attached hereto and incorporated herein as Exhibit A [exhibit omitted].

4. Thereafter the defendant loaded the merchandise on board the _____ [vessel] and the vessel, having the merchandise on board, sailed from the port of _____ and subsequently arrived at the port of _____ where the _____ [stevedore] discharged the merchandise, not in like good order and condition as when delivered to the vessel and to the defendant at the port of _____, but seriously injured and damaged by contact with [coal dust and/or other] substances] to plaintiff unknown.

5. By reason of the premises the plaintiff has sustained damages in the sum of _____ dollars (\$ _____) as nearly as the same can now be estimated, no part of which has been paid although the same has been duly demanded.

6. The plaintiff has duly performed all the conditions precedent on its part to be performed under the terms of the bill of lading.

[Prayer for Process, Demand for Judgment and Verification] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6, *and* 1-10 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-82

FORM No. 1-82 Complaint In Rem and In Personam by Several Plaintiffs--Cargo Damage

[Modify Form No. 1-81 supra by substituting paragraphs 2, 5, 7 and 8 below for paragraphs 2, 3, 4, 6 and 7 of Form No. 1-81 :]

4. At all the times hereinafter mentioned, the plaintiffs were, and now are, individuals, corporations or co-partnerships as follows:

(A) TAJ, Inc., a corporation duly organized, created and existing under and by virtue of the laws of the State of _____, with an office and place of business at _____.

(B) WFC, an individual doing business under the trade name and style of The WFC Company, with an office and place of business at _____.

(C) _____ *[set forth a description of each additional plaintiff in separately numbered subparagraphs as necessary]*.

*

5. During the month of _____, 20 _____, various merchants delivered to the defendant at _____ certain shipments of merchandise, in good order and condition, to be carried from the port of _____ to _____, there to be delivered in like good order and condition as when shipped unto the order of the respective consignees in consideration of an agreed freight, and in accordance with the valid terms of certain bills of lading, then and there signed and delivered to the respective shippers, by the duly authorized agent or representative of the defendant.

4-I Benedict on Admiralty FORM No. 1-82

The bill of lading numbers, the shippers, the merchandise shipped, the consignee, and the present owners of the merchandise, are set out below:

B/L	Plaintiff Shipper	Merchandise	Consignee	Owner
3 KL		1,000 cartons cheese	Order	TAJ
17 JF		500 cases wineNat.	WFC

6. Prior to the discharge by the _____ of the merchandise referred to in Paragraph 5 hereof, and prior to the commencement of this action, the plaintiffs became the owners of such merchandise and are entitled to bring this action.

7. By reason of the premises the plaintiffs have sustained damage, so far as the same can now be estimated, as follows:

TAJ, Inc.	\$ _____
_____	_____
WFC	_____
_____	_____
Etc. _____	_____ n1
—	

8. The plaintiffs have duly performed all the conditions precedent on their part to be performed under the terms of the bills of lading.

FOOTNOTES:

(n1)Footnote 1. If the plaintiffs and shipments are very numerous, paragraphs 2, 5, and 8 may refer to schedules annexed to the complaint for the details which are contained in such paragraphs in this form.

* See 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-83

FORM No. 1-83 Complaint In Rem and In Personam by Underwriters--Cargo Damage

[Modify Form No. 1-81 supra by substituting the following for paragraphs 7, 8 and 9 :]

7. The plaintiffs were the marine insurers of the shipments referred to in Paragraph [5] hereof and became liable to pay for any loss or damage sustained by such shipments during transit from the port of _____ to the port of _____. The plaintiffs were in due course called upon to pay and did pay claims for the losses and damages in the sums set forth opposite their respective names on Schedule A attached hereto and incorporated herein (schedule omitted) became subrogated to the rights of the owners of such shipments. Such amounts were paid to the owners of the shipments or to their agents who were the holders of the bills of lading entitling them to delivery of the shipments at destination.

8. The plaintiffs and their respective predecessors in title and in interest have duly performed all the terms and conditions of the contracts of carriage on their part to be performed.

or

7. Plaintiffs were the consignees and/or underwriters of the said cargo and bring this action on their own behalf and as agents and trustees, on behalf of and for the interest of all the parties who may be or may become interested in the said cargo or their underwriters, as their respective interests may ultimately appear.

8. By reason of the premises, plaintiffs have sustained damage in the amount of _____ Dollars _____, as near as the same can now be determined, but plaintiffs reserve the right to amend this clause in light of the facts as they develop in the course of this action.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-84

FORM No. 1-84 Complaint In Rem and In Personam--Cargo Damage Caused by Geographical Deviation

*[Supplement Form Nos. 1-81, 1-82 or 1-83
supra by adding the following:]*

FOR A SECOND CAUSE OF ACTION

9 [or 10]. The plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1, 2, 3, 4 and 5 of the first cause of action.

10 [or 11]. Thereafter the defendant loaded the merchandise on board the vessel _____ at _____, and the vessel, having the merchandise on board, sailed from the port of _____ for _____, the contractual port of discharge of the cargo. During the course of the voyage, however, on the orders of the defendant, the vessel improperly and unjustifiably deviated from her proper course to the port of _____ and put in at the port of _____. During the course of such unjustifiable deviation and while lying in the port of _____, the merchandise referred to in the complaint was destroyed or damaged.

11 [or 12]. The plaintiffs repeat and reallege each and every allegation contained in Paragraphs 7 and 8 (and 9) of the first cause of action.

* See 2A Benedict on Admiralty, ch. IV (Matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-85

FORM No. 1-85 Complaint In Rem and In Personam--Cargo Damage Caused by On-Deck Stowage

*[Supplement Form Nos. 1-81, 1-82 or 1-83
supra by adding the following:]*

FOR A SECOND CAUSE OF ACTION

9 [or 10]. The plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1, 2, 3, 4 and 5 of the first cause of action.

10 [or 11]. Despite the fact that the bills of lading issued by the defendant and/or by the duly authorized agents or representatives of the defendant and of the vessel _____ to cover the shipments set forth in Paragraph [5] of the complaint were all "clean" bills of lading and contained no special provisions providing for or allowing stowage of the cargo on deck, various shipments of _____, referred to in Paragraph 5 of the complaint, shipped at _____ and there loaded on board the vessel _____, were stowed and carried on the voyage in question as "on deck" cargo.

11 [or 12]. The plaintiffs repeat and reallege each and every allegation contained in Paragraphs 7 and 8 (and 9) of the complaint.

* See 2A Benedict on Admiralty, ch. IV (Matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-86

FORM No. 1-86 Complaint In Rem and In Personam--Water Damage to Cargo

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

5. The vessel _____ at all times herein mentioned was a general ship engaged in the common carriage of goods by water for hire between ports in the _____ and _____.

6. On or about _____ and _____, 20 _____, shipments of _____ were delivered to defendants at the port of _____ in good order and condition to be delivered to plaintiff at _____ in like good order and condition as when shipped, in consideration of an agreed freight and pursuant to the valid terms of bills of lading issued by defendants and the _____ [vessel]. A list of said shipments is attached hereto and incorporated herein as Schedule "A".

7. The cargo still in good order and condition was loaded on board the _____ [vessel] but was delivered at destination in a damaged and wet condition.

8. Plaintiff became for value the owner of said shipments and brings this suit on its own behalf and that of all others interested in said shipments.

9. By reason of the premises, plaintiff and those on whose behalf this suit has been brought have sustained damages in the sum of \$ _____, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

[Prayer for Process, Demand for Judgment and Verification] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1, 1-2 and 1-5, *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6 and 1-11, *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-87

FORM No. 1-87 Complaint In Personam--Water Damage to Cargo

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

5. On or about _____, 20 _____, the plaintiff at _____ delivered to the defendant _____ in good order and condition to be carried from _____ to _____, there to be delivered to the order of the plaintiff.

6. Defendant issued to plaintiff, _____, bills of lading for the goods and the goods were accepted by defendant for common carriage subject to all the valid exceptions contained in the bills of lading, as controlled and/or modified by federal statutes and maritime law and the laws of the state of _____. Copies of the bills of lading are attached hereto and incorporated herein as Exhibit A.

7. The bills of lading were signed by defendant _____ as agents for the master. The name of the master was not contained in the bills of lading and plaintiff holds the defendant as a principal on the contracts of carriage.

8. The goods were carried from _____ to _____ but when delivery was made or attempted to be made to plaintiff, the goods were not in the same good order and condition as when shipped at _____. On the contrary, the goods were seriously injured and damaged by reason of having come in contact with water.

9. By reason of the foregoing, plaintiff has sustained damages in the sum of \$ _____.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-81 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-88

FORM No. 1-88 Complaint In Rem and In Personam by United States--Cargo Damage

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n1*

1. On or about _____, 20 ____ and _____, 20 ____, at _____, defendants accepted shipment of _____ from _____, an agency of the United States of America, on behalf of the Agency for International Development, United States Department of State, in good order and condition, for loading on board _____, and agreed to transport it to there to be delivered in the same good order and condition as when received, all in consideration of charges paid or to be paid and in accordance with the terms of a contract of carriage evidenced by defendant, _____ bills of lading.

2. _____, with said shipment on board, then sailed from said port of loading and subsequently arrived at the discharging ports where defendants attempted to deliver said shipments which were not in the same good order and condition as when received and shipped, but on the contrary were partially missing, torn, broken, leaking, slack, unfit for human consumption, stained and otherwise grievously and seriously injured and damaged, and part of said shipment was not discharged or delivered to consignees there or at any other port or place, all in breach of said contract of carriage, and of defendants' duties and obligations as carriers of merchandise by water for hire.

3. Plaintiff and all parties to said contract for whom plaintiff may be responsible have performed all terms and conditions of said contract on their part required to be performed.

4. By reason of the foregoing, plaintiff sustained damages in the sum of \$_____, as nearly as can be estimated. Said sum has not been paid although duly demanded and remains owing to plaintiff from defendants.

[Prayer for Process, Demand for Judgment]

and Verification by United States Attorney] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1, 1-2 and 1-5 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6 and 1-12 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-89

FORM No. 1-89 Complaint In Rem and In Personam Against Lighter--Cargo Damage

[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n1

4. On or about the _____ day of _____, 20____, plaintiff, acting through its agent, _____, chartered the vessel _____ for the carriage of a cargo of _____, at a rate of _____ per ton, from alongside the vessel _____, lying at Pier _____, _____.

Under and by virtue of said charter party or contract of affreightment, the seaworthiness of the vessel _____ was warranted, including the proper manning of the vessel.

5. The vessel _____ arrived alongside the _____ on _____, 20____, and commenced to load a cargo of _____ which was delivered from the vessel. At about _____ P.M. of _____ the master of the barge signified that she had a complete cargo.

6. The master of the vessel _____ caused and permitted the barge to be so deeply loaded that her free-board aft did not exceed 18 inches. She lay in the outer end of the slip with her stern toward the bay totally unprotected from the north and the east. The master of the said barge thereupon abandoned her, having failed to cover the manholes leading into a number of her tanks and into her after peak. During the night of _____, 20____, a moderate storm came up from the northeast causing waves and swells on the bay which washed over the deck of said barge and entered her after peak and her tanks, through the open manholes, sinking the barge still deeper in the water and ultimately causing her to founder, resulting in the total loss of most of her cargo.

7. The vessel _____ was unseaworthy in the following among other particulars which will be proved upon the trial:

1. She was laden too deeply;
2. Her manhole covers were left off;
3. She was abandoned by her master;
4. Her master was incompetent.

8. Plaintiff had purchased the said _____ laden on the _____ from _____, the owner of the and at all the times herein mentioned plaintiff was the owner of the said _____.

9. A _____ has assigned all of its rights in the premises, if any, to plaintiff.

10. Plaintiff has duly performed all obligations on its part to be performed.

11. By reason of the premises plaintiff has suffered damages in the amount of \$ _____ with interest thereon from the _____ day of _____, 20 _____.

[Prayer for Process, Demand for Judgment and Verification] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1, 1-2 and 1-5 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6, 1-10, 1-11 and 1-12 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-90

FORM No. 1-90 Complaint In Personam With Maritime Attachment--Cargo Damage Caused by Non-Delivery

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n1*

4. The _____ [*identify vessel*] at and during all times hereinafter mentioned, was and now is a vessel employed in the common carriage of merchandise by water for hire, which was owned, operated, managed and otherwise controlled by the defendant.

5. On or about _____, 20 _____, in the City of _____, State of _____, County of _____, there was shipped by the plaintiff, _____, and delivered to the defendant, _____, as a common carrier, _____ cartons of _____, all in good order and condition, as more fully described in documents issued by the defendants and denoted bills of lading, numbered _____, _____, _____, and _____, for transportation on the _____ [*identify vessel*]. The defendant accepted said shipment which was delivered to it and, in consideration of certain agreed freight charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipment on board the _____ [*identify vessel*] in part to _____, _____ and carry the balance of the shipment to _____, _____ and there deliver the same in like order and condition as when received by the defendant.

6. Thereafter, in violation of its duty as a common carrier of merchandise by water for hire and its agreement with the plaintiff, the defendant failed to load the aforesaid shipment on the _____ [*identify vessel*] or any other vessel owned, operated, managed or otherwise controlled by the defendant, but, instead, permitted the shipment to remain upon a pier; as a direct result, the shipment rotted, decayed, and was destroyed at the direction of the defendant and its agents, and was never delivered at the port of destination.

7. Plaintiff is the owner and shipper of the shipment described in Paragraph 5 above and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who are, or may become, interested in said shipment, as their respective interests may ultimately appear and plaintiff is entitled to maintain this action.

8. That, by reason of the aforesaid, the plaintiff has sustained damages in the amount of \$_____, no part of which has been paid although duly demanded.

[*Prayer For Process; Demand for Judgment and Verification*] n2

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1, and 1-7 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6, 1-10, 1-11 and 1-12 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-91

FORM No. 1-91 Complaint In Rem and In Personam by Charterer--Jettison of Cargo

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n1*

4. On or about the _____ day of _____, 20____, defendant, _____ entered into a charter party with plaintiff whereby defendant agreed to let and plaintiff agreed to hire the *[identify vessel]* for a period of two months from the time of delivery of said vessel, the charter containing among others, the following clause:

"22. Should the vessel be stranded or exposed to other perils resulting in the jettison of bananas, and the vessel be ultimately saved, the ship owner agrees to pay to the charterer for the bananas jettisoned, fifty cents, United States currency, per stem of bananas, and further to assume all liability for the banana cargo's contribution to general average and salvage expenses."

A copy of said charter is attached hereto and incorporated herein as Exhibit A.

5. The said *[identify vessel]*, thereafter, during _____, 20____, and during the continuance of said charter, sailed for the _____, from _____ with a cargo of bananas, and was stranded on _____, and in consequence of such stranding, the master and crew of the vessel were obliged to and did jettison _____ *[state cargo and quantity jettisoned]*, which became a total loss.

By reason of the jettison of the _____ *[state cargo]* there be came due to plaintiff from the owner of the _____ *[identify vessel]*, under the provisions of the said charter party, the sum of \$_____.

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6. Plaintiff also made certain advances for account of the _____ [*identify vessel*], and furnished materials and repairs to the _____ [*identify vessel*] during the life of said charter in the amount of \$ _____, making the total of \$ _____, which is due under the terms of said charter, by defendant and the _____ [*identify vessel*], to plaintiff, which sum has been demanded and payment of which has been refused.

[*Prayer for Process, Demand for Judgment, and Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1, 1-2 and 1-5 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6, 1-10, 1-11 and 1-12 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-92

FORM No. 1-92 Complaint (Third Party) In Personam--Cargo Damage

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties n1*

4. On or about _____, 20____, plaintiffs _____ filed an action in this Court against defendants _____ to recover for alleged non-delivery, shortage, loss, pilferage and damage with respect to a shipment of _____ [*state cargo* moving from _____ to _____, aboard the [*identify vessel* under bills of lading Nos. _____ dated _____, 20____. A copy of the complaint is attached hereto and incorporated herein as Exhibit A.

5. The third-party defendant _____, by its agents, servants and/or employees, discharged and arranged for the pickup of the cargo which is the subject of the complaint and had custody and control of it, pursuant to agreement.

6. Any non-delivery, shortage, pilferage, loss and damage to the subject cargo, which is not excused by contract or statute, was due to the negligence, breach of contract and breach of an implied warranty of third-party defendant _____, who should be held directly liable to plaintiff _____, and who should be required to indemnify the third-party plaintiffs _____ for all sums which they may be required to pay, including the costs of defending this action.

Wherefore third-party plaintiffs _____ pray that the complaint be dismissed as to them; that the third-party defendant _____ be required to pay to plaintiff such losses as may be proven; that third-party defendant _____ be required to indemnify the third party plaintiffs _____ for all of their losses, including legal expenses and for such other and further relief as to this Court may seem just and proper.

Dated: _____, 20 _____

Attorney for Third-Party Plaintiffs

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-93

FORM No. 1-93 Complaint (Counterclaim) Alleging that Improper Packing by Plaintiff Caused Damage to Other Cargos

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2*

4. On or about _____, 20____, plaintiff, *[shipper, owner, consignee or representative of the owner]* caused to be delivered to the _____ *[identify vessel]* a _____ *[describe cargo]*, _____, on board the _____ *[identify vessel]* to be carried from the port of _____ to the port of _____.

5. Plaintiff loaded, stowed, and secured said _____ *[identify cargo]* in a container that was loaded on board the vessel.

6. During the voyage, said _____ *[identify cargo]* broke loose within the container causing damage to containers stowed in areas adjacent to said gear generator. As a result of said event approximately five containers carried on board the vessel were severely damaged.

7. The aforesaid losses were due solely to the negligence of the plaintiff or those acting on its behalf because the _____ *[identify cargo]* was not stowed and secured properly within the container.

8. As a result of said negligence, defendant, has or may suffer damages in the amount of \$ _____ as nearly as the same can now be estimated.

Wherefore, defendant, _____, demands judgment dismissing the Complaint herein, together with costs and disbursements of this action and judgment against plaintiff for \$ _____ plus interest and

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such other further relief as the court deems just and proper under the circumstances.

Dated: _____, 20 _____

Attorney for Defendant

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-94

FORM No. 1-94 Complaint In Rem and In Personam by Cargo Owner on Behalf of Other Cargo Owner Against Vessel Owner and Shipyard--Cargo Damagen1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

5. On or about _____, 20____, at the port of _____, there was delivered to the vessel _____ and defendant in good order and condition a shipment of _____ [identify cargo] of _____ marked _____ [bill of lading No. _____] and _____ packages of _____ marked _____ [bill of lading No. _____], which said vessel and defendant received, accepted and agreed to transport for certain consideration to the port of _____.

6. Thereafter, the said vessel arrived at the aforesaid port of destination where the cargo was delivered short and/or otherwise damaged.

7. By reason of the premises, the above named vessel and defendants breached, failed and violated their duties and obligations as common carriers and were otherwise at fault.

8. Plaintiff was the [shipper, consignee or owner of the shipment] as above described, and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

9. Plaintiff has duly performed all duties and obligations on its part to be performed.

10. By reason of the premises, plaintiff has sustained damages as nearly as same can now be estimated, no part of which

has been paid, although duly demanded, in the amount of \$_____.

FOR A CAUSE OF ACTION AGAINST

_____ SHIPYARDS CORP.

11. Plaintiff repeats and realleges each of the allegations set forth in Paragraphs 2 through 10 with the same force and effect as if fully set forth herein at length.

12. The defendant, _____ Shipyards Corp., is a corporation organized and existing under and by virtue of the laws of the State of _____, with an office and place of business at _____, _____.

13. The jurisdictional basis of the claim herein is the diversity of citizenship of the parties and the amount in controversy being in excess of \$50,000.00.

14. Prior to the outbound voyage of the _____ [*identify vessel*] to _____ where the aforementioned cargo was loaded certain repairs were negligently done in the No. 1 hold by the defendant, _____ Shipyards Corp., in a defective, improper and inadequate manner as a result of which on the voyage aforementioned water entered that hold damaging the plaintiff's cargo in breach of defendant's, _____ Shipyards Corp.'s, obligations.

[*Prayer for Process, Demand for Judgment and Verification*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Lawnelson Corp. v. S.S. Iran Niru*, 76 Civ. 7 (CES) (S.D.N.Y. 1976).

(n2)Footnote 2. *See* Form Nos. 1-1, 1-2 and 1-5 *supra*.

(n3)Footnote 3. *See* Form Nos. 1-3, 1-6 and 1-12 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-95

FORM No. 1-95 Intervening Complaint In Rem and In Personam--Cargo Loss and Damage

[Caption] n1

Intervening plaintiff _____ [state name], by their attorney _____ brings this action against the defendants _____ [identify vessel], her engines, boilers, tackle, etc., In Rem and _____ Trust Co., In Personam, and allege as follows:

1. These claims come within this Court's Admiralty and Maritime jurisdiction with respect to the carriage of goods by water, and under the Court's diversity and pendent jurisdiction with respect to the remaining aspects of the claim.
2. Plaintiffs are the owners or duly authorized representatives of the owners or underwriters or subrogated underwriters of cargo shipped on board the defendant vessel _____ which is more particularly described in Schedule A hereto, (omitted) and for which bills of lading were issued.
3. Defendant _____ is a corporation, trustee and owner of the _____ [identify vessel]
4. The cargo described in Schedule A was lost and damaged by defendants due to the fault, neglect, deviation, tortious interference with contract, breach of warranty, and conversion of defendants, their agents and servants, and delivered by defendants in non-conforming condition, mis-delivered and non-delivered.
5. The vessel is now within the jurisdiction of this Honorable Court.
6. Intervening plaintiffs sue on their own behalf and as agents and trustees on behalf of any other party who may now have or hereinafter acquire an interest in this action.

7. Intervening plaintiffs' damages are in excess of \$ _____.

Wherefore, intervening plaintiffs demand judgment in an amount exceeding \$ _____ plus interest and costs, and pray the Court to issue its process against the aforesaid defendant and vessel.

Dated: _____, 20 _____

Attorney for Intervening Plaintiffs

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-96

FORM No. 1-96 Complaint (Cross-Claim) by Vessel Owner Against Co-Defendants--General Claim of Indemnity--Cargo Damagen1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. That if plaintiff is entitled to recover damages from defendant and cross-claim plaintiff, _____, by reason of matters and things alleged in the complaint, then defendant and cross-claim plaintiff, _____, will have been held liable as a result of the cross defendant's breach of contract, breach of warranty, or negligence with respect to the shipment described in the complaint and the matters in suit.

5. By reason of the foregoing, cross defendant, _____, is primarily liable for any and all damages sustained by the plaintiff, and said cross defendant is obligated to indemnify defendant and cross plaintiff, _____, for any and all damages that may be imposed upon it by reason of the occurrences described in plaintiff's Complaint and for the costs incurred, including reasonable attorneys fees, in defending this suit and action.

Wherefore, defendant and cross-claim plaintiff, _____, prays that judgment be entered herein dismissing the complaint against it and, in the alternative, demands judgment over and against cross-claim defendants, _____ and _____, for any sum which may be recovered herein by the plaintiff against defendant and cross-claim plaintiff, _____, together with the costs, disbursements, and reasonable counsel fees incurred in the defense of this action, and for such other and further relief as may be just.
Dated: _____, 20 _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New

York.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-97

FORM No. 1-97 Complaint (Cross-Claim) for Indemnity by Vessel Owner Against Shipyard--Cargo Damagen1

[Caption] n2

ANSWER AND CROSS-CLAIM

Defendant, _____ Shipping Line, by its attorneys, _____,
& _____, for its Answer to the Complaint herein alleges upon information and belief as follows:

1. It admits _____

2. It denies _____

FIRST DEFENSE

3. _____

SECOND DEFENSE

AS AND FOR A CROSS-CLAIM AGAINST _____ SHIPYARDS CORPORATION

4. Defendant, _____ Shipping Line, repeats and realleges each and every allegation set forth above in paragraphs 1 and 2 as if fully set forth in length herein.

5. At all times hereinafter mentioned, defendant, _____ Shipping Line, was and now is a foreign entity duly organized and existing under and by virtue of the laws of _____, and was the owner of the _____.

6. At all times hereinafter mentioned defendant, _____ Shipyards Corporation, was and now is a corporation duly organized and existing under and by virtue of the laws of one of the States of the United States, with an office and place of business at _____.

7. Prior to the outbound voyage of the _____ to _____ where the subject cargo of this litigation was loaded, certain repairs were negligently performed by defendant, _____ Shipyards Corporation in a defective, improper and inadequate manner.

8. If the plaintiff's cargo sustained any damage or loss as alleged in the complaint, which is denied, such damage or loss was occasioned solely by the fault and neglect of, and was attributable to, the defendant, _____ Shipyards Corporation, its agents or servants, and not to the defendant, _____ Shipping Line.

9. By reason of the aforesaid, if there should be any liability imposed upon defendant, _____ Shipping Line, the defendant, _____ Shipyards Corporation, is liable over to said defendant for the amount of any such liability, together with the costs and disbursements of this action, including attorney's fees, and if said defendant, _____ Shipping Line, is held responsible for the damages sustained by the plaintiff herein, such liability will have been brought about and was caused wholly as a result of the primary and active negligence or fault of the defendant, _____ Shipyards Corporation, its agents or employees, without any fault on the part of the defendant, _____ Shipping Line, contributing thereto.

10. Defendant, _____ Shipping Line, has duly performed all duties and obligations on its part to be performed.

Wherefore, defendant, _____ Shipping Line, prays that the Complaint be dismissed as against it or, alternatively, if it should be found liable to any extent to plaintiff, that it should have full indemnity for such liability from defendant, _____ Shipyards Corporation, together with the costs and disbursements, and reasonable counsel fees incurred in the defense of this action, and that it have such other, further, and different relief as the justice of the cause may require.

Dated: _____, 20 _____

Attorney for
Defendant, _____
Shipping Line

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Lawnelson Corp. v. S.S. "Iran Niru"*, 76 Civ. 7 (CES) (S.D.N.Y. 1976).

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (Matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-98

FORM No. 1-98 Complaint (Cross-Claim) for Indemnity by Vessel Owner Against Shipper--Cargo Damage--Insufficient Packaging, Limitation of Liability and Mitigation Expensesn1

[Caption, Jurisdictional Statement and Allegation Concerning Parties] n2

FIRST CROSS-CLAIM

4. That the shipment that is the subject of Plaintiff's Complaint was carried aboard defendant _____ vessel pursuant to the terms of a bill of lading, number _____ issued to Co-defendant _____ or its duly authorized agent, a true copy of which is attached hereto and incorporated herein as Exhibit A.

5. That Defendant _____, its agents, or employees packaged and secured the metal working machinery to a flatbed before delivering it to Defendant _____, at the port of _____ for ocean carriage.

6. That Clause 8 of the terms of the long form bill of lading provides:

"8. SUFFICIENCY OF PACKAGING AND MARKING. The shipper, whether principal or agent, represents and warrants that the goods are properly described, marked, secured and packed and may be handled in ordinary course without damage to the goods, ship, or property or persons and guarantees the correctness of the particulars, weight of each piece or package and description of the goods and agrees to ascertain and to disclose in writing on shipment, any condition, nature, quality, ingredient or characteristic that may cause damage, injury or detriment to the goods, other property, the ship or to persons, and for the failure to do so the shipper agrees to be liable for and fully indemnify the carrier and hold it harmless in respect of any injury to death of any person and loss or damage to cargo or property. The carrier shall not be concluded as to the correctness of any such mark, descriptions or representations."

7. If the aforesaid cargo sustained damage or loss, which Defendant _____, denies, said damage or loss resulted from the primary, active and direct fault, negligence, breach of express or implied warranty, and want of care on the part of the Co-defendant _____, its agents, servants, or employees, without the fault of Defendant _____.

8. If Plaintiff is entitled to recover damages against Defendant, _____, by reason of the matters alleged in the Complaint, which _____ denies, then Defendant _____ is entitled to indemnity in full, including legal fees and expenses from Co-defendant, _____.

SECOND CROSS-CLAIM

9. That under the terms of said bill of lading, it was agreed between Defendant _____, and Defendant, _____, that any "piece and all articles of any description of goods except goods shipped in bulk" shall be considered a "package."

10. That the particulars typed onto the face of bill of lading No. _____, Exhibit A, were provided by Defendant, _____, its agents, or employees.

11. That if Defendant, _____ is liable for any damage to the cargo, which liability is specifically denied defendant _____'s liability under the agreed terms of the bill of lading is a maximum of \$500.

12. If Defendant _____, is held liable to plaintiff for more than \$500, then _____ is entitled to be indemnified in full by Defendant _____, for any amount exceeding \$500, plus fees and disbursements incurred in participating in this litigation.

THIRD CROSS-CLAIM

13. Defendant _____ repeats and realleges each and every allegation contained in the foregoing paragraphs, _____ through _____, with the same force and effect as if the same were herein set forth at length.

14. That Defendant, _____, was forced to incur expenses amounting to \$ _____ as a result of labor and materials expended as a result of the damages, and efforts to mitigate the damage, to Plaintiff's cargo.

15. By reason of Defendant _____'s failure to properly and safely package and secure the shipment, defendant has sustained damages in the amount of \$ _____, no amount of which has been paid by _____.

Wherefore, defendant _____, demands judgment dismissing the Complaint herein, together with costs and disbursements of this action, or in the alternative, if liability for the damages set forth in the Complaint should be adjudged in favor of Plaintiff and against _____, then _____ is entitled to indemnity in full, including reasonable counsel fees, disbursements, and expenses from _____, as well as the \$ _____ in labor and materials expended in the efforts to mitigate the damages, and for such other and further relief as in the premises may be just.

Dated: _____, 20 _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-99

FORM No. 1-99 Complaint (Cross-Claim) for Indemnity by Vessel Owner Against Stevedore--Cargo Damagen1

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2*

4. At all pertinent times mentioned in the Complaint, Defendant, _____, agreed to furnish stevedoring and terminal service to the _____ and to defendant _____, including the discharge, placing, tiering, and safekeeping on the Piers of the cargo that is the subject of this suit.

5. The various consignments of _____ in suit were allegedly discharged and delivered short or otherwise damaged.

6. If the Plaintiff suffered the damages as alleged in the Complaint, which Defendant _____, denies, the same are improperly attributed to the acts of Defendant _____, but were actually caused by the fault and neglect, act, or omission of the Defendant, _____, in violation of _____'s warranty to perform its service in a workmanlike manner.

7. By reason of the aforesaid, Defendant _____, is primarily liable for any and all damages sustained by the Plaintiff and said Defendant is obliged to indemnify the Defendant, _____, for any and all damages that may be imposed upon it by reason of the occurrence described in the Plaintiff's Complaint.

Wherefore, Defendant _____, demands judgment dismissing the Complaint herein, together with costs and disbursements of this action, or in the alternative for judgment against the Defendant _____, for all sums as may be recovered by the Plaintiff against defendant, _____, in this action, together with reasonable counsel fees, costs, and disbursements.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Forms Nos. 1-1 and 1-5 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-100

FORM No. 1-100 Complaint (Cross-Claim) for Indemnity by Vessel Owner Against Trucker--Cargo Damagen1

[Caption] n2

ANSWER AND CROSS-CLAIM

Defendant, _____ Marine Lines, by its attorney, _____, for its Answer to the Complaint herein alleges upon information and belief as follows:

1. It admits _____

2. It denies _____

FIRST DEFENSE

3. _____

SECOND DEFENSE

4. _____

AS AND FOR A CROSS-CLAIM AGAINST _____
TRANSPORTATION CORPORATION

5. Repeat and reallege each and every admission, denial and denial of knowledge or information contained in each and every paragraph of the Complaint answered.

6. That at the times hereinafter mentioned in the Complaint, the Defendant, _____ Transportation

4-I Benedict on Admiralty FORM No. 1-100

Corporation is a corporation organized and existing pursuant to the laws of one of the states of the United States, and was and is doing business within the State of _____, and was at all times mentioned in the Complaint engaged in the common carriage of cargo by truck for hire.

7. Defendant, _____ Marine Lines, is a corporation with an office and place of business at _____, and at all the times mentioned in the Complaint was engaged in the ocean carriage of goods by hire.

8. That each of the shipments referred to in the Complaint, which were carried aboard the vessel _____, were delivered to Defendant _____ Transportation Corporation, or its employees, agents, or authorized representatives in good order and condition at _____, and were thereafter transported by _____ Transportation Corporation to _____.

9. That if the said shipments were damaged as alleged in the Complaint, such damage occurred while they were in the possession, custody, and control of the Defendant, _____ Transportation Corporation, as common carrier, and subsequent to their delivery by the Defendant _____ Marine Lines.

10. That in the event the Defendant _____ Marine Lines, is found liable to the Plaintiff _____ in this action, such liability will arise by operation of law and not by reason of any act, omission, default, or other conduct on its part.

11. That by reason of the foregoing, in the event the Defendant, _____ Marine Lines, is found liable to the Plaintiff _____, it will be entitled to indemnity from said Defendant, _____ Transportation Corporation.

Wherefore, the Defendant, _____ Marine Lines, demands judgment dismissing the Complaint herein, together with the costs and disbursements of this action. In the event judgment is rendered in this action in favor of the Plaintiff _____, against the Defendant _____ Marine Lines, then and in that event, the Defendant, _____ Marine Lines, demands judgment over and against the Defendant, _____ Transportation Corporation, in a like amount.

Dated: _____

 _____ Attorney for Defendant _____
 Marine Lines

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-101

FORM No. 1-101 Complaint (Cross-Claim) for Indemnity by Vessel Owner Against Charterer--Damagen1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. At all times herein, and throughout the voyage in question, the vessel _____ was operated under the terms and conditions of a certain tanker time charter party dated at _____ on _____, 20 _____, entered into between _____, owners, and _____, charterers.

5. The aforesaid time charter provides that, should any dispute arise between the owners and charterers, it should be referred to arbitration in _____. Defendant _____ hereby reserves its rights to demand arbitration.

6. If Defendant _____ is under any liability to the Plaintiff by reason of matters or things alleged in the Complaint, which it denied, then, under the provisions of the aforesaid time charter, the said charterers are liable over to _____ to the full extent of such liability, plus reasonable counsel fees and expenses.

Wherefore, Defendant _____, demands judgment dismissing the Complaint herein, together with costs and disbursements of this action, and judgment against Defendant _____, for all sums, if any, which may be recovered by Plaintiff from Defendant _____, and, whether or not Plaintiff prevails, reasonable counsel fees, costs, and disbursements of this action, and for such other and further relief as may be just.
Dated: _____

Attorney for Defendant, _____

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-102

FORM No. 1-102 Complaint by Cargo Owner Against Common Carriers--Failure to Safely Secure, Load, Stow, Carry and Care for Cargo

[Caption] n1

The Plaintiff _____, by its attorneys, _____ sue the Defendants
_____ [identify vessel], in rem, and allege as follows:

1. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears and is an admiralty or maritime claim within *Rule 9(h) of the Federal Rules of Civil Procedure*.

2. Plaintiff _____, is a corporation organized and existing under and by virtue of the laws of the State of _____, with an office and place of business at _____.

3. Plaintiff _____ is a corporation organized and existing under the laws of _____ with an office and place of business in _____.

4. Defendant _____ is a foreign corporation and upon information and belief is organized and existing under and by virtue of the laws of _____ with an office and place of business in _____, and that _____, which was and still is in business as a common carrier of merchandise by water for hire, controlled, owned and/or managed the vessel at all times pertinent hereto, which vessel is now or will be within the jurisdiction of this Court during the pendency of this action.

5. Defendant _____ is a foreign corporation and upon information and belief is organized and existing under and by virtue of the laws of _____, with office and place of business in _____, and that _____ Lines, which was and still is in business as a common

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carrier of merchandise by water for hire, controlled, owned and/or managed the vessel all times pertinent hereto, which vessel is now or will be within the jurisdiction of this Court during the pendency of this action.

6. Defendant _____ is a corporation organized and existing under and by virtue of the laws of the State of _____, with an office and place of business at _____, which Defendant was and still is in the business of providing services as steamship agent and other functions as more full appears herein in the Port of _____.

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-103

**FORM No. 1-103 Complaint In Personam by Charterer and Cargo Owner on Behalf of Other Cargo Owners,
With Demand for Arbitration--Cargo Loss Caused by Vessel's Sinkingⁿ¹**

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2*

4. On or about _____, 20 ____, plaintiff _____ as Charterer, entered into a Charter Party with defendants _____, as Owner, for the charter of the vessel _____ for the transportation and carriage of approximately _____ [*identify cargo*] from the port of _____ to the port of _____, for an agreed freight.

5. On or about _____, 20 ____, at the port of _____, and on or about _____, 20 ____, at the port of _____, there was shipped by the plaintiff, _____, as shipper, and delivered to the defendants and the said vessel _____, the aforementioned cargo of _____ in the amount of _____, then being in good order and condition, and the defendants and the said vessel then and there accepted said shipments so shipped and delivered to them, and in consideration of the agreed freight thereupon paid or agreed to be paid, agreed to transport and carry the said shipments to the port of destination as stated above, and there deliver the same in like good order and condition as when shipped, delivered to, and received by them unto the consignee of said shipments.

6. Thereafter, the said vessel _____ departed from the port of _____, bound for _____, and while enroute, and on or about _____, 20 ____, the said vessel took in sea water into her engine room and other compartments of the vessel and sank, with the plaintiffs' cargo onboard.

7. The sinking of the vessel _____ and resultant loss of plaintiff's cargo was the direct and proximate result of the negligence, fault, knowledge and privity of said defendants and each of them, in the management, operation

and maintenance of said vessel.

8. By reason of the premises aforesaid, defendants have wholly failed to make delivery of plaintiff's shipments, all in violation of their obligations and duties as common carriers of goods by water for hire.

9. Plaintiff was the _____ [*shipper, consignee or owner*] of the above shipments and brings this action on its own behalf and as agent and trustee on behalf of or for the interests of all parties who may be or become interested in said shipments, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

10. All conditions precedent required of plaintiff and of all others interested in said shipments have been performed.

11. By reason of the premises, plaintiff has sustained damages in the sum of \$ _____, as nearly as the same can now be estimated, no part of which has been paid, although duly demanded.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF _____

12. Plaintiff, _____, repeats and realleges the allegations contained in Paragraphs 1 through 11 of this Complaint.

13. Clause _____ of the Charter Party referred to in Paragraph 4 herein provides in effect that any and all differences and disputes arising out of the Charter be put to arbitration in the City of _____, as follows:

"It is mutually agreed that should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York for arbitration, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final and for the purpose of enforcing any award, this agreement may be made a rule of the court. The arbitrators shall be commercial men."

14. A dispute, as aforesaid, has arisen between said plaintiff, _____ and said defendant, _____, which dispute plaintiff is entitled to have referred to arbitration.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Nicheman Co., Inc. v. Transpacific Lines, Inc.*, 74 Civ. 5476 (S.D.N.Y 1974).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-104

FORM No. 1-104 Complaint In Personam With Maritime Attachment to Enforce Foreign Judgment--Cargo Damagen1

[Caption and Jurisdictional Statement] n2

2. At all times hereinafter mentioned plaintiff was and still is a corporation duly organized and existing pursuant to the laws of _____, with an office and place of business _____.

3. At all times hereinafter mentioned defendant, _____, was and still is a corporation duly organized and existing pursuant to the laws of _____, with an office and place of business at _____.

4. Plaintiff herein filed suit in the _____ Court of _____ against, *inter alia*, defendant herein to recover \$ _____ damages for loss of and damage to a shipment of _____ *[identify cargo]* carried aboard the vessel _____ under _____ bills of lading _____, all dated at _____, 20 _____, which action bears _____ Court of _____ index number _____ of 20 _____. Statement of claim is attached hereto and made part hereof as Exhibit "A." Notice of Writ is attached hereto and made part hereof as Exhibit "B."

5. On _____, 20 _____, Master *[or Judge]* _____ of the _____ Court of _____ signed an order, a copy of which is attached hereto and made part hereof as Exhibit "A," permitting plaintiff to issue a concurrent Writ for service upon _____, at _____.

6. Copies of said order of Master *[or Judge]* _____ of 20_____, the notice of Writ, and statement of

4-I Benedict on Admiralty FORM No. 1-104

claim were personally served upon defendant, _____, on _____, 20____, by _____, Esquire. Affidavit of Service of _____ is attached hereto and made part hereof as Exhibit "D."

7. The matter before the _____ Court of _____ having come on for trial and assessment of damages before the Honorable Mr. Justice _____ of that court on 20 _____, and the court, having noted the default of defendant, _____, entered judgment on _____, 20 _____ against said defendant and in favor of plaintiff, _____, a copy of which judgment is attached hereto and made part hereof as Exhibit "E."

8. The _____ Court of _____ had proper jurisdiction, under the laws of _____, over said suit.

9. Said judgment remains fully unsatisfied, and no proceedings have been instituted anywhere in the world to enforce the judgment against either judgment debtor, to wit, _____ and defendant, _____.

10. Upon information and belief defendant, _____, has for all intents and purposes ceased doing business and has little or no prospect of conducting a viable business and therefore may deem it prudent to remove any or all of its assets from this district and from the _____ District of _____, which assets consist of cash, funds and credits in its hands and bank accounts and those of its affiliates and agents [*state names*]:

a) Accounts of _____,
_____ Bank _____

b) Accounts of _____,
_____ Bank _____

c) Accounts of _____,
_____ Bank _____

d) Cash, funds and credits of _____ in the hands of _____

e) Cash, funds and credits of _____ in the hands of _____

f) Cash, funds, credits and accounts of _____, including, but not limited to, letters of credit, and funds payable under said letters of credit, in favor of _____, at _____ Bank

Wherefore, plaintiff prays,

1. That a writ of maritime attachment and garnishment be issued and levied against (a) the accounts of _____ at _____ Bank, _____; (b) the accounts of _____ at _____ Bank, _____; (c) the accounts of _____ at _____ Bank, _____; (d) cash, funds and credits of _____ in the hands of _____; (e) cash, funds and credits of _____ in the hands of _____; (f) cash, funds, credits and accounts of _____, including, but not limited to, letters of credit, and funds payable under said letters of credit, in favor of _____, at _____ Bank, _____.

2. That plaintiff may have judgment against defendant herein in the amount of _____, or its equivalent in United States dollars, together with the costs and disbursements of this action and the costs of the _____ [foreign] action.

3. That plaintiff may have such other and further relief as this court may deem just and proper.

Dated: _____, 20 _____

Attorney for Plaintiff

[Affidavit] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Philip Green & Co, Ltd. v. Sovereign Marine Lines, Inc., Civ. No. 76C 62 (E.D.N.Y.).

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. *See* Form No. 1-9 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-105

FORM No. 1-105 Complaint by Plaintiff Oil Company Against Vessel and its Owner--Cargo Shortage

[Caption] n1

The Plaintiff herein by its attorneys, complaining of the above named vessel, alleges upon information and belief:

1. This is an admiralty or maritime claim within the *Fed. R. Civ. P. 9(h)*.
2. The Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of _____. Plaintiff is a dealer, importer and refiner of crude oil.
3. That Plaintiff is the owner of a cargo of _____ loaded aboard the _____
[identify vessel] on or about _____, 20 _____ in the total amount of approximately
_____ metric tons.
4. The Defendant vessel _____ is an ocean going vessel, of _____ flag registry and is a common carrier of cargo between various ports of the world and the United States. Said vessel is now situated in the Port of _____ and is engaged in maritime commerce.
5. On or about _____, 20 _____, at the port of _____, there was delivered to the said vessel in good order and condition a shipment of _____ metric tons of _____ and said cargo was accepted by said vessel which agreed to transport same to the Port of _____, for certain money consideration thereupon paid or agreed to be paid.
6. That the vessel _____ arrived at _____ on or about _____, 20 _____ and discharged a portion of the aforesaid cargo, but not in the same quantity and condition as when accepted by

the Defendant vessel in that the amount discharged was short in the amount of approximately _____ barrels, all in violation of the Defendant vessel's duties and obligations as a common carrier of merchandise by water for hire.

FIRST CAUSE OF ACTION (CONTRACT)

7. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 through 6 of this Complaint.

8. Said damages resulted from the breach by Defendant vessel of its agreements and warranties, both expressed and implied, safely to secure, load, stow, and carry the said cargo of _____ and to discharge and deliver same to Plaintiff in like good order and condition as when received by it for shipment.

9. Said damage resulted from the breach by Defendant vessel of its agreements and warranties, both express and implied, to discharge and secure the said cargo in a workmanlike manner.

10. That the Plaintiff was the _____ [*shipper, consignee and/or owner*] of the shipment as above described and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who are or may become interested in the said shipments, as their respective interest may ultimately appear, and Plaintiff is entitled to maintain this action.

11. Plaintiff has duly performed all duties and obligations on its part to be performed.

12. That as a result of the aforesaid breaches of agreements and warranties by this Defendant, Plaintiff has suffered loss of cargo, additional expenses and related damages in the approximate amount of _____ Dollars (\$ _____) as near as can now be calculated, none of which has been paid although duly demanded.

SECOND CAUSE OF ACTION (TORT)

13. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 through 6 of this Complaint.

14. Said damage resulted from the negligence of Defendant vessel in loading, stowing, securing, carrying and/or discharging the said cargo in that among other things, the Defendant:

- a. Failed to properly protect the cargo;
- b. Failed to properly cover the cargo;
- c. Failed to properly store, stow, load, and carry the cargo;
- d. Failed to follow directions of Plaintiff as to protection required for said cargo;
- e. Failed to provide a seaworthy vessel and a competent crew necessary for the protection of the cargo;
- f. Converted a portion of the cargo to its own use;
- g. And otherwise failed to take proper precaution for the safety of the cargo.

15. That the Plaintiff was the _____ [*shipper, consignee and/or owner*] of the shipment as above described and brings this action in its own behalf and, as agent and trustee, on behalf of and for the interest of all parties

who are or may become interested in the said shipments, as their respective interest may ultimately appear, and Plaintiff is entitled to maintain this action.

16. Plaintiff has duly performed all duties and obligations on its part to be performed and in no way caused or contributed to the aforesaid damages.

17. That as a result of the aforesaid breaches of agreements and warranties by this Defendant, Plaintiff has suffered loss of cargo, additional expenses and related damages in the approximate amount of _____ Dollars (\$ _____) as near as can now be calculated, none of which has been paid although duly demanded.

THIRD CAUSE OF ACTION (BREACH OF WARRANTIES)

18. Plaintiff incorporates herein by reference the allegations of Paragraphs 1 through 6 of this Complaint.

20. That the Defendant chartered the vessel _____ to Plaintiff for the carriage of this cargo from _____ to _____.

20. That Defendant warranted, *inter alia*, that the cargo would be kept at a certain temperature level for the efficient and proper carriage and discharge of the cargo.

21. That Defendant breached such warranties by failing to keep the cargo at a proper temperature, failing to maintain the heating elements in good order and condition, failing to maintain cargo pumps in good order and condition and in otherwise failing to keep the vessel's machinery in a seaworthy condition.

22. As a result of the Defendant's breach of warranty as aforesaid, Plaintiff lost certain of its cargo and was required to incur additional expenses to recover its cargo from the vessel, all of which damages, costs and expenses have been duly demanded from Defendant, but which have not been paid.

23. That as a result of the aforesaid breaches of agreements and warranties by this Defendant, Plaintiff has suffered loss of cargo, additional expenses and related damages in the approximate amount of _____ Dollars (\$ _____) as near as can now be calculated, none of which has been paid although duly demanded.

wherefore, Plaintiff prays:

a. That process in due form of law may issue against the Defendant, _____, citing it personally to appear and answer all and singular the matters aforesaid;

b. That process in rem may issue in due form of law according to the practices of this Honorable Court in causes of admiralty and maritime jurisdiction, against the said vessel _____, her engines, boilers, tackle, etc. and against any and all persons having or claiming to have any and all interest therein, that they may be cited to appear and answer under oath all and singular the matters aforesaid;

c. That Plaintiff may have a decree against the said vessel _____, her engines, boilers, tackle, etc. for damages sustained by the Plaintiff as aforesaid, together with interest and costs and disbursements; that the said vessel _____, may be condemned and sold to pay the same; and that Plaintiff may recover its damages together with interest, costs and disbursements from said Defendant;

d. That judgment be entered against the Defendant vessel in favor of the Plaintiff in the amount of _____ Dollars (\$ _____), together with interest and costs.

e. That this Honorable Court may grant such other and further relief as may be required.

Attorneys for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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CARGO DAMAGE *

4-I Benedict on Admiralty FORM No. 1-106

FORM No. 1-106 Complaint by Plaintiff Cargo Owner Against Vessel, Vessel Owner, Time Charterer and Cargo Loader--Collapse of Container Spilling Cargo Onto Dock

[Caption] n1

_____, Co., by _____, its attorneys, sues _____, in rem, (hereinafter referred to as "Vessel"), _____, and _____, defendants, and respectfully represents upon information and belief:

1. This is a case of Admiralty and Maritime jurisdiction as hereinafter more fully appears and is an Admiralty claim within the meaning of *Fed. R. Civ. P. 9(h)*. This Complaint is in rem against the vessel, _____, pursuant to the *Fed. R. Civ. P. Supplemental Rule C*.

2. At all times hereinafter mentioned, plaintiff was and now is a corporation of a state other than _____, having its principal place of business at _____, and was the owner of a cargo of _____ which is the subject of this case. Plaintiff brings this action on its behalf and as agent and trustee on behalf of all parties who may be or become interested in this shipment as their respective interests may ultimately appear.

3. The _____ is a vessel that is now or will be during the pendency of this action within this District and within the jurisdiction of this Honorable Court.

4. At all times hereinafter mentioned, defendant, _____, was a corporation having its principal office in _____ and was and now is the owner of the Vessel.

5. At all times hereinafter mentioned, defendant _____ was and now is a corporation having its

4-I Benedict on Admiralty FORM No. 1-106

principal office in _____ and was the charterer of the Vessel.

6. At all times hereinafter mentioned, defendant, _____ was a _____ corporation and was acting for defendant, _____, in performing the loading and stowage of the container in which plaintiff's cargo hereinabove referred to had been placed.

COUNT I

7. That on or about _____, 20 _____, defendant, for a valuable consideration, furnished to plaintiff a _____ foot container, No. _____ into which was loaded plaintiff's cargo of _____ for transport to _____, at which point said container was to be loaded aboard the Vessel for shipment overseas. In the course of loading, the flooring of said container collapsed, spilling its contents onto the deck of the vessel and onto the pier, whereby the contents were seriously damaged and depreciated in value. That said defendant acted negligently and in breach of its respective contract and warranty with plaintiff in furnishing a container which was defective, unseaworthy and/or unfit for its intended purpose.

COUNT II

8. That on or about _____, 20 _____, plaintiff's said cargo of _____ in container No. _____ was received by defendant in good order and condition at _____ Terminal and said defendant was thereafter obligated to care for and to properly and carefully load the same on board the Vessel; that in the course of loading on or about _____, 20 _____, said defendant negligently and in breach of its respective contractual obligations, caused the floor of the container to collapse and its contents to be spilled onto the deck of the vessel and onto the pier, whereby the said _____ was seriously damaged and depreciated in value.

COUNT III

9. That on or about _____, 20 _____, plaintiff, _____, was the owner of _____, which were loaded into a _____ foot container, No. _____, to be shipped on board the Vessel, at _____ Terminal for shipment overseas; that said shipment was received by _____ in good order and condition for export, but in the course of loading was caused to break open and its contents spilled to the pier whereby the contents were seriously damaged and depreciated in value; that defendant, _____, was hired by defendant, _____, to perform the loading and stowage of the container at issue herein; that said damage to the container and contents was caused by the negligence of defendant, _____, in the care, custody, loading and handling of said container.

10. By reason of the premises, plaintiff claims damages of \$ _____ plus interest and costs.

Wherefore, plaintiff prays:

a. That a warrant for the arrest of the _____, her engines, boilers, tackle, etc. and her freights and charter hire may issue and that all persons claiming any right, title or interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid;

b. That the _____, her engines, boilers, equipment, etc., may be condemned and sold to satisfy the amount found due to plaintiff, with interest, costs and reasonable attorneys' fees;

c. That the above-named defendants may be cited to appear and answer all and singular the matters aforesaid and that a decree may be entered herein in favor of plaintiff for the amount of its claim, with interest and costs;

d. That plaintiff may have such other and further relief as in law and justice it may be entitled to receive.

Dated: _____, 20 _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No.1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-107

FORM No. 1-107 Complaint by Plaintiff Motor Vehicle Owners Against Common Carrier's Lack of Due Care, Negligence and Unseaworthiness in Delivery of Vehicles

[Caption] n1

Plaintiffs, by their attorneys, _____, for complaint against _____, allege as follows:

1. This is a cause of admiralty and maritime jurisdiction as hereinafter more fully appears and an admiralty and maritime claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*.

2. At all times hereinafter mentioned, Defendant _____ was and is a foreign corporation with an office in _____ and was and still is the owner and/or operator of the _____
[identify vessel].

3. At all times hereinafter mentioned, Defendant _____ was and is a corporation organized and existing under and by virtue of the laws of _____ and was and still is the owner and/or operator of the _____
[identify vessel].

4. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 3 of this Complaint.

5. Plaintiff _____ was and is the owner of a 20 ____ motor vehicle and brings this action on his own behalf and on behalf of and for the interest of all parties who may be or become interested in said motor vehicle, as their respective interests may ultimately appear.

6. On or about _____, 20 ____, at _____, there was delivered to Defendants, their

agents, servants and employees, and _____ [*identify vessel*], as common carriers, the said motor vehicle, in good order and condition. Defendants and the vessel then and there accepted said motor vehicle so delivered to them in consideration of certain agreed freight, thereupon agreed to be paid. Defendants and the vessel agreed to transport the said motor vehicle to _____ and there to deliver the motor vehicle in like good order and condition as when received by Defendants and the vessel. The aforesaid shipment was covered by _____ [*state name*] Bill of Lading No. _____.

7. The damages suffered by Plaintiff _____ resulted from the unseaworthiness of the _____ [*identify vessel*].

8. As the result of the aforesaid breach, lack of due care, negligence and unseaworthiness, Plaintiff _____ has suffered damages in the amount of \$ _____, as best as now can be determined, no part of which sum has been paid, although payment has been duly demanded.

Wherefore, Plaintiff prays:

(a) That process issue in due form of law, according to the practices of this Honorable Court, against _____ and that it be cited to appear and answer all and singular the matters aforesaid;

(b) That judgment be entered against Defendant (and each of them) in the sum of \$ _____, plus interest and costs;

(c) That this Honorable Court grant such other and further relief as the justice of this cause may require.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-108

FORM No. 1-108 Complaint Against Ocean Carrier, River Carrier and Terminal/Stevedore

[Caption] n1

COUNT I

Now comes the plaintiff, _____ [insurance company], as subrogee of _____, by its attorneys _____, and for its complaint against _____, and the vessel _____, her engines, tackle, equipment, furnishings, the _____ [name of barges] alleges and states as follows:

1. This is a case in Admiralty and Maritime jurisdiction as hereinafter more fully appears and is an Admiralty claim within the meaning of *F.R.C.P. Rule 9(h)*.
2. Jurisdiction of this court is also founded on the existence of federal questions arising under the following statute: The Carriage of Goods by Sea Act, 49 Stat. 1207 (1936) 46 U.S.C. Sec. 1300-15 (1964) and the Harter Act, 46 U.S.C. Sec. 190-196 (1964).
3. At all times hereinafter mentioned, plaintiff is in the business of insuring various cargoes.
4. At all times hereinafter mentioned, _____ is a _____ corporation doing business, *inter alia*, as _____.
5. At all times hereinafter mentioned, _____ is subrogated to the rights of recovery of _____, to the full extent of each of these entities' interest in the cargo described below and for recovery against the above-named defendants.

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6. At all times hereinafter mentioned, _____ is a _____ corporation upon information and belief incorporated in the State of _____ and doing business as an ocean common carrier of goods for hire.

7. Upon information and belief, the vessel _____ is a vessel owned, operated and/or chartered by defendant, _____ and is now or during pendency or process herein will be, within the jurisdiction of this court.

8. At all times hereinafter mentioned, _____ is a _____ corporation incorporated in the State of _____ and now doing business as an inland common carrier of goods for hire.

9. Upon information and belief, the barges _____ are vessels owned, operated and/or chartered by defendant, _____, and are now or during the pendency of process herein, will be within the jurisdiction of this court.

10. At all times hereinafter mentioned, _____ is a _____ corporation incorporated in the State of _____ and is now doing business as a stevedore, discharging terminal, and warehouse operator.

11. Upon information and belief, defendant _____ has done and will continue to do business within the jurisdiction of this court.

12. Upon information and belief, defendant _____ has done and will continue to do business within the jurisdiction of this court.

13. Upon information and belief, defendant _____ has done and will continue to do business within the jurisdiction of this court.

14. On _____, 20 _____, _____ contracted with defendant _____ for ocean transportation for hire for a cargo of _____ from _____ to _____. Copies of _____ bill of lading _____ giving rise to this complaint are attached hereto and made a part hereof as group Exhibit "1".

15. On various dates in _____, 20 _____ defendant _____ accepted the various shipments of _____ in good order and condition and issued their bill of lading _____ for transportation for compensation from _____ to _____.

16. At all times hereinafter mentioned, defendant _____ owed to _____ the contractual duty to safely transport and deliver all of the shipments of _____ as set forth in Group Exhibit "1".

17. On _____, 20 _____, _____ contracted with defendant _____ for inland transportation of _____ from _____ to _____. Copies of _____ bill of lading giving rise to this complaint are attached hereto and made a part hereof as Group Exhibit "2".

18. On _____, 20 _____, defendant _____ accepted the various shipments of _____ pursuant to the _____ bill of lading and issued the bill of lading for transportation for compensation from _____ to _____.

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20. At all times hereinafter mentioned, defendant _____ owed to _____ the contractual duty to safely transport and deliver all the shipments of _____ as set forth in Group Exhibit "2".

20. In breach of defendant _____'s duty as a common carrier, various portions of these shipments were not delivered to the consignee in like good order and condition as when received, but rather, were delivered in a _____ condition.

21. In breach of defendant _____'s duty as a common carrier, various portions of these shipments were not delivered to the consignee in like order and condition as when received, but rather, were delivered in a _____ condition.

22. At all times hereinafter mentioned, _____ was entitled to enforce said bill of lading against the defendant for their benefit and for the benefit of any other person having any interest in the goods.

23. At all times hereinafter mentioned, _____ performed all conditions required of them by law to be performed.

24. As a proximate result of defendant(s') breach of their respective duties, _____ has been damaged in the amount of approximately \$_____.

Wherefore, plaintiff _____, as subrogee of _____ demands judgment in the amount of \$ _____ against defendant(s) _____, plus costs, prejudgment interest and other appropriate relief. Plaintiff further demands process in due form of law according to the practice of this Court in Admiralty and Maritime Claims may issue against the vessel _____, her engines, tackle, equipment and furnishings and the barges _____ and that the vessel _____ and the barges _____ may be condemned and sold to satisfy the judgment to the plaintiff herein.

COUNT II

Now comes the plaintiff, _____, as subrogee of _____ by its attorneys, _____, and for its complaint against defendant, _____, alleges and states as follows:

1-15. Plaintiff repeats and realleges paragraphs 1-15 of Count I as and for paragraphs 1-15 of Count II as if said paragraphs were fully set forth in detail hereunder.

16. On or about _____, _____, the defendant received and accepted a quantity of _____ per the _____ bill of lading for delivery to the order of the plaintiff all in accordance with the valid laws and terms thereof.

17. On or prior to _____, 20 _____ the defendant was hired to safely and carefully discharge the aforementioned _____ from the vessel and to hold the same in its care, custody and control as a bailor and to make delivery thereof to the plaintiff in the same order and condition as when received by the defendant.

18. On or about _____, 20 _____ the defendant discharged the _____ from the vessel and received the same into its care, custody and control at its terminal facility at _____.

20. That said _____ became additionally damaged during the course of discharge by the defendant

and/or while in the care, custody and control of the defendant, in breach of its contract to safely discharge and care for the _____ as a direct and proximate result of the negligence of said defendant.

20. As a direct and proximate result of the negligence of said defendant and in breach of its agreement to safely discharge and care for the goods, the said defendant delivered the goods not, however, in the same quality or condition as when received by it, but, on the contrary, in _____ condition.

21. As a proximate result of the above and foregoing, the plaintiff has sustained damages in the proximate amount of \$ _____.

Wherefore, plaintiff, _____, as subrogee of _____, demands judgment in the amount of \$ _____ against defendant _____, plus costs and attorneys fees and for such other relief as this court might deem just and proper in the premises.

By: _____,
One of its attorneys

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-109

FORM No. 1-109 Complaint--Breach of Bailment by Freight Forwarder--Cargo Damagen1

[Caption] n2

Now comes the plaintiff, _____ [insurance company], subrogor and _____, subrogee, by its attorneys, _____, and for its complaint against the defendant, _____, states as follows:

1. At all times hereinafter mentioned, plaintiff, _____, was engaged in the business as, *inter alia*, a _____.
2. At all times hereinafter mentioned, plaintiff, _____, is a lawfully organized corporation doing business as _____.
3. At all times hereinafter mentioned, _____ is subrogated to the rights of recovery of _____ to the full extent of its interest in the cargo described below and for recovery against the above-named defendant.
4. At all times hereinafter mentioned, defendant, _____ was and is a _____ corporation licensed to do business in the State of _____ as *inter alia*, a freight forwarder.
5. On or about _____, 20 _____, defendant received and accepted into its care, custody and control _____ [cargo] for common carriage by sea from _____ to _____, and then transshipped to _____.
6. That the _____ [cargo] had been shipped from _____ to _____

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_____, aboard the vessel, under bill of lading number _____.

7. At the time the defendant received the _____ into its care, custody and control the _____ was in good order and condition and defendant made no exception on bill of lading number _____. A copy of said bill of lading is attached hereto and made a part hereof as Exhibit 1.

8. At all times thereafter mentioned, the defendant owed to plaintiff's subrogor the contractual duty to safely transport and deliver all _____ [cargo] in the same good order and condition as when received by the defendant.

9. In breach of the defendant's duty as a common carrier, various _____ [cargo] were not delivered to the plaintiff's subrogor in like good order and condition as when received, but rather, were delivered in a _____ and damaged condition.

10. At all times hereinafter mentioned, _____ was entitled to enforce said bill of lading against the defendant for their benefit and for the benefit of any other person having any interest in the _____ [cargo].

11. At all times hereinafter mentioned, _____ performed all conditions required of them by law to be performed.

12. As a proximate result of defendant's breach of its duty, the plaintiff's subrogor has been damaged in the amount of \$ _____.

Wherefore, plaintiff, _____, subrogor and _____, subrogee, demand judgment in the amount of \$ _____ against the defendant, _____ and _____ [vessel] plus costs, prejudgment interest and any other appropriate relief.

[Name of Party Represented]

By: _____

One of its Attorneys

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-110

FORM No. 1-110 Cargo Complaint

[Caption] n1

COMPLAINT

Now comes the plaintiff, _____, by its attorneys, _____, for its complaint against the defendant, _____ and for its complaint against the vessel, _____, its engines, tackle, equipment and furnishings, states as follows:

1. This is a case of admiralty and maritime jurisdiction as herein and more fully appears and is an admiralty claim within the meaning of *F.R.C.P. Rule 9(h)*.
2. Jurisdiction of this Court is also found on the existence of federal questions arising under the Carriage of Goods by Sea Act, 40 Stat. 1207 (1936), 46 U.S.C. §§ 1300-1315.
3. Jurisdiction of this Court is also founded on 28 U.S.C. § 1332 and is a claim in excess of \$50,000.
4. At all times hereinafter mentioned, plaintiff (hereinafter "_____") was and is now a foreign corporation.
5. Upon information and belief, at all times hereinafter mentioned, defendant _____ and the vessel, _____, its engines, tackle, equipment and furnishings (hereinafter referred to as "_____") were foreign corporations or corporate type entities of diverse citizenship from the plaintiff, with an office and doing business in _____ engaged in the business of common carriage of merchandise for hire, and at all times owned and/or chartered and operated the vessel _____.

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6. Upon information and belief, the vessel, _____, (hereinafter referred to as "the vessel") is now or during the pendency of the process herein will be within this district and within the jurisdiction of this Honorable Court.

7. On or about _____, 20____, the _____ defendant received and accepted a cargo consisting of _____ (hereinafter referred to as "cargo") in good order and condition, per bill of lading number _____, a copy of which is attached and incorporated herein as Exhibit 1 aboard the vessel _____ for carriage to _____, then to _____ for ultimate delivery at _____ for delivery to the order of the holder of the bill of lading, then and there issued by the said defendant, all in accordance with the valid law and terms thereof.

8. The _____ vessel defendant thereafter transferred the said cargo by sea to _____ and there delivered the cargo to the order of the holder of the aforementioned bill of lading, not however, in the like order and condition as when received by them, but, on the contrary, in a damaged condition [*describe*], all as a proximate consequence of the _____ vessel defendant's breach of their duty as common carriers under the said bill of lading.

9. At all times herein pertinent, plaintiff was the holder of the said bills of lading entitled to possession of the goods and entitled to enforce the aforesaid bills of lading against the _____ defendant and for their benefit and the benefit of any other person having an interest in the goods. Plaintiff has performed all conditions on its part to be performed.

10. As a proximate consequence of the aforementioned breach of the duty by the _____ vessel defendant, plaintiff has sustained damages in the amount of \$ _____.

Wherefore, plaintiff _____ demands judgment in the amount of \$ _____ including interest, costs and attorney's fees against the defendant _____ and the vessel _____, her engines, tackle, equipment and furnishings. Plaintiff further prays that process in due form of law, according to the practice of this Court in admiralty and maritime claims may issue against the vessel _____, her engines, tackle, equipment and furnishings, and that all persons claiming any interest therein, may be required to appear and answer on oath, all the singular matters aforesaid that the vessel _____ may be condemned and sold to satisfy the judgment of the plaintiff herein. The plaintiff also prays for such other, further and different relief as this Court may deem just and proper in the premises.

By: _____
One of Its Attorneys

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-111

FORM No. 1-111 Complaint for Declaratory Judgment--Cargo Loss

[Caption] n1

Now comes the plaintiff, _____, by its attorneys, _____, and complaining of the defendant, _____, alleges as follows:

COUNT I

1. Plaintiff is a corporation authorized to and doing the business of writing _____ and other insurance in the State of _____.

2. Defendant, _____, a corporation, has entered into a number of contracts of insurance with the plaintiff, _____ Insurance Company in _____.

3. That on _____, 20____, plaintiff issued a policy of _____ insurance bearing policy number _____ to the defendant, _____ in _____, which said policy was in full force and effect between _____, 20____ and _____, 20____. A true and correct copy of said policy is attached hereto and incorporated herein as plaintiff's Exhibit 1.

4. That said policy by its terms provided coverage for _____ to _____.

5. That based upon information and belief, on or about _____, 20____, _____ [describe incident giving rise to issue; for example, see paragraphs 6, 7 and 8.].

Ex. 6. That based upon information and belief, on or about _____, 20____, while Barges

4-I Benedict on Admiralty FORM No. 1-111

_____ were in the care, custody, and control of _____, and the tow of the _____, on the _____ River, the aforesaid barges were run aground.

Ex. 7. That based upon information and belief, on or about _____, 20 _____, the cargo _____ in Barge _____ was discovered leaking into the _____ River through the bottom of the barge where it had been "holed" at the time of the aforesaid grounding.

Ex. 8. That based upon information and belief, barge _____ was damaged in the amount of _____ and barges _____ suffered down time in the amount of _____.

9. That on _____, 20 _____ defendant _____ filed suit in the _____ [Court] against the _____. A true and correct copy of said complaint is attached hereto and made a part hereto as plaintiff's Exhibit 2.

10. The defendant, _____, neither reported the aforesaid losses to the plaintiff, nor notified the plaintiff of the existence of a claim under policy number _____, nor commenced a lawsuit, action, or other proceeding against the plaintiff for the recovery for physical loss or damage to _____ until _____.

11. That lines _____ through _____ of _____ policy number _____ as set forth above provided that no suit, action, or proceeding for the recovery of any claim, physical loss or damage to the barges covered by the policy may be maintained unless commenced within 12 months of the physical loss.

12. That no suit, action or other proceeding has been commenced against _____ by the defendant, _____ and any further claims by _____, for coverage under _____ policy number _____ for losses suffered on or about _____, 20 _____, or thereafter are barred as a matter of law.

13. That an actual controversy exists between the plaintiff and the defendant by the terms and provisions of Section _____ of the Civil Practice Act of the State of _____, and that this Court is invested with the power to declare the rights and liabilities of the parties hereto, and to give such other and further relief as may be necessary in the premises.

Wherefore, the plaintiff, _____, a corporation, prays:

a) That this court determine and adjudicate the rights and liabilities of the parties hereto with respect to the policy of insurance herein above described.

b) That this court find and declare that the aforesaid policy _____ affords no coverage to the defendant, _____, that _____ is not obligated to pay for any physical loss or damage to _____ or for _____ for acts or omissions occurring on or after _____, 20 _____.

c) That the court grant such other and further relief as it deems proper under the evidence and circumstances.

COUNT II

1-7. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of

4-I Benedict on Admiralty FORM No. 1-111

Count II, as if they had been fully set forth herein.

8. That the defendant, _____ failed to notify the plaintiff of the existence of a claim under policy number _____ until _____, 20 ____.

9. That the defendant failed to afford the plaintiff a reasonable opportunity to be present at a survey of the alleged damaged barges at any time following the acts or occurrences of _____, 20 ____.

10. That the defendant neither allowed the plaintiff to name the attorneys seeking recovery against the responsible parties, nor allowed the plaintiff the opportunity to control said litigation as provided for under lines _____ through _____ of _____ policy number _____ as set forth above.

11. That the plaintiff's subrogation rights under policy number _____ have been substantially prejudiced by the aforementioned acts and omissions of the defendant, _____.

12. Plaintiff repeats and realleges the allegations of paragraph 11 of Count I and paragraph 12 of Count II, as if it had been fully set forth herein.

Wherefore, the plaintiff, _____, a corporation, prays:

a. That this court determine and adjudicate the rights and liabilities of parties hereto with respect to the policy of insurance herein above described;

b. That this court find and declare that the aforementioned policy number _____ affords no coverage to the defendant, _____, and that _____ is not obligated to pay for any physical loss or damage to _____ or for _____ for acts or omission occurring on or after _____, 20 ____.

c. That the court grant such other and further relief as it deems proper under the evidence and circumstances.

COUNT III

1-2. Plaintiff repeats and realleges the allegations of paragraphs 1 and 2 of Count I as paragraphs 1 and 2 of Count III, as if they had been fully set forth herein.

3. That on _____, 20 ____, plaintiff issued a policy of cargo insurance bearing policy number _____ to the defendant, _____, in _____ [City, State], which said policy was in full force and effect between _____, ____ [date] and _____, ____ [date]. A true and correct copy of said policy is attached hereto and incorporated herein as plaintiff's Exhibit 3.

4. Said policy, by its terms, provided coverage for _____ which, based upon information and belief, formed the cargo of _____.

5. That based upon information and belief, on or about _____, 20 ____, while in the care, custody, and control of _____, and in the tow of the _____, the aforesaid tug and tow collided with and caused damage to a _____.

6. Plaintiff repeats and realleges the allegations of paragraph 6 of Count I as paragraph 6 of Count III, as if it had been fully set forth herein.

7. Plaintiff repeats and realleges the allegations of paragraph 8 of Count I as paragraph 7 of Count III, as if it had been fully set forth herein.

8. That based upon information and belief, damage _____ amounted to \$ _____ and pollution and clean-up costs amounted to \$ _____.

9. Plaintiff repeats and realleges the allegations of paragraph 9 of Count I as paragraph 9 of Count III, as if it had been fully set forth herein.

10. That defendant, _____, failed to notify the plaintiff of the existence of a claim under policy number _____ until _____, 20 ____.

11. Paragraphs _____ and _____ of policy Number _____ provide the assurers prompt notice of any cargo shortage.

12. Paragraph _____ of policy number _____ excludes from coverage all losses arising from _____.

13. That the plaintiff has been substantially prejudiced in its investigation of the actual cause and the extent of this loss as a proximate result of the defendant's failure to promptly notify the plaintiff of this loss.

14. Plaintiff repeats and realleges the allegations of paragraph 13 of Count I as paragraph 14 of Count III as if it had been fully set forth herein.

Wherefore, the plaintiff, _____, a corporation, prays:

a) That this court determine and adjudicate the rights and liabilities of the parties hereto with respect to the policy of insurance herein above described;

b) That this court find and declare that the aforesaid policy number _____ affords no coverage to the defendant, _____, and that _____ is not obligated to pay for any loss or contamination to the cargo of _____ or pay for the _____ of cargo;

c) That the court grant such other and further relief as it deems proper under the evidence and circumstances.

THIS PLAINTIFF DEMANDS TRIAL BY JURY.

[Name of Party we Represent]

By: _____

One of its attorneys

FOOTNOTES:

(n1)Footnote 1. See Form No. 1-1 *supra*.

* See 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty Form 1-112

Form 1-112 Complaint In Rem and In Personam -- Breach of Shipper's Warranty

COMES NOW [PLAINTIFF NAME] (hereinafter referred to as "Plaintiff") and for its complaint against Defendant [DEFENDANT NAME] (hereinafter [DEFENDANT NAME]), *in personam*, and the Defendant Vessel, M/Y [VESSEL NAME], *in rem*, alleges as follows:

GENERAL ALLEGATIONS

1. This is a case of admiralty jurisdiction as hereinafter more fully appears, and is an admiralty and marine claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333.
2. Plaintiff [PLAINTIFF NAME] is a New York corporation, with an office in [PLACE OF BUSINESS]. Plaintiff is, and at all material times was, engaged in business as a non vessel operating common carrier providing ocean carriage of goods and products.
3. Plaintiff is informed and believes, and on such information and belief alleges, that Defendant [DEFENDANT NAME] was, and is, a business entity organized and existing under the laws of the [COUNTRY] with a base of operations on [PLACE OF BUSINESS].
4. Plaintiff is informed and believes, and on such information and belief alleges, that the M/Y [VESSEL NAME](hereinafter referred to as the "Vessel"), is an 87-LOA motor yacht of approximately 90 Gross Tons.
5. On or about [DATE], by and through a corporate officer, Defendant [DEFENDANT NAME] contracted with Plaintiff for the ocean transport and carriage of the Vessel from [PORT OF LOADING] to [PORT OF DISCHARGE] with a return voyage to the United States of America to occur several months later. A true and correct copy of Booking

Note No. [BOOKING NOTE NUMBER] is attached hereto as Exhibit "A" and incorporated herein by reference.

6. The terms and conditions incorporated into Booking Note No. [BOOKING NOTE NUMBER] provide that: [a]ll carriage under this booking note shall have effect subject to the provisions of the Carriage of Goods by Sea Act, 46 U.S.C. §§ 1300-1315." A true and correct copy of the Terms and Conditions are attached hereto as Exhibit "B" and incorporated herein by reference.

7. Defendant [DEFENDANT NAME] declared the weight of the Vessel as 75 Metric Tons with an overall length of 87-feet and a beam of 23-feet.

8. The Vessel was loaded on or about [DATE] at [PORT OF LOADING] for her eastbound voyage, on board the M/V [VESSEL NAME]. The loading was supervised by the Vessel's master, [MASTER NAME].

9. For the return voyage to the United States of America, Plaintiff secured the M/V [VESSEL NAME] with an independent lifting capacity of 85 Metric Tons. She arrived at [PORT OF LOADING] on or about [DATE] to load the Vessel on board. Repeated attempts to lift the Vessel at the maximum safe working load of the cranes on board the M/V [VESSEL NAME] were unsuccessful. During these efforts it was determined that the weight of the Vessel was 90 Metric Tons.

10. Following discussions between Plaintiff [PLAINTIFF NAME] and Defendant [DEFENDANT NAME] it was agreed to transfer the loading evolution to Genova, Italy where cranes of greater capacity were available to lift the Vessel on board the M/V [VESSEL NAME]. Defendant [DEFENDANT NAME] agreed to allocate the expenses associated with lifting operations in Genova, Italy for its own account.

11. The transfer of loading operations to [PORT OF LOADING] resulted in additional expenses associated with crane and cargo loading operations, port and customs expenses and fees, pilot and dive services, and water taxi costs in an amount of [AMOUNT].

12. An additional [AMOUNT] of freight was not paid for by Defendant [DEFENDANT NAME], and remains unpaid, for the ocean carriage of the Vessel from [PORT OF LOADING] to [PORT OF DISCHARGE].

FIRST CAUSE OF ACTION

(Against *in personam* Defendant for Violation of 46 U.S.C. § 1303(5))

13. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 12 above.

14. Plaintiff and Defendant [DEFENDANT NAME] were, at all relevant times herein, parties to a contract or contracts, pursuant to which Defendant agreed to "have guaranteed to (Plaintiff) the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by (Defendant); and (Defendant) shall indemnify (Plaintiff) against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars."

15. Plaintiff has performed all relevant covenants and conditions under said contract or contracts.

16. By virtue of the inaccurate weight declared by Defendant [DEFENDANT NAME] regarding the particulars of the Vessel, Plaintiff incurred additional expenses in loading the vessel in [PORT OF LOADING] of [AMOUNT] as a proximate result of this breach which Plaintiff is entitled to recover from Defendant. Plaintiff continues to incur damages, liabilities, costs, expenses and attorneys' fees as result of Defendant's breach and shall submit proof thereof at trial.

SECOND CAUSE OF ACTION

(Against *in personam* Defendant for Breach of Charter Party)

17. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 16 above.

18. On or about [DATE], Plaintiff forwarded its claim for damages to Defendant [DEFENDANT NAME] and requested that the same be paid according to the terms of the booking note and charter party.

19. Defendant [DEFENDANT NAME] has failed to make payment of the outstanding claim amount of [AMOUNT], comprised of cargo expenses and unpaid freight, despite such demands from Plaintiff. By failing to make payment, Defendant [DEFENDANT NAME] has breached the terms of the booking note and charter party.

20. Plaintiff has performed all relevant covenants and conditions under said contract or contracts.

21. By virtue of Defendant's breach of the terms of the booking note and charter party, Plaintiff has incurred damages of [AMOUNT] as a proximate result of said breach which it is entitled to recover from Defendant. Plaintiff continues to incur damages, liabilities, costs, expenses and attorneys' fees as result of Defendant's breach and shall submit proof thereof at trial.

THIRD CAUSE OF ACTION

(Against *in personam* Defendant for Negligence)

22. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 21 above.

23. Defendant [DEFENDANT NAME] was at all material times herein responsible to accurately state the weight of the Vessel to ensure that she could be loaded on board the M/V [VESSEL NAME] within the maximum safe working load of her deck cranes and without danger to the carrying vessel or the personnel working on board.

24. Defendant [DEFENDANT NAME] owed a duty to Plaintiff to exercise reasonable care in the declaration of the vessel particulars of the M/Y [VESSEL NAME] to ensure that she could be properly loaded, stowed, carried and cared for by the M/V [VESSEL NAME] and without exposing the carrying vessel to danger caused by the inaccurate statement of weight.

25. Plaintiff's damages were proximately caused by Defendant's breach of its duty to exercise reasonable care in the declaration of the vessel particulars of the M/Y [VESSEL NAME]. Defendant's negligence includes, but is not limited to, its failure to accurately state the weight of the Vessel such that she could be properly loaded and stowed whilst lying alongside in [PORT OF LOADING].

26. As a proximate result of Defendant's negligence, Plaintiff has suffered damages, including, without limitation, expenses associated with crane and cargo loading operations, port and customs expenses and fees, pilot and dive services, and water taxi costs which it is entitled to recover from Defendant. Plaintiff continues to incur damages, liabilities, costs, expenses, and attorneys' fees due to Defendant's negligence and shall submit proof thereof at trial.

FOURTH CAUSE OF ACTION

(Against All Defendants for Total Indemnity)

27. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 26 above.

28. As a proximate result of the acts, omissions, negligence, and conduct of Defendants which caused the inaccurate declaration of vessel particulars, Plaintiff has become obligated to pay or has paid, and may in the future incur additional obligations to pay claims, liabilities, damages, costs and expenses related to the loading and carriage of the M/Y [VESSEL NAME].

29. Defendants, and each of them, are responsible, through active and primary negligence or other culpable conduct, or by operation of law, for the claims, liabilities, damages, costs and expenses related to the loading and carriage of the M/Y [VESSEL NAME]. The inability to load the Vessel in [PORT OF LOADING] and the necessity to conduct subsequent loading operations in [PORT OF LOADING] were not caused by any active wrongdoing on the part of Plaintiff. Any liability incurred by Plaintiff for the loading and carriage of the M/Y [VESSEL NAME] is vicarious, passive and secondary to that of Defendants which are therefore obligated to fully indemnify and hold Plaintiff harmless from and against any and all damages, claims, liabilities, costs, expenses, fees or other payments arising from or related to the loading and carriage of the Vessel. Defendants are also obligated to pay all costs, expenses and attorneys' fees incurred by Plaintiff in defending claims arising from or related to the loading and carriage of the Vessel.

FIFTH CAUSE OF ACTION

(Action Against *in personam* Defendant For
Necessaries Furnished Pursuant to 46 U.S.C. § 31341)

30. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 29 above.

31. On or about [DATE], Plaintiff, at the order and request of [CORPORATE OFFICER], President of [DEFENDANT NAME], furnished and supplied to Defendant Vessel, said vessel received and accepted, certain services relating to ocean carriage, which were of the reasonable and agreed value of [AMOUNT]. In furnishing and supplying said services, Plaintiff relied on the credit of the Defendant Vessel.

32. Although Plaintiff has made demand upon the *in personam* Defendant for the payment of the outstanding sum of [AMOUNT], payment has been refused. The furnishing, supplying and delivery of the said services, as aforesaid, constitute a maritime lien upon said Defendant Vessel in the amount herein mentioned.

SIXTH CAUSE OF ACTION

(Action *in rem* Against Defendant Vessel For
Necessaries Furnished Pursuant to 46 U.S.C. § 31341)

33. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 32 above.

34. On or about [DATE], Plaintiff, at the order and request of Defendant [DEFENDANT NAME], furnished and supplied to Defendant Vessel, said vessel received and accepted, certain services relating to ocean carriage, which were of the reasonable and agreed value of [AMOUNT]. In furnishing and supplying said services, Plaintiff relied on the credit of the Defendant Vessel.

35. Although Plaintiff has made demand upon the *in personam* Defendant and the Defendant Vessel for the payment of the outstanding sum of [AMOUNT], payment has been refused. The furnishing, supplying and delivery of the said services, as aforesaid, constitute a maritime lien upon said Defendant Vessel in the amount herein mentioned.

WHEREFORE, Plaintiff prays for judgment in its favor as follows:

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A. On the First Cause of Action Against Defendant [DEFENDANT NAME];

1. That the Court order judgment in favor of Plaintiff, against Defendant [DEFENDANT NAME], in the amount of [AMOUNT] plus reasonable costs, expenses and attorney's fees;
2. For costs of suit herein;
3. For interest on all of the above; and
4. For such other and further relief as the Court deems just and proper.

B. On the Second Cause of Action Against Defendant [DEFENDANT NAME];

1. That the Court order judgment in favor of Plaintiff, against Defendant [DEFENDANT NAME], in the amount of [AMOUNT] plus reasonable costs, expenses and attorney's fees;
2. For costs of suit herein;
3. For interest on all of the above; and
4. For such other and further relief as the Court deems just and proper.

C. On the THIRD Cause of Action Against Defendant [DEFENDANT NAME];

1. That the Court order judgment in favor of Plaintiff, against Defendant [DEFENDANT NAME], in the amount of [AMOUNT] plus reasonable costs, expenses and attorney's fees;
2. For costs of suit herein;
3. For interest on all of the above; and
4. For such other and further relief as the Court deems just and proper.

D. On the Fourth Cause of Action Against All Defendants;

1. That the Court order judgment in favor of Plaintiff, against Defendant [DEFENDANT NAME] and the M/y [VESSEL NAME] in the amount of [AMOUNT], plus reasonable costs, expenses and attorney's fees;
2. For costs of suit herein;
3. For interest on all of the above; and
4. For such other and further relief as the Court deems just and proper.

E. On the Fifth Cause of Action Against Defendant [DEFENDANT NAME];

1. That the Court order judgment in favor of Plaintiff, against Defendant [DEFENDANT NAME], in the amount of [AMOUNT] plus reasonable costs, expenses and attorney's fees;
2. For costs of suit herein;

3. For interest on all of the above; and

4. For such other and further relief as the Court deems just and proper.

F. On the Sixth Cause of Action Against Defendant Vessel;

1. That the Court order judgment in favor of Plaintiff, against Defendant Vessel, M/Y [VESSEL NAME], in the amount of [AMOUNT] plus reasonable costs, expenses and attorney's fees;

2. For costs of suit herein;

3. For interest on all of the above; and

4. For such other and further relief as the Court deems just and proper.

* *See* 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty Form 1-113

Form 1-113 Breach of Contract -- Cargo Damage -- Wetting of Cargo

Plaintiff [PLAINTIFF NAME], by its attorneys, alleges as follows, on its behalf and on behalf of all parties interested in the cargo described below:

1. This is a claim under the Court's Admiralty and Maritime jurisdiction within the meaning of *Federal Rule of Civil Procedure 9(h)* with respect to the carriage of goods by water. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 46 U.S.C. §§ 190 *et seq.*, 46 U.S.C. §§ 1300 *et seq.*, 49 U.S.C. §§ 81 *et seq.*
2. Plaintiff [PLAINTIFF NAME], ("Plaintiff") is incorporated under the laws of the country of [COUNTRY NAME] and is the owner or duly authorized representative of the owners of the 250 bags of shipped on board the M/V [VESSEL NAME] on voyage Number [NUMBER], which is more particularly described below, and for which Bill of Lading No. [BILL OF LADING NUMBER] in Container No. [CONTAINER NUMBER] was issued on [DATE]. Plaintiff's principal place of business is at [PLACE OF BUSINESS].
3. The defendant vessel, M/V [VESSEL NAME], is a foreign flag cargo vessel which is owned by defendant, [DEFENDANT NAME], and whose office is located at [PLACE OF BUSINESS].
4. Defendant [DEFENDANT NAME] is a [STATE] corporation with a place of business located at [PLACE OF BUSINESS]. Defendant [DEFENDANT NAME] issued this Bill of Lading for this shipment as carrier and upon information and belief was the owner, operator, N.V.O.C.C., charterer and/or manager of the Vessel.
5. The vessel is now, or will be during the pendency of this action, within the jurisdiction of this Court.

FIRST COUNT

6. Plaintiff repeats and realleges each and every allegation stated in Paragraphs 1 through 5 above, as if the same were

set forth at length herein.

7. At the port of [PORT OF LOADING], on or about [DATE], [TYPE OF CARGO] in good order and condition, were delivered to and accepted by defendants in consideration of an agreed freight. The [TYPE OF CARGO] were loaded on board the M/V [VESSEL NAME] for carriage to [PORT OF DISCHARGE], to be delivered in like, good order and condition to Plaintiff.

8. The [TYPE OF CARGO] were carried pursuant to the terms of Bill of Lading No. [BILL OF LADING NUMBER] dated [DATED], in Container No. [CONTAINER NUMBER].

9. The [TYPE OF CARGO] were delivered in [PORT OF DISCHARGE] in a damaged condition contaminated by water, all in breach of each and every Defendants' duties to the Plaintiff. As a result of the foregoing damage, Plaintiff sustained damages in an amount of [AMOUNT], as near as now can be estimated, no part of which has been paid, although payment has been duly demanded.

10. Plaintiff sues on its behalf and as agents and trustees on behalf of any other party who may now have or hereinafter acquire an interest in this action.

WHEREFORE, plaintiff demands judgment as follows:

(a) against defendants [DEFENDANT NAME], in personam, and defendant M/V [VESSEL NAME] in rem, on the First Count in the amount of [AMOUNT], plus interest and costs;

(b) that a warrant of arrest be issued against defendant vessel, M/V [VESSEL NAME], in rem, to foreclose on plaintiff's maritime liens on the First Count for a total of [AMOUNT], plus interest and costs; and

(c) such other relief as the Court may deem just and appropriate.

* See 2A Benedict on Admiralty, ch. IV (matthew Bender 7th ed.); 2 Benedict on Admiralty, § 43 (Matthew Bender 7th ed.).



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FORM No. 1-136 Complaint In Rem and In Personam--Charter Hire

[Caption and Jurisdictional Statement] n1

2. The plaintiff, _____, is a corporation duly organized and existing under the laws of _____, and is, and was at all times hereinafter mentioned, the owner of the vessel _____.

3. The defendant, _____, is an individual, doing business as _____, with a principal office and place of business in _____.

4. By charter party dated _____, 20 _____, the plaintiff chartered the vessel to the defendant, _____, for a minimum period of _____ and a maximum period of _____, upon the terms and conditions set forth in the charter party, a copy of which and of an addendum thereto, dated _____, 20 _____, is attached hereto and incorporated herein as Exhibit A.

5. Pursuant to the charter party, the plaintiff delivered the _____ to the defendant, _____, at _____, on or about _____, 20 _____, and the vessel has been operated under the charter party since that time, and is still so operated. Clause _____ of the charter party provides that payment of hire is to be made semi-monthly in advance. The defendant has from time to time made payments to the plaintiff on account of the charter hire due for the vessel at the rate of \$ _____ per calendar month, based on dead weight tons at \$ _____ per ton as provided in the charter party. However, from the charter hire due the plaintiff on or about _____ and _____, 20 _____, the defendant improperly and wrongfully deducted \$ _____ on account of alleged off hire claims and for fuel oil consumed during alleged off hire periods, as set forth in the plaintiff's statement of claim annexed hereto as Exhibit B, so that there is still due the plaintiff the sum of \$ _____ for charter hire for the

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period from _____ to _____, 20 _____, inclusive.

6. Clause _____ of the charter party between the plaintiff and defendant, provides "That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributions." By virtue of that provision, plaintiff has a lien on the cargoes and sub-freights of the _____ for the indebtedness due by the defendant to the plaintiff as aforesaid.

7. Upon information and belief, on or about _____ 20 _____, the defendant, _____, entered into a sub-charter of the _____ with _____ for carriage of a cargo of _____ from _____, to a _____ port, lay days to commence between _____ and _____, 20 _____; and that the sub-charter is being performed, as hereinafter alleged; and pursuant to the terms thereof subfreights in an amount in excess of \$ _____ are or will become due from _____ to the defendant.

8. On information and belief, plaintiff alleges that pursuant to the sub-charter there were shipped on the vessel at _____ [state destination] _____ [state cargo] under bill of lading No. 1, by _____ to the _____, notify _____ and under bill of lading No. 2, by _____ [state destination] to _____ Trust Company, notify _____.

9. The vessel is now, or during the pendency of this action will be, within this district, and has as cargo _____ [describe cargo] shipped as aforesaid.

10. Upon information and belief, by virtue of the charter provisions referred to in Paragraph _____ hereof, plaintiff is entitled to and has a lien upon the _____ [identify vessel] and the sub-freights due from _____ to the defendant _____ for the charter hire and other indebtedness of the defendant to the plaintiff.

11. The plaintiff has advised the sub-charterer, _____, of the plaintiff's claim against the sub-freights due by the _____, to the defendant, _____.

12. Although the plaintiff has made due demand upon defendant, _____, for the unpaid charter hire and other indebtedness to the plaintiff the defendant has refused and neglected to pay the same and has asserted a right to set off sums alleged to be due to it against the charter hire, although no such sums are properly due and owing.

13. The defendant has paid the plaintiff charter hire at the rate of \$ _____ per day for the period from _____, 20 _____, to _____, 20 _____, at _____ A.M. (less \$ _____ said to be for disbursements for owner's account and bunkers on redelivery). Further charter hire will accrue and become due from and after _____ A.M. _____, 20 _____, at the rate of \$ _____ per day until redelivery of the _____ by the defendant to the plaintiff, and unless paid the plaintiff's claim will be accordingly increased.

14. The plaintiff has performed all the conditions, duties and obligations imposed upon it by the charter party.

15. The plaintiff reserves the right to have the dispute herein set forth referred to arbitration as authorized by clause _____ of the charter party and the provisions of the Federal Arbitration Act (61 Stat. 669, 9 U.S.C. §§ 1-14).

Wherefore the plaintiff prays:

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1. That a warrant for the arrest of the vessel _____ may issue, and that all persons claiming any interest therein may be cited to appear and answer the matters aforesaid; and that the cargo of _____ may be condemned and sold to satisfy the plaintiff's claim, with interest thereon and costs.

2. That a warrant may issue for the arrest of the subfreights of vessel in the hands of _____, and that a summons may issue directed to _____ to show cause why such sub-freights should not be paid into court to abide the judgment, n2 and that all persons claiming any right or interest therein may be cited to appear and answer the matters aforesaid. n3

Attorney for Plaintiff

[*Verification*] n4

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Rule C(3).

(n3)Footnote 3. For additional prayers for process and demand for judgment see Forms Nos. 1-3, 1-5 and 1-7 *supra*.

(n4)Footnote 4. *See* Form Nos. 1-10 and 1-11 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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FORM No. 1-137 Complaint In Personam--Charter Hire

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. In the month _____, 20 _____, at the port of _____, plaintiff made and concluded with defendant a charter party, a copy of which is annexed hereto as Exhibit A, bearing the date _____ day of _____, 20 _____, by which plaintiff, for and in consideration of the covenants and agreements thereafter mentioned, to be kept and performed by defendant, did covenant and agree on the freighting and chartering of the vessel _____ unto defendant for a voyage from the port of _____ to _____, and back to _____, on certain terms in the charter party mentioned, that is to say:

Plaintiff engaged that the said vessel in and during the said voyage should be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions for such voyage, and should take and receive on board during the aforesaid voyage, all such lawful goods and merchandise as defendant or his agent might think proper to ship;

Defendant engaged to provide and furnish to the said vessel the necessary cargoes or ballast for her lading at the several ports aforesaid, and to pay to plaintiff or his agent, for the charter or freight of the said vessel during the voyage aforesaid, \$ _____ per calendar month for each and every month, and pro rata for any unexpired month, that said vessel might be employed, payable in current money of the United States, also to pay all the vessel's foreign port charges, lighterage, and pilotage.

The master to have what money he might require in foreign ports for disbursements, and the balance payable on discharge of the cargo in _____.

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5. On the _____ day of _____, 20____, at the said port of _____, defendant loaded and received on board the said vessel a full cargo of lawful goods, with which the said vessel immediately set sail and proceeded to the port of _____, where she made a due delivery of such part of said cargo as was destined for _____ and afterwards on _____, 20____, set sail and proceeded to where she made a due delivery of such part of said cargo as was destined for _____, and also took, loaded, and received on board of said vessel _____ bags of and other merchandise, to be conveyed to _____, and thereupon proceeded to the port of _____, where she arrived on _____, 20____, and duly delivered said homeward cargo to defendant or his agents.

6. On the discharge of the said homeward cargo at the port of _____, the sum of \$ _____ and upwards, for freight, foreign port charges, lighterage, and pilotage became and was due and payable from defendant to plaintiff, according to the said charter party.

7. Defendant has paid to plaintiff the sum of \$ _____ on account of the said charter, and no more, and has not paid the balance of \$ _____ due thereon from defendant to plaintiff, on the discharge of the said cargo at the port of _____.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-4 *supra*.

(n2)Footnote 2. *See* Form No. 1-5 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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FORM No. 1-138 Complaint In Personam to Recover Wrongful Deduction and Owner's Expense of Cleaning Tanks--Charter Hire¹

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties]* n2

4. On or about the _____ day of _____, 20____, a tanker time charter party in writing was entered into between the plaintiffs and defendant on the _____ form by the terms of which the vessel was chartered for a period of _____ years, _____ days more or less in charterer's option.

5. Under the terms of the aforesaid charter party, it was the duty of the defendant as charterer of the vessel to pay by check monthly in advance in U.S. dollars at the rate of \$ _____ per ton on the vessel's total deadweight commencing from the time of delivery of the vessel under the charter party to the time and date of her redelivery.

6. On _____, 20____, when the charter-hire payment, for that month became due, the defendant-charterer deducted from the said monthly payment the sum of \$ _____ for an alleged failure to deliver a certain quantity of cargo on a voyage which had taken place the previous November.

7. The plaintiffs protested the wrongful deduction from the charter hire, demanded that it be repaid to the plaintiffs, and continued to demand repayment up until the present time, but none of it was repaid.

8. In addition to their claim for the defendant-charterer's wrongful deduction from charter hire, plaintiffs have a claim against the charterer for cleaning of the vessel's tanks caused by the charterer to be done in _____ at a cost of _____ (equivalent to U.S. \$ _____), none of which has been paid although

duly demanded.

9. From the time of the aforesaid wrongful deduction from hire up until the present time, the parties have been in communication with each other through their attorneys and have attempted to settle their differences, but have been without success. The defendant-charterer has been fully aware of the aforesaid claims through the years of negotiation and has not been in any way prejudiced by the delay, this being a cause of action on an admiralty and maritime claim, there being no applicable statute of limitations to these claims of the plaintiffs and no laches applying.

10. By reason of the aforesaid, the plaintiffs have suffered damages in the amount of \$ _____, so near as the same can presently be estimated, no part of which has been paid although duly demanded, and are entitled to interest on the aforesaid damages at a rate comparable to that which the plaintiffs would have received had they been paid the money at the time when they were entitled to receive it.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-4 *supra*.

(n3)Footnote 3. *See* Form No. 1-5 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-139

FORM No. 1-139 Complaint in Personam To Recover on a Performance Guarantee--Charter Hire

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n2*

4. On or about the _____ day of _____, 20____, at _____ a charter party in writing was entered into between the plaintiff and _____, which called for the carriage of a cargo of _____ from one safe berth at _____ to one safe berth at _____ on board a vessel to be nominated by the plaintiff. A copy of the said charter party, marked Exhibit A, is attached hereto and herein with the same force and effect as if herein repeated and set forth at length.
[exhibit omitted]

5. The _____ was originally fixed for the account of _____. After the fixture was concluded, _____, New York asked that their affiliated company in _____, _____, be inserted into the charter party as charterers. Plaintiff agreed to this request only upon execution of a performance guarantee by the defendant _____. A copy of the said guarantee executed by the defendant, and marked Exhibit B, is attached hereto and incorporated herein with the same force and effect as if herein repeated and set forth at length.

6. The aforesaid charter party contained the following provisions and riders, among others:

[set forth the applicable terms]

7. Thereafter the plaintiff nominated the vessel _____ to perform the charter party, and the vessel reported to _____ where she loaded a full cargo of _____ and carried it to

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_____ and there discharged the cargo in accordance with the terms of the charter party.

8. After the cargo was delivered at the port of destination, plaintiff presented statements of facts both for loading and discharging ports to _____ and demand was made upon _____ to pay freight and demurrage due under the charter party, quoted above, but only a partial payment was made, leaving a balance still outstanding of \$ _____. The plaintiff received the partial payment under protest and without waiver of its right to the full amount due.

9. Plaintiff has duly performed all obligations resting upon it under the aforementioned charter party.

_____ has breached the charter party in the particular mentioned aforesaid, and by reason of the said breaches of charter party has caused the plaintiff to suffer damages in the total amount of \$ _____ plus loss of interest in the amount of \$ _____ from the _____ day of 20 _____, and loss of interest on \$ _____ from the _____ day of _____, 20 _____.

10. As the liability of defendant _____ under the performance guarantee is a primary one, that it has undertaken to pay and make good all amounts due immediately as the same become due, defendant is liable to plaintiff for the amount still due of \$ _____, as well as interest at the legal rate on \$ _____ from the day of _____, 20 _____, until the _____ day of _____, 20 _____, and interest at the legal rate on \$ _____ from the _____ day of _____, 20 _____ forward.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-4 *supra*.

(n3)Footnote 3. *See* Form No. 1-5 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-140

FORM No. 1-140 Complaint In Personam--Charter Hire

[Caption, Jurisdictional Statement, and Allegations Concerning Parties] n1

4. On or about _____, 20 _____, at _____, a charter party in writing was entered into between plaintiff as owner, and defendant as charterer, whereby plaintiff agreed to let and defendant agreed to hire the _____ from _____, 20 _____, on which day at _____ P.M. the vessel was to be delivered and placed at the disposal of the charterer in the port of _____, at a certain agreed rate of hire, which was not to exceed \$ _____ per month. A copy of said charter party is attached hereto as Exhibit A [omitted].

5. Thereafter the vessel was duly delivered to defendant at the port of _____, and entered on the performance of said charter party and earned hire thereunder.

6. The vessel is still in defendant's service, has not been redelivered to plaintiff and is still performing the voyages contemplated by the charter party.

7. Defendant has not paid to plaintiff the hire of said vessel under the terms of said charter party and at the rate agreed therein, in that defendant, allegedly on account of cargo claims, has improperly deducted from the hire earned and otherwise admittedly due under said charter party for the month of _____, 20 _____, sums aggregating \$ _____.

This deduction is unauthorized, wrongful and improper and is a breach of defendant's obligations under said charter party.

8. By reason of the premises the said sum of \$ _____ with interest thereon has become and is due and

owing from defendant to plaintiff, payment of which sum has been duly demanded but has been refused.

9. Plaintiff has duly performed all of its obligations under the charter which it is thus far obligated to perform.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-4 *supra*.

(n2)Footnote 2. *See* Form No. 1-5 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-141

FORM No. 1-141 Complaint In Personam Against Charterer-Master--Charter Hire (Share of Profits of Voyage)

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. On or about the _____ day of _____, 20____, at _____, plaintiff and defendant entered into a charter party or agreement in writing, a copy of which is hereto attached and incorporated herein as marked Exhibit A.

5. The agreement provided, among other things, that plaintiff would demise and let to the defendant and the defendant would hire a vessel known as _____ for the purpose of making a voyage and of carrying cargo between the City of _____, in the State of _____, and the City of _____, State of _____ and defendant would pay to plaintiff for the use of the vessel _____ percent of any profit derived from the sale of the cargo to be carried upon the vessel.

6. On information and belief the defendant made the voyage, carried the cargo, sold it at the port of destination and made a net profit of \$ _____ over and above all operating expenses.

7. As a result of the foregoing there is owing to the plaintiff _____ percent of the profits made by the defendant, amounting to the sum of \$ _____, no part of which has been paid, although demanded.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-4 *supra*.

(n2)Footnote 2. *See* Form No. 1-5 *supra*.

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* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-142

FORM No. 1-142 Complaint In Rem and In Personam Against Vessel Owner-- Breach of Time Charter

[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1

4. Plaintiff, in accordance with the provisions of a written charter party dated _____, 20 _____ entered into between plaintiff and Owners, chartered the vessel _____ for a voyage from a port in _____ to _____. Upon said voyage cargo was carried and discharged at the various ports. The Owner in breach of the charter has failed to pay the expenses of this voyage and caused plaintiff, the charterer, to advance and expend in order to save the cargo a sum in excess of \$ _____ over and above the freight collected. Almost the entire amount of the said \$ _____ has been paid to satisfy the maritime liens of American materialmen, suppliers, repairmen and furnishers of other necessities to the said ship in the United States. Also, some \$ _____ of these funds were advanced and paid to the ship's crew as wages or given as loans to the crew, which loans were guaranteed by the Owners.

5. The defendant _____ has personally guaranteed the payment of such sums of money.

6. The defendant Owners, by written agreement (*charter party*), have obligated themselves to pay to the plaintiff these expenses of the voyage and are thus personally liable for the same.

7. The damages sustained by the plaintiff by reason of the premises amounted as nearly as plaintiff can now ascertain with respect to the vessel _____ is in the sum of \$ _____, no part of which has been paid although payment thereof has been duly demanded.

FOR A SECOND CAUSE OF ACTION

4-I Benedict on Admiralty FORM No. 1-142

8. Plaintiff realleges each and every allegation as set forth above in paragraphs "1" through "7" of this complaint.

9. Plaintiff's agent and officer in _____, entered into with defendant "Owners" a "confidential agreement" dated _____, 20 ____ which provided in paragraph "_____" thereof as follows:

"_____) The Charter Party dated _____ is required for a formality only and not forming part of this Confidential Agreement unless in contrary with the general indemnify Clause as specified in point 12 a/b/c 1.2.3.4. Therefore Owners to indemnify Messrs _____ for the complete wordings of the Charter Party. Any claim resulting out of C/P is null and void."

The said agreement also provides in an addendum dated _____, 20 ____ as follows:

"This arrangement/Agreement is also applicable for the Charter parties' _____, ' and' _____, ' 31.5.72."

10. Said agreement further provided that all of the expenses of voyage, ship and charter party to be borne by Owners; that all freights collected would be paid to the Owners; that plaintiff would receive a 5% commission on earned freights; that plaintiff would be reimbursed by Owners for all expenses incurred with respect to the voyage.

11. The plaintiff has paid sums of money in excess of \$ _____ over and above freights collected with respect to the said voyage of the _____, most of which sums of money were paid to satisfy the maritime liens of American materialmen, suppliers and other furnishers of necessities for the _____. Plaintiff has also advanced and paid the wages of the said ship's crew as well as advanced money to the crew for their wages, which loans were guaranteed by Owners.

12. The damages sustained by plaintiff by reason of the premises amounted as nearly as plaintiff can now ascertain to the sum of \$ _____, no part of which has been paid although payment thereof has been duly demanded.

FOR A THIRD CAUSE OF ACTION

13. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "3" of this complaint.

14. Plaintiff entered into written agreements with Owners consisting of a charter party with respect to the vessel _____ owned by the Owners herein, and which made a voyage from _____ to _____.

15. Plaintiff, as charterer and/or operator of such vessel, incurred expenses in excess of \$ _____ over and above freights collected, most of which was to satisfy the claims of American materialmen and suppliers and furnishers of other necessities to the vessel _____. Defendant Owners and vessel _____ were obligated to reimburse plaintiff for such expenses.

16. Although such moneys are presently due and owing and due demand has been made for the payment of same, the said Owners and _____ have failed to reimburse plaintiff for these expenses and, accordingly, plaintiff has sustained damages, as best can be determined at the present time, in the sum of \$ _____.

FOR A FOURTH CAUSE OF ACTION

17. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "3" of this complaint.

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18. Plaintiff, as charterer and/or operator of the vessel _____ on a voyage from _____ to _____ and return, has expended the sum of \$ _____ over and above the freights collected, which sum of money by virtue of a written agreement between plaintiff and defendants Owners and _____ is to be repaid to plaintiff.

20. Plaintiff has made due demand for repayment of such moneys and the said defendants Owners and _____ have failed to make such repayment.

20. Accordingly, plaintiff has been damaged, as best can be determined now, in the sum of \$ _____.

Wherefore it is requested that plaintiff have a decree against the vessel _____, her tackle, apparel, furniture, boilers, engines and freight for the damages in the sum of \$ _____ and interest sustained by plaintiff on the first and second causes of action with costs, and that said vessel may be condemned and sold to pay the same, and that plaintiff may have such other and further relief as may be just, and further that judgment be entered against the defendants Owners and _____ on the first and second causes of action in the sum of \$ _____, and further that judgment be entered against the defendants Owners, and _____ on the third cause of action in the sum of \$ _____ with interest from _____, 20 _____, and further that judgment be entered against the defendants owners and _____ in the fourth cause of action in the sum of \$ _____, totalling all the sum of \$ _____ together with costs and disbursements of this action.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1, 1-2 and 1-5 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-11 and 1-12

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-143

FORM No. 1-143 Complaint (Counterclaim) by Charterer--Breach of Time Charter

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties]* n1

3. At all material times, plaintiff and counter-defendant was the time charterer of the vessel _____ and operated the vessel in its service, pursuant to and subject to the terms and conditions of a certain charter party contract or agreement in writing made and entered into by and between it and the defendant, dated at _____ on _____, 20 _____. A copy of said charter party or agreement is attached hereto and incorporated herein as Exhibit A.

4. By and pursuant to the terms and conditions of said charter party contract or agreement, plaintiff and counter-defendant, at all material times, was responsible for the bookings, reception, loading, stowing, discharging and delivery, under its bills of lading, of all cargoes carried by and on board the vessel _____.

5. The plaintiff and counter-defendant has breached said charter party contract or agreement in several respects and on several occasions during the term and tenure thereof, including:

(specify acts)

6. The defendant and counter-claimant has performed all those things required on its part to be performed under the said charter party or agreement.

7. The defendant and counter-plaintiff has been required and obligated to give security to respond in damages to plaintiff's claims arising out of said charter party contract or agreement as appears from a certain letter of indemnity and undertaking a copy of which is attached hereto and incorporated herein as Exhibit B.

8. The defendant and counter-plaintiff pursuant to the provisions of Rule E(7) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure requests security for its claim against the plaintiff and counter-defendant which will be the subject of an arbitration between plaintiff and counter-defendant and pursuant to the provisions of Clause 17 of the aforementioned written charter party or agreement.

9. As a result of the breach of said charter party or agreement by plaintiff and counter-defendant, it has been exposed to numerous and substantial claims for cargo damage and to other losses, expenses and damages, the full extent of which are not known but are presently estimated at no less than _____.

wherefore _____, claimant, defendant and counterclaimant herein, prays:

1. That the complaint filed against the vessel _____ in rem and against it, in personam, be dismissed.

2. That this Court, pursuant to Rule E(7) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, direct that it be given security from plaintiff and counter-defendant, _____ to respond in damages on its counter-claim in the sum of \$ _____ failing which this Court dismiss the complaint of plaintiff and vacate any security given by _____ to secure the release of the vessel _____.

3. That this Court stay the trial of this action and retain jurisdiction to enter its judgment upon the award of the arbitrators against the security herein obtained by _____ as counterclaimant, to the extent same may be capable of satisfying said award in whole or in part.

4. That the Court grant to it such other, further and different relief as justice may require.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-11 and 1-12 *supra*.

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4-I Benedict on Admiralty FORM No. 1-144

FORM No. 1-144 Complaint In Personam by Charterer--Failure to Deliver Vessel--Oral Agreement

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. On _____, 20 _____, _____ was owner and master of the vessel _____, of _____. On or about that date, the defendant, at the port of _____, by his duly authorized agent and broker, chartered the vessel to the plaintiff for a voyage from the port of _____ to _____, and thence to _____, to carry a full cargo of _____ from _____ to _____, at a freight of _____, the amount of the charter to be paid on the discharge of the cargo in _____.

5. The charter was made by word of mouth and not in writing. A few days after the same was so agreed on, the defendant, as the plaintiff has been informed and believes, chartered the vessel to other persons for a different voyage, and defendant now refuses to fulfill the charter to the plaintiff.

6. The plaintiff has sustained damage to the amount of \$ _____ and upwards, by reason of the premises.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-145

FORM No. 1-145 Complaint In Personam by Charterer--Failure to Deliver Vessel--Written Agreement

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties]* n1

4. On or about the ____ day of _____, 20 ____, the plaintiff and defendant entered into a charter party or agreement in writing, a copy of which is attached hereto and incorporated herein as Exhibit A.

5. The agreement, among other things, provided that a ship owned by the defendant and known as _____ should with all convenient speed sail to _____ in the State of _____ and the plaintiff should there load her with a full cargo of _____ or other lawful merchandise which she should carry to _____ and there deliver to plaintiff on payment by him to defendant of freight at the rate of \$ _____ per ton.

6. The ship did not with all convenient speed sail to _____ and did not take on the cargo which plaintiff was ready, willing and able to load upon her but defendant caused the ship to deviate from her voyage and abandon the same all to plaintiff's damage in the sum of \$ _____.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-146

FORM No. 1-146 Complaint In Personam by Charterer--Failure to Furnish Seaworthy Vessel

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties]* n1

4. On or about the ____ day of _____, 20 ____, at _____ the plaintiff and defendant entered into a charter party or agreement in writing, a copy of which is attached hereto and incorporated herein as Exhibit A.

5. By the agreement defendant demised and plaintiff hired a vessel known as _____ for the purpose of using her to _____ (*describe activity*) and it was impliedly warranted by the defendant that the vessel was seaworthy and fit for the work to be done by it.

6. At all times herein the vessel was unseaworthy and as a result thereof while the vessel was being loaded from a ship owned by plaintiff known as _____, she capsized, dumped her cargo which had been loaded upon her and damaged the vessel and an adjacent wharf to which the vessel was moored, which wharf was the property of plaintiff.

7. As a result of the foregoing plaintiff has sustained damage in the sum of \$ _____.

[Demand for Judgment] n2

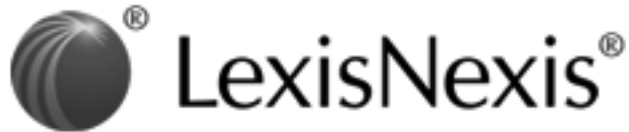
FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

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* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-147

FORM No. 1-147 Complaint In Rem and In Personam by Charterer and Cargo Owner--Failure to Discharge

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2*

FIRST CAUSE OF ACTION

6. By _____ Charter Party dated in _____ on 20 _____, Owner let and _____, as Charterer, hired the vessel _____ to carry a cargo of _____ from _____ to certain ports designated by plaintiff _____ as permitted by the Charter Party. A COPY of the Charter Party is attached hereto as Exhibit A.

7. The terms of the Charter Party provide, "freight shall be payable telegraphically immediately after completion of discharge." The vessel is now or is about to be ready for discharge and _____ has instructed the vessel to discharge.

8. Plaintiff _____ is ready, prepared and able to make freight payments as set forth in Paragraph 7. In addition, plaintiff _____ has offered to Owner to post proper security to guarantee payment of freight immediately after completion of discharge. Upon information and belief, the amount of freight owed is \$ _____.

9. Despite plaintiff _____'s compliance with the terms of the Charter Party and performance of all obligations and responsibilities on its part to be performed, the vessel and its Owner refused to discharge the cargo, asserting certain other payments are due from _____ prior to discharge. Pursuant to the terms of the Charter Party, no other payments except as here stated are due and the Charter Party has thus been breached.

10. Owner's breach of the Charter Party as here stated gives rise to a maritime lien and plaintiff

_____ has a lien against the vessel for those damages it has sustained and will continue to sustain as a result of Owner's breach of the Charter Party such amount now being as nearly as may be approximated, \$ _____.

SECOND CAUSE OF ACTION

11. Plaintiff _____ repeats and realleges each and every allegation contained in paragraphs numbered "6", "7", "8" and "9" as though more fully set forth herein at length.

12. By reason of the foregoing, Owner has breached the Charter Party and is liable to _____ for those damages _____ has sustained and will sustain, such amount being as nearly as may be approximated, \$ _____.

13. Plaintiff _____ is informed and believes that none of the officers of the defendant are now within the jurisdiction of this Court and that Owner does not maintain an office within this District; but, there are now or will be during the pendency of this action certain goods, chattels, credits and effects within this District belonging to or claimed by defendant, to wit: the vessel _____.

(PLAINTIFF) n3

FIRST CAUSE OF ACTION

14. Plaintiff (2) _____ repeats and realleges each and every allegation contained in paragraph numbered "6" as though more fully set forth herein at length.

15. Plaintiff (2) _____ is the Owner and/or beneficial Owner of the cargo presently aboard the vessel _____.

16. Plaintiff (2) _____ has been informed and believes that Plaintiff _____ is prepared to pay, or to have paid, the amount of freight due Owner "after completion of discharge".

17. Plaintiff (2) _____ has a contract of Sale with a company or business entity known as _____. Pursuant to the terms of said contract, _____ must receive the cargo laden aboard the vessel _____ prior to _____, 20____.

18. Should the cargo not be so discharged and delivered to _____, Plaintiff (2) _____ will suffer irreparable harm in that _____ will cancel the contract and, as the market for the cargo is falling, Plaintiff (2) _____ will be unable to recoup its losses caused by Owner's failure to deliver the cargo. The amount of the cargo aboard the vessel is worth approximately \$ _____. Should the cargo not be discharged and delivered to _____, Plaintiff (2) _____ will suffer damages in an amount of not less than \$ _____.

20. Plaintiff (2) _____ is informed and believes that none of the officers of the Owner are now within the jurisdiction of this Court and that Owner does not maintain an office within this District; but, there are now or will be during the pendency of this action certain goods, chattels, credits and effects within this District belonging to or claimed by defendant, to wit: the vessel _____.

SECOND CAUSE OF ACTION

20. Plaintiff (2) _____ repeats and realleges each and every allegation contained in paragraphs numbered "6", "15", "16", "17", "18" and "20" as though more fully set forth herein at length.

21. Plaintiff (2) _____ being the Owner and/or beneficial Owner of the cargo presently laden aboard the vessel _____ is entitled to possession of the cargo.

22. Plaintiff (2) _____ has demanded the vessel and Owner to deliver the cargo to _____'s designee but the Owner and vessel have refused.

23. By reason of the foregoing, Owner and vessel have converted the cargo as here identified and _____ has and will sustain damages in an amount of no less than \$ _____.

THIRD CAUSE OF ACTION

24. Plaintiff (2) _____ repeats and realleges each and every allegation contained in paragraphs numbered "6", "7", "8", "9", "15" and "17" as though more fully set forth herein at length.

25. Plaintiff _____ has sublet the vessel, as it is permitted to do under the terms of the Charter Party, to Plaintiff (2) _____.

26. The refusal of Owner and the vessel to discharge the cargo has and will cause damage to the cargo by delay and alterations of the cargo from its present form.

27. The damage to the cargo as here stated gives rise to a maritime lien and Plaintiff (2) _____ has a lien against the vessel for those damages it has sustained and will continue to sustain such amount being as nearly as may now be approximated, \$ _____.

wherefore, plaintiffs pray:

A. That a summons with process of maritime attachment and garnishment pursuant to Rule B, Supplemental Rules for Certain Admiralty and Maritime Claims, may issue to attach the vessel, _____;

B. That a summons with process in rem pursuant to Rule C, Supplemental Rules for Certain Admiralty and Maritime Claims, may issue and the vessel _____ be arrested;

C. That process in personam may issue in due form of law according to the practices of this Court in causes of Admiralty and maritime jurisdiction against _____ and that it be required to appear and answer this Verified Complaint;

D. That plaintiffs may have a decree against the vessel, _____, her engines, boilers, tackle, etc., for damages sustained by plaintiffs as aforesaid, together with interest, costs disbursements and reasonable attorneys' fees and that the vessel _____, may be condemned and sold to pay plaintiffs' just claims;

E. That judgment be entered against defendant _____ in the sum of \$ _____ plus costs, interest, disbursements and reasonable attorneys' fees.

F. The right of _____ to submit the dispute here set forth to arbitration as authorized by the Charter Party be preserved; and,

G. That this Court grant such other and further relief as may be just.

Dated: _____

Attorney for Plaintiff

[*Verification*] n4

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Interpetrol Bermuda Ltd. v. The Jane Stove*, Civ. No. 81-1655 (E.D.N.Y. 1981).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form Nos. 1-1 and 1-5 *supra*.

(n4)Footnote 4. *See* Form Nos. 1-11 and 1-12 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-148

FORM No. 1-148 Complaint In Personam by Charterer--Removal of Vessel From Charter

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. On or about _____, 20____, the plaintiff and the defendant, _____, duly made and entered into a certain charter party in writing, a true and correct copy of which is hereto attached hereto and incorporated herein as Exhibit A.

5. In and by the charter party the defendant, _____, let, and the plaintiff, as charterer hired the vessel _____, for the period of about _____, upon all the terms and conditions therein stated, such period of time to commence upon delivery of the vessel to the plaintiff.

6. The vessel _____ was delivered to the plaintiff by the defendant, _____, pursuant to the charter party, on _____, 20____, and the period for which the plaintiff is entitled to have the vessel under the charter party therefore will not expire until about _____, 20____. On or about 20____, the vessel duly entered upon the performance of the charter party for the plaintiff and remained in the service of the plaintiff thereunder except as hereinafter stated until on or about _____, 20____.

7. Upon information and belief, on or about _____, 20____, the vessel, having been loaded by the plaintiff with cargo for _____, arrived at _____ and there discharged the cargo on board destined for _____.

8. On information and belief, while the vessel was at _____, the plaintiff ordered the master of the vessel to receive aboard the vessel and load thereon certain cargo destined to be transported from _____ to _____, and ordered the master so to transport the same, but the master

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and the defendant, in violation of the charter party, and wholly disregarding the same, refused to load or to receive the cargo on board the vessel and wholly refused to transport the same on board the vessel from _____ to _____, but the vessel sailed and proceeded from _____ to _____ without the cargo, in violation of the rights of the plaintiff under the charter party, whereby the plaintiff has wholly lost the profits which it was entitled to make for the transportation of the cargo from _____ to _____, and has been damaged thereby in a large sum of money, the precise amount being unknown as yet to the plaintiff.

9. Upon information and belief, on or about _____, 20 _____, in violation of the charter party, the defendant, _____, at _____, withdrew the vessel _____ from the service of the plaintiff, and thereupon used her and ever since has used her for its own purposes and the defendant, _____, and the master of the vessel _____ have refused ever since, and still refuse to obey the lawful orders of the plaintiff in pursuance to the charter party and/or to perform the charter party further, whereby the plaintiff has wholly lost and will wholly lose the use of the vessel _____ from the date of the unlawful withdrawal thereof to the expiration of the charter period.

10. Upon information and belief, the vessel _____ arrived at _____, as aforesaid, on or about _____, 20 _____, and there discharged the cargo then remaining aboard the vessel, the discharge being complete on or about _____, 20 _____, the vessel being then ready to continue the service under the charter party. Previously the plaintiff had duly given orders that the vessel should then proceed from _____ to _____, and in disregard and disobedience of the orders, the defendant, _____ refused to allow the vessel to obey the plaintiff's orders, or any of them, and the vessel did not in fact obey the orders, or any of them, but the vessel left _____ under orders of the defendant, _____, and the plaintiff is ignorant of the destination of the vessel, but, upon information and belief, alleges that ever since the vessel has been operated under the orders of the defendant and in violation of the rights of the plaintiff.

11. In consequence of the breach of charter party and refusal of the vessel _____ and the defendant, _____, to perform the charter party further, or to allow the plaintiff to use and employ the vessel in pursuance of the terms of the charter party, the plaintiff has been and will be compelled to employ other tonnage with great increase of rates of hire and freight, and has suffered and will suffer further loss and damage. On _____, 20 _____, the charter party had a period of about _____ still to run. The fair and reasonable market rate for a vessel of the size and type of the _____ on time charter containing the terms and conditions of the charter party, a copy of which is marked Exhibit A, was on _____, 20 _____, and ever since has been _____. The deadweight capacity of the vessel _____ is _____ tons. At _____ a ton, which is the fair and reasonable charter party rate for the vessel, the market value of the vessel on time charter was on _____, 20 _____, and ever since has been _____. The hire to be paid by the plaintiff to the defendant, _____, pursuant to the terms of the charter party is \$ _____ a month. The plaintiff, therefore, has suffered and will suffer damage by reason of the breach of the charter party in the sum of \$ _____ a month, and, upon information and belief, will continue to suffer damage at that rate for a long period of time, and the plaintiff will suffer damage by reason of the breach of the charter party until the end of the period of time which the vessel was chartered to plaintiff as aforesaid.

12. The plaintiff has performed all and singular the conditions, duties and obligations laid upon it by the charter party, but the owner of the vessel _____ has refused to perform, complete and fulfill the charter party and the covenants and undertakings thereof.

13. By reason of the premises the plaintiff has suffered and will suffer damage in the sum of \$ _____ and upwards.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-149

FORM No. 1-149 Complaint (Counterclaim) by Charterer--Breach of Warranties

COUNTERCLAIM

[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1

4. By charter party, dated _____, 20 _____, the plaintiff chartered the vessel to the defendant for a minimum period of _____ and a maximum period of _____, upon the terms and conditions therein set forth, a photostatic copy of which charter party and of the addendum thereto, dated _____, 20 _____, has been attached hereto and incorporated herein as Exhibit A. The charter party warrants that the vessel's "hull, machinery and equipment" are "in a thoroughly efficient state," and that the vessel is "capable of steaming, fully laden, under good weather conditions, about 9 1/2/10 knots ..."

5. The vessel has been unable to make the speed warranted by the owner (*the plaintiff herein*) in the charter party, and as a result thereof, on the voyages from (*list origin, destination and time periods of voyages*), the vessel, solely by reason of her failure and inability to make the warranted speed, and not by reason of other than good weather conditions or any other causes, took approximately _____ days longer actual steaming time (*in the aggregate*) than if she had made her warranted speed. By reason of the premises the defendant has sustained damages on account of the payment of such additional days' hire, as nearly as can now be estimated, in the aggregate amount of \$ _____, no part of which has been paid although duly demanded.

FOR A SECOND CAUSE OF ACTION

6. The defendant repeats and realleges each and every allegation contained in Paragraphs 1 through 5, inclusive, of this counterclaim with the same force and effect as if the same were set forth at length herein.

7. The charter party provides as follows:

Insert paragraph of charter party upon which action is based]

8. On the voyage from _____ to _____, with a full cargo of _____, the vessel encountered difficulties in the _____, (*state ocean*) by reason of the unseaworthiness of the vessel, and she developed a _____ (*state problem*), a portion of her deck cargo of _____ was jettisoned and she put into the port of _____.

9. The difficulties were the direct result of her unseaworthiness in that _____ (*describe problems*).

10. The difficulties resulted in substantial delays at the ports of _____, the total delay amounting to a period of _____ days, _____ hours and _____ minutes, as nearly as can now be estimated.

11. As a direct consequence of the delays, resulting from the vessel's breakdown and her speed deficiency, the defendant has sustained damages in the amount of _____ as nearly as can now be estimated, no part of which has been paid though duly demanded.

wherefore the defendant prays:

1. That the suit begun by _____ (*identify plaintiff*), on or about _____, 20 _____, and in which the defendant has appeared and given proper security, be stayed pursuant to Supplemental Rule E(7) until proper security shall have been given on behalf of the plaintiff herein.

2. (*Demand for Judgment*) n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-150

FORM No. 1-150 Complaint In Personam Against Bareboat Charterer-- Damage to Vessel

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. On or about _____, 20 _____, the plaintiff entered into an agreement with the defendant, whereby the defendant chartered the _____ from the plaintiff. By the terms of the charter, the defendant agreed to pay the plaintiff hire at a special rate; and further agreed to return the vessel _____ upon the termination of the charter in the same good order and sound and seaworthy condition as when delivered by the plaintiff to the defendant, ordinary wear and tear excepted.

5. Thereafter and on or about the _____, 20 _____, in accordance with such agreement the plaintiff delivered to the defendant the vessel in a good, sound, and seaworthy condition.

6. Thereafter, and on the termination of the charter, on or about _____, 20 _____, the defendant, in violation of the terms of the charter, failed to return the vessel _____ to the plaintiff in the same good order and condition as she was when delivered to the defendant by the plaintiff, but on the contrary, returned her in a seriously damaged and unsound condition, such damages, unsoundness, and unseaworthiness not being due to or caused by ordinary wear and tear.

7. The plaintiff has sustained damage by reason of having had to make necessary repairs to restore the vessel _____ to the same good, sound and seaworthy condition as when delivered by the plaintiff to the defendant. The damages, including cost of repairs, loss of use of the vessel _____ while undergoing repairs, incidental expenses, etc., amount to \$ _____ as nearly as can be estimated at this time, and no part thereof has been paid although payment has been duly demanded from the defendant by the plaintiff; and such damages are due and owing to the plaintiff from the defendant, with interest.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1, 1-2 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-151

FORM No. 1-151 Complaint In Personam Against Bareboat Charterer-- Loss of Vessel

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. On or about the _____ day of _____, 20____, at _____ plaintiff and defendant entered into a charter party or agreement in writing, a copy of which is attached hereto and incorporated herein as Exhibit A.

5. The agreement provided, among other things, that plaintiff would demise and let to the defendant and defendant would hire from the plaintiff the vessel _____ for the purpose of making a voyage as in the contract provided.

6. The contract further provided that the defendant would keep the vessel in repair, pay all its running expenses and surrender the same, with all its gear, furniture, and tackle at the expiration of the contract to the owner or his agent in as good condition as at the start, fair wear and tear from reasonable and proper use only excepted and defendant should be liable and responsible for any and all loss and damage to hull, machinery, equipment, tackle, gear, furniture, or the like.

7. At all the times herein the vessel with its gear, furniture, and tackle as demised to the defendant was of the fair and reasonable value of \$_____.

8. On information and belief, the defendant used and employed the vessel for the purpose of making a voyage from _____ to _____ in the Republic of _____ and that while on such voyage the vessel was wrecked and sunk and became a total loss.

9. As a result of the foregoing plaintiff has sustained damages in the sum of \$_____.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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4-I Benedict on Admiralty FORM No. 1-152

FORM No. 1-152 Complaint In Personam Against Voyage Charterer and Pier Owner--Damage to Vesseln1

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2*

4. At all times hereinafter mentioned, plaintiff was the disponent owner of the vessel _____ which, previous to the events hereinafter described, was in all material respects tight, staunch, strong, seaworthy and fitted for the voyage in question.

5. On or about _____, 20 _____, plaintiff entered into a voyage charter party designated as _____ whereby plaintiff as disponent owner of the vessel _____ agreed to let and defendant _____ (*charterer*), as charterer, agreed to hire the said vessel for a stated voyage at a stated charter rate. A copy of the said charter party is attached to this Complaint incorporated herein as Exhibit A.

6. The vessel _____ was duly delivered by plaintiff to defendant _____ (*charterer*) under the terms of the hereinabove mentioned charter.

7. On _____, 20 _____, during the term of the said charter, and while the vessel was being operated by plaintiff for defendant (*charterer*), as charterer, and pursuant to the order of defendant _____, the vessel _____ was loading a cargo of _____ at the dock of defendant _____ at _____, as directed by defendants _____ (*identify stevedore*) and _____ (*pier owner*). On _____, 20 _____, at the order of defendants, loading of the vessel _____ was stopped and at the further order of defendants the vessel _____ was shifted to a second berth. While moored at the second berth the vessel _____ was caused to go aground and suffered damage to her hull and machinery.

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8. The aforesaid damages occurred while defendant (*dock owner*) was the owner of the dock at which the vessel _____ was moored, was the shipper of the cargo being loaded aboard the vessel, and was the charterer's agent.

9. The aforesaid damages were not caused or contributed to by any fault or neglect on the part of the vessel _____ or those in charge of her, or of any person for whom plaintiff was or is responsible, but were caused wholly and due solely to the breach of contract, and fault or negligence of defendant _____ (*identify charterer*), its agents, servants, employees or contractors, in the following respects, among others, which will be shown at the trial of this cause:

- (a) By directing the vessel _____ to an unsafe berth;
- (b) By failing to provide a safe berth for the vessel _____;
- (c) By failing to take the proper or any precautions to prevent the damage in question; and
- (d) By failing to provide the minimum depth salt water guaranteed in the said charter party.

10. In the alternative, plaintiff says that the aforementioned damages were not caused or contributed to by any fault or neglect on the part of the vessel _____ or those in charge of her, or of an person for whom plaintiff was or is responsible, but were caused wholly by and due solely to fault and negligence of defendant _____ (*dock owner*), its agents, servants, and employees in the following respects, among others, which will be shown at the trial of this cause:

- (a) By failing to furnish a dock sufficiently strong and properly fitted at which a vessel such as the vessel _____ could be moored; and
- (b) By directing the vessel _____ to an unsafe berth.

11. Because of the grounding of, and damage to the hull of, the vessel _____, it was necessary for plaintiff to incur expenses for refloating, towage, and repairs to the vessel; and plaintiff lost the use of its vessel and had other varied incidental expenses; for all of which said damages defendants are responsible.

12. By reason of the premises, plaintiff has sustained damages which, as nearly as can now be estimated, amount to approximately \$ _____, plus interest thereon.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Trade & Transport, Inc. v. Caribbean S.S. Co.*, 384 F. Supp. 782, 2075 A.M.C. 1065 (S.D. Tex. 1974), courtesy of Kleberg, Mobley, Lockett & Weil, Corpus Christi, Texas.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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FORM No. 1-153 Complaint In Personam Against Bareboat Charterer--Damage to Vessel; Charter Hire

[Caption and Jurisdictional Statement] n2

2. Now and at all relevant times _____ is and was a corporation organized and existing under the laws of the State of _____ with its principal place of business _____, _____ and, likewise, _____, now and at all relevant times is and was a corporation organized and existing under the laws of the State of _____ with its principal place of business in _____, _____.

3. At relevant times plaintiff was the title owner of vessel _____ (*barge*) and on or about the _____ day of _____, 20 _____ plaintiff bareboat chartered _____ to defendant, who since _____, 20 _____ and at all relevant times herein was in complete possession and control of _____. As bareboat charterer, defendant was operator and owner pro hoc vice of _____ and the only "owner" of _____ within the meaning of 33 U.S.C. §§ 409 and 415.

4. Between _____, 20 _____ and _____, 20 _____ at _____, defendant loaded, equipped and adapted _____ (*barge*) for the holding of sand and to serve as a work platform for use in defendant's sandblasting operations. After loading with sand, defendant, on _____, 20 _____ had _____ (*barge*) towed to the face of a dock at _____ on the _____ River in _____, _____ where defendant spotted and moored her for use in defendant's sandblasting operations. Sometime in the late hours of Saturday night, _____, 20 _____ or early Sunday morning _____, 20 _____, _____ (*barge*) capsized, broke her mooring lines and drifted capsized down the _____ River. Patrol craft operated by the City of _____ discovered the capsized

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barge in the river and brought her in the capsized condition to waters of a slip area at _____, _____ where she shortly thereafter sank in her capsized condition near the stern of a merchant vessel _____. The sinking blocked the merchant vessel's departure to sea which was scheduled for Sunday morning, _____, 20_____.

5. The sinking of Barge _____ (*describe actions required by authorities*).

6. The capsizing and sinking of Barge _____ was proximately caused by the negligence and carelessness of defendant in:

(*describe negligence*)

7. After the sinking of Barge _____ defendant refused to do anything or incur any expense or responsibility for salvaging the barge or removing the barge as a menace to navigation. On _____, 20_____, plaintiff tendered to defendant the right and responsibility to salvage barge _____ and remove her as a wreck and upon its rejection of such tender plaintiff undertook to salvage the barge and remove her as a menace to navigation and notified defendant it was doing so for defendant's account and at its expense. It was defendant's sole duty and responsibility to salvage the barge and remove her as a menace to navigation. Plaintiff was required to perform defendant's duty to salvage the barge and/or remove her as a menace to navigation both to mitigate defendant's ultimate expense and damages and to prevent Barge _____ to be condemned and sold by the _____ (*authority*) to pay for such expense of removal had he through the Corps of Engineers been required to do so.

8. As a direct result of defendant's negligence and defendant's failure as bareboat charterer of barge _____ to salvage barge _____ and remove her from being a menace to navigation, plaintiff paid or incurred the following costs and expenses:

(*list all costs and expenses*)

Plaintiff is entitled to interest at the rate of _____ upon the sum of \$ _____ from _____ 20_____.

9. Plaintiff performed the duty of defendant to remove and refloat barge _____ by supplying salvaging vessels, equipment, personnel and incurring other risks and expenses in an aggregate amount of \$ _____; all with and after notice to defendant of its intent to do so and for the account of defendant. The things supplied and the vessels, equipment and personnel furnished by plaintiff to accomplish the removal of barge _____ from the river as a menace to navigation and refloating her were each and all immediately necessary and reasonable to satisfy the requirements of public safety which defendant had a duty to do but refused to do.

10. Under the premises plaintiff should be reimbursed by defendant for its expenditures as above-described which it made for the account and benefit of defendant and for which defendant is responsible in the amount of \$ _____.

FOR A SECOND CAUSE OF ACTION

11. Plaintiff incorporates herein by reference each and all of the allegations contained in paragraphs 1 through 6 of its first cause of action.

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12. On _____, 20 ____ the master of the vessel _____ by letter notified plaintiff that barge _____ had come to rest in sunken condition against his ship at [state location], preventing departure as scheduled and that owners of the _____ intended to hold plaintiff responsible for all costs involved in freeing the vessel and costs for extra tugs, lines, pilots as well as loss of hire resulting from the incident. On _____, 20 ____ owners of the _____ made demand on plaintiff for the sum of \$ _____ for its aforescribed costs and further stated its demand would be greatly increased should subsequent drydocking reveal suspected hull and propeller damage to the _____.

13. Plaintiff is entitled to and hereby makes claim upon defendant for full indemnity, including attorney fees and defense costs for any and all money it might be required to pay to the owner, charterer or operator of the _____ by either compromise or settlement of such claim of judgment against plaintiff.

14. Plaintiff alleges that the sum of \$ _____ is a reasonable attorney's fee to be paid to plaintiff by defendant for having to defend the claim of the owner of the _____.

FOR A THIRD CAUSE OF ACTION

15. Plaintiff incorporates herein by reference each and all of the allegations contained in paragraphs 1 through 4 of its first cause of action.

16. Plaintiff under said bareboat charter delivered barge _____ to defendant on _____, 20 ____ in a reasonably fit condition for her intended use by defendant and defendant thereafter returned said barge to plaintiff in a capsized, sunken and damaged condition requiring plaintiff to expend \$ _____ to raise and float the barge.

17. That after the barge _____ was raised and refloated she was drydocked and inspected at the joint request of plaintiff and defendant. As a proximate result of her capsizing and sinking the _____ barge was damaged as follows: (*describe damages*). That the reasonable cost of repairing barge _____ and restoring her to the condition she was in prior to capsizing and sinking is \$ _____.

18. It was a necessity for plaintiff to expend the reasonable sum of \$ _____ as and for a marine surveyor to inspect and survey the barge while drydocked.

19. A reasonable time for effecting repair to barge _____ is thirty days and that the reasonable amount for plaintiff's loss of use (or loss of future charter-hire) for the barge is at the rate of \$ _____ per day or a sum of \$ _____.

20. Defendant had agreed to pay to plaintiff as charter-hire of barge _____ the sum of \$ _____ per day. That plaintiff bareboat chartered the barge to defendant on _____, 20 _____. Defendant terminated the charter on _____, 20 _____. That defendant owes plaintiff the sum of \$ _____ as and for past charter-hire.

21. Plaintiff is entitled to interest at the rate of _____ per cent per annum on all amounts claimed in this cause of action from _____, 20 _____.

wherefore plaintiff prays for judgment against defendant as follows:

Upon its FIRST cause of action in the amount of \$ _____ together with interest at the rate of _____ per cent per annum thereon from _____, 20 _____.

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Upon its SECOND cause of action in the amount of \$ _____ or such other greater or lesser sum as may be required to fully indemnify plaintiff in respect to claim of the owners of the _____, together with the additional sum of \$ _____ as and for attorney fees and costs to be incurred in such defense irrespective of whether the defense is successful or not.

Upon its THIRD cause of action in the amount of \$ _____ (or only _____ should the full amount of \$ _____ be awarded to plaintiff on its first cause of action) together with interest thereon at the rate of _____ per cent per annum from _____, 20 ____.

For such other and further relief as appears to the Court to be just and proper.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Western Transp. Co. v. Pac-Mar Services, Inc.*, 376 F. Supp. 530 (D. Ore. 1974), courtesy of White, Sutherland, Parks & Allen, Portland, Oregon.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

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4-I Benedict on Admiralty FORM No. 1-154

FORM No. 1-154 Complaint In Personam Against Bareboat Charterer--Damage to Vessel; Charter Hire

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n1*

4. On or about the _____ day of _____, 20____ at _____, a charter party in writing was duly entered into by and between plaintiff and defendant, whereby plaintiff, as owner, agreed to let and defendant, as charterer, agreed to hire, the vessel _____ for a period of about _____ months at the rate of \$ _____ per ton on the vessel _____ dead weight capacity, which is _____ tons.

The charter contained the following, relevant provision: _____ *[state provision]*.

A copy of the said charter party is attached hereto and incorporated herein as Exhibit "A".

5. The vessel _____ was duly delivered by plaintiff to defendant under the above mentioned charter on _____, 20____, being at that time in good order and condition, and remained continuously in the service of defendant until _____, 20____, at _____ A.M.

6. In the latter part of _____ or early part of _____, 20____, the vessel _____, under the above mentioned charter, was loaded by defendant at _____ with a cargo of _____ *[describe where cargo was stowed and damage to ship caused by cargo]*.

7. On _____, 20____, at _____ A.M. defendant redelivered the vessel _____ to the owners, not in like good order and condition as when delivered, but damaged by reason of _____ *[describe cause of damage]*.

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8. By reason of the premises, it became necessary to make repairs to the vessel _____ in order to restore her to the like good order and condition as when delivered to defendant under charter party which repairs amounted to \$ _____. The time occupied in making these repairs to the vessel amounted to _____ days and hours, which at the charter party rate of \$ _____ per calendar month amounted to the sum of \$ _____ which, less _____ per cent address commission of \$ _____ amounts to \$ _____, to which should be added \$ _____ being the cost of the _____ [fuel] consumed during the time repairs were going on, or a total of \$ _____.

9. On or about _____, 20 _____, while the vessel _____ was proceeding on the above mentioned voyage to _____ port, it was found necessary to put in to the port of _____ in order to obtain medical attention for one of the ship's crew who had been injured by the _____ [damage] above mentioned hours were consumed in putting into _____. Defendant wrongfully and improperly deducted from the hire due to the vessel the sum of \$ _____ representing the _____ hours occupied in putting into _____ plus expenses for port charges amounting to \$ _____, making a total of \$ _____ wrongfully deducted from the hire.

10. By reason of the premises, the above sums of \$ _____ and \$ _____, a total of \$ _____, have become due and owing from defendant to plaintiff, no part of which has been paid although duly demanded, and the said sum of \$ _____ is due and owing from defendant to plaintiff.

11. Plaintiff has duly performed all and singular the obligations resting on it under the above mentioned charter party.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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FORM No. 1-155 Complaint In Personam Against Charterer by Oral Demise--Damage to Vessel

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n1*

4. On or about the _____ day of _____, 20____, plaintiff and defendant entered into an oral agreement, whereby plaintiff agreed to demise and defendant agreed to receive on charter the vessel _____, at a daily rate of charter hire until defendant should return her light within the limits of the Harbor of _____ in as good condition as when received, ordinary wear and tear expected, and plaintiff by letter immediately confirmed said charter, which confirmation comprised the terms of the charter and was received and retained by defendant without objections: a copy is attached hereto and incorporated herein as Exhibit A.

5. Pursuant to the terms of the aforesaid agreement of charter, plaintiff delivered said vessel _____ in a sound and seaworthy condition to defendant on the _____ day of _____, 20____, and defendant continued as bailee in the custody and control of said barge until redelivery thereof to plaintiff on or about the _____ day of _____, 20____.

6. Defendant failed to redeliver to plaintiff the vessel _____ in the same condition as when received, ordinary wear and tear excepted, but, on the contrary, returned said vessel in a grievously damaged condition, _____ *[describe damage]* which was not the result of ordinary wear and tear, but was due to defendant's breach of its obligations under said charter.

7. By reason of the premises aforesaid, it was necessary to place the vessel _____ in dry dock for repairs and a survey was duly held thereon on the _____ day of _____, 20____, at which survey defendant was represented and the damage to said vessel was found to amount to the sum of \$ _____ and the repairs called for by such survey were duly made on the _____, to

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and including the _____ day of _____, 20 _____, a period of detention of _____ days, during which time plaintiff lost the use of said barge in a profitable employment at _____ a day, amounting to \$ _____, which sum was the fair and reasonable value of said detention and plaintiff was obliged to expend \$ _____ for towage of said vessel to and from dry dock, and \$ _____ for surveyor's fees, making a total \$ _____, with interest thereon from 20 _____, payment of which has been duly demanded of defendant, which has neglected and refused to pay any part thereof.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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FORM No. 1-156 Complaint (Third-Party) In Personam by Time Charterer Against Voyage Charterer--Damage to Vesselⁿ¹

[Caption and Jurisdictional Statement] ⁿ²

2. Plaintiff, _____, has filed a complaint herein, a copy of which complaint is attached hereto as Exhibit A.

3. Defendant and third-party plaintiff was and now is a corporation duly organized and existing according to law, engaged in the shipping business, and acting through its duly appointed agent, _____. Such agent was and now is a corporation duly organized and existing according to law with an office for the transaction of business at _____.

4. Third-party defendant, _____, at all times hereinafter mentioned, was and now is a foreign corporation, duly organized and existing according to law, with an office and usual place of business at _____, _____ at the present time _____, was appointed by third-party defendant as its agent for the transaction of certain business involved herein and at all times hereinafter mentioned acted as such.

5. In the City of _____ on _____, 20 _____, a time charter, on Government form approved by the New York Produce Exchange, was entered into between _____ as disponent owner of the _____, and defendant and third-party plaintiff, for a period of _____ months from date of delivery of the vessel to charterers, to be employed generally within American Institute Trade Warranties. A copy of said time charter is attached hereto and incorporated herein as Exhibit B. On _____, 20 _____, a voyage charter, "approved Baltimore berth grain charter party--steamer" form, of the _____ was entered into in the City of _____ between the defendant and third-party plaintiff and third-party

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defendant for a voyage from one safe port, _____, with a full and complete cargo of _____ to _____, and _____, "1/2 safe berths each port."

6. Pursuant to said charter parties, a cargo of _____ was duly loaded on board the _____ which proceeded to and arrived at the Port of _____, where she was berthed at _____ hours on _____, 20 _____, and forthwith commenced discharge of said cargo. On or about _____ hours on _____ [*describe damage*].

7. Plaintiff has alleged that defendant and third-party plaintiff is responsible under the said time charter for furnishing an unsafe berth contrary to the provisions of said time charter. Defendant and third-party plaintiff denies that there has been any breach of obligation on the part of defendant and third-party plaintiff but further maintains that if there was such breach then there was similar and corresponding breach by third-party defendant of its obligations under said voyage charter and that the ultimate responsibility is that of third-party defendant and not that of defendant and third-party plaintiff.

Wherefore defendant and third-party plaintiff demands judgment against third-party defendant for all sums that may be adjudged against it in favor of the plaintiff, together with costs, expenses and attorneys' fees.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Venore Transp. Co. v. Oswego Shipping Corp.*, 363 F. Supp. 1366, 2073 A.M.C. 2150 (S.D.N.Y. 1973), courtesy of Mendes & Mount, New York, New York.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

* *See* 2B and 2C Benedict on Admiralty Matthew Bender).



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FORM No. 1-177RESERVED



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*4-I Benedict on Admiralty FORM No. 1-178***FORM No. 1-178 Complaint In Rem and In Personam by Vessel Owner--Collision**

[Caption, Jurisdictional Statement and
 Allegations Concerning Parties] n1

5. On the evening of _____, 20____, the _____ left the _____ Lumber Company dock at _____ bound for _____, _____, with about _____ tons of general cargo and _____ feet of lumber, her draft being 20 feet 7 inches forward and 20 feet aft. After undocking the _____ proceeded down the harbor and in due course entered _____ Channel. The master was on the bridge directing the vessel's navigation and with him were the third officer and an able-bodied seaman who was at the wheel. Another seaman was stationed on the forecastle head keeping lookout. The weather was fine and clear with a fresh north-east wind, and the tide was flood. It was dark and the _____ had the regulation navigation lights properly set and burning brightly.

While the _____ was proceeding down the center of _____ Channel with _____ Channel range lights directly in line astern, those aboard her saw ahead the masthead range light and green side light of a vessel which later proved to be the Tanker _____ proceeding up the channel. The masthead and range lights of the _____ bore on the _____'s port bow and were open, indicating the _____ was on a course angling slightly across _____ Channel from east to west. Shortly after sighting the lights of the _____ the _____ sounded a passing signal of one blast which was answered by the _____ with one blast, the vessels thereby agreeing to a port to port passage. After the exchange of one blast passing signals the course of the _____ was directed to her starboard toward the westerly edge of _____ Channel. When she was well on her own starboard side of the channel the _____ was straightened up on a course along the westerly edge of the channel. The _____ continued to approach still showing her green side light and her range lights were still open slightly but there was ample room for a safe passage port to port

when the _____ suddenly sounded an alarm signal (four short blasts) and it was seen that she was sheering rankly to port and heading directly toward the _____. The _____ immediately put her wheel hard to starboard in an effort to haul away from the oncoming _____ and sounded a one blast signal. The _____, however, continued approaching the _____ and the _____ sounded a signal of three blasts but continued closing in rapidly on the _____ and the stem of the _____ violently struck the _____'s port side about twenty feet forward of the bridge, the angle of collision being almost a right angle. On or about the moment of collision the _____ grounded on the mud bank, lump or shoal just to the westward of the westerly edge of the channel, between buoys 9-c and 11-c. After collision the vessels remained locked together until _____, 20 _____, when, with the assistance of several tugs, they were pulled apart. As a result of the collision the _____ sustained serious damage and was compelled to return to _____ to discharge cargo in order to effect repairs necessitated by the collision.

6. The collision and the damages resulting therefrom were not caused or contributed to by any fault or negligence on the part of those in charge of the _____ but were caused wholly by, and due solely to, fault and negligence on the part of those in charge of the _____ in the following particulars, among others, which will be brought out upon the trial:

1. She was not in charge of competent persons.
2. She failed to keep a good lookout.
3. She was proceeding at an immoderate rate of speed under the circumstances.
4. She failed to keep on her own starboard side of the channel as she was required to do under the provisions of _____ of the Inland Rules.
- 5 After exchanging one blast passing signals with the _____ she failed to alter her course to starboard so as to effect a port to port passage.
6. After exchanging one blast passing signals with the _____ she altered course to port in direct violation of her agreement to pass the _____ port to port.
7. She suddenly and unexpectedly sheered across channel and into the _____.
8. She failed to stop and reverse her engines when danger of collision was, or should have been, apparent.
9. She did not do anything to avoid collision.

7. By reason of the premises and as a result of the collision, the plaintiff has sustained heavy damage consisting of the cost of salvaging the _____, the cost of repairs, the loss of use of the vessel, rehandling and reshipment of cargo, general average expenses and other substantial expenses necessarily incurred and to be incurred as a result of the collision which, so nearly as can be estimated at present, will amount to about _____ dollars (\$ _____), no part of which sum has been paid although payment thereof has been duly demanded.

[Prayer for Process, Demand for Judgment and Verification] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1, 1-2, and 1-5 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6, 1-10, 1-11 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-179

FORM No. 1-179 Complaint In Rem and In Personam by Vessel Owner--Collisionn1

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n2*

4. During the early afternoon of _____, 20 _____, the vessel _____ [*describe type of vessel*], a _____ foot, _____ hp. Navigation of the _____ was in charge of _____, who was in her pilothouse maintaining a sharp lookout.

5. Weather conditions were _____ [*describe*].

6. Sea conditions were _____ [*describe*].

7. [*describe traffic conditions*]

8. At or about _____ P.M. (CST), on _____, 20 _____, and in broad daylight another vessel, which was later identified as the Vessel _____, was observed about _____ [*give location*] of the _____ and proceeding in the direction of the _____ on a crossing course. As it was apparent that the _____ [*crossing vessel*] had ample time to take whatever measures were necessary to keep out of the way of the _____, and avoid crossing ahead of her, the _____ maintained her course and speed. Thereafter, when the two vessels were a short distance apart, the master of the _____ observed that no one was on watch in the pilothouse of the _____ [*crossing vessel*] and he immediately turned the steering wheel of the _____ hard right in a desperate attempt to avoid collision. However, the two vessels were too close to each other to avoid collision by any action on the part of the _____, and shortly thereafter, while proceeding at full speed, the bow stem of the _____ [*crossing vessel*] collided heavily with the

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_____ [state location of contact] about 10 feet aft of bow of the _____, after which the bow of the _____ [crossing vessel] rode along and continued to scrape against the port side of the _____ from the initial point of impact to her stern.

As a result of the collision, the _____ suffered heavy damage _____ [describe location, nature and extent of damage].

9. After the collision the vessels exchanged information with respect to their identities, and the _____ returned to _____, at half-speed under escort of the _____ for survey and temporary repairs. Thereafter, the _____ [crossing speed] proceeded to the port of _____, _____ for permanent repairs, which were not completed until _____, 20 ____.

10. The aforesaid collision and damage were not caused, or contributed to, by any fault or neglect on the part of Plaintiff, or those in charge of the _____, but, on the contrary, were caused wholly by, and due solely to the fault, neglect and want of care on the part of Defendant, the _____ [crossing vessel], and those in charge of said vessel, in the following respects, among others, which will be more fully shown at the trial of this cause: _____ [state all allegations of neglect and fault].

11. As a consequence of the aforesaid collision, plaintiff has suffered loss and damage in the amount of \$ _____ as nearly as the same can now be estimated, consisting of temporary and permanent repairs to _____, her hull, machinery and rigging, various expenses incurred to minimize its loss, and loss of earnings and use, no part of which has been paid although duly demanded.

[Prayer for Process, Demand for Judgment and Verification] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *P.S. Fish Industries, Inc. v. St. George Packing Co., Inc.*, 307 F. Supp. 458 (S.D. Tex. 1969), courtesy of Storter, Carinhas & Cunningham, Brownsville, Texas.

(n2)Footnote 2. See Form Nos. 1-1, 1-2 and 1-5 *supra*.

(n3)Footnote 3. See Form Nos. 1-3, 1-6, 1-10, 1-11 and 1-12 *supra*.

* See 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-180

FORM No. 1-180 Complaint In Rem and In Personam by Vessel Owner--Collision

[Caption and Jurisdictional Statement] n1

4. At all the times herein mentioned, the defendant was and still is the owner and in possession and control of a certain vessel known as _____.

5. At all the times herein mentioned, the plaintiff was and still is the owner of a certain vessel known as _____.

6. On the _____ day of _____, 20 ____ at about _____ o'clock in the _____ noon of that day, plaintiff was lawfully operating its said vessel over the waters of _____ at a point about _____ miles off shore from _____ in the County of _____ and State of _____.

7. At the time and place, defendant was engaged in operating its said vessel _____ in close proximity to the vessel owned and operated by the plaintiff and so negligently and carelessly operated and controlled the same that it was permitted to and did collide with the vessel owned by plaintiff and caused the damage to plaintiff's vessel hereinafter alleged.

8. The said collision and the damage to plaintiff's vessel resulting therefrom were caused solely by the negligence of the defendant.

9. The negligence of the defendant consisted of _____ *[set forth the facts showing of what the negligence in navigation consisted]*.

10. [*allege damages to vessel*]

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-181

FORM No. 1-181 Complaint In Personam by Vessel Owner--Collision

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties]* n1

4. During the evening of _____, 20 _____, the vessel _____ struck and damaged the vessel _____ at Pier at _____.

5. The aforesaid collision and resulting damage were not caused or contributed to by any negligence on the part of the vessel _____ or her owner or operator but were caused wholly by and due solely to the fault and neglect of the defendants and those in charge of the _____.

6. By reason of the foregoing, plaintiff has sustained damage in the approximate amount of \$ _____, as nearly as can now be estimated, no part of which has been paid although duly demanded.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-182

FORM No. 1-182 Complaint In Personam by Motorboat Owner--Collision

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. Upon information and belief, at all the times herein mentioned, the defendant was and still is the owner of _____ [vessel] commonly called the _____. Said vessel was of a class commonly known as a _____, was of the length of approximately _____ feet and was propelled by means of a _____.

5. At all the times herein mentioned, plaintiff was and still is the owner of a _____ [vessel] commonly known as the _____, which said vessel was of a character commonly known as a _____ was approximately _____ feet in length and was propelled by means of a gasoline engine.

6. At all the times herein mentioned, the vessels owned and operated by plaintiff and defendant were floating on the waters of _____ near _____.

7. On the _____ day of _____, 20 _____ between the hours of _____ and _____, plaintiff was on his said vessel, which was anchored about _____ feet off _____ at _____, _____.

8. At the same time and place, while defendant was in his _____ and was operating the same, it was anchored about _____ feet away from the boat owned by the plaintiff as aforesaid.

9. On the _____ day of _____, 20 _____, at about _____

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o'clock in the _____ noon of that day, at the place aforesaid, defendant pulled up the anchor by which his said vessel was anchored and permitted the said boat to drift and failed to start the motor or engine thereof and the said boat continued to drift until it collided with plaintiff's boat causing the following personal injuries to the plaintiff: _____ [*list injuries*].

10. The said accident and the injuries to plaintiff resulting therefrom were caused solely by the following negligent acts of the defendant: _____ [*state all negligent acts*].

11. [*allege damages suffered*]

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-183

FORM No. 1-183 Complaint In Personam by Sailing Yacht Owner and Passenger Against Commercial Vessel Owner--Collisionn1

[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2

4. On the morning of _____, 20 _____, at approximately _____ hours, the sailing yacht _____ (United States Documentation No. _____) ("RU2"), owned by _____, was proceeding _____ [list direction] in the area of _____ regulation navigation lights were properly set and burning brightly. _____ was at the helm of _____, directing its navigation and with him was an able-bodied yachtsman who served as a lookout and aided in the sailing of _____, and another person were below deck. The weather was _____ [describe weather, wind and visibility].

5. While proceeding down the _____, those on deck observed the green running light of a vessel in the _____ above _____ [yacht] which later proved to be the vessel _____ [owner] maneuvered _____ in the direction of the port side of the channel to permit _____ [commercial vessel] to overtake and pass to starboard of _____ [yacht], however, failed to take action calculated to avoid _____ [yacht], but continued in the same direction rapidly closing in on _____ then ordered all persons aboard to come above deck and immediately thereafter maneuvered _____ [yacht] on a tack in the direction of the _____ shore in an effort to haul away from the oncoming _____ [commercial vessel]. The bow of _____ however, violently struck _____ [yacht] starboard side causing severe damage to _____ and injuring _____, and another, both of whom were thrown overboard by the impact of the collision.

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6. The collision and the damages resulting from the collision were not caused or contributed to by any fault or negligence on the part of those aboard _____ [yacht] but were caused wholly by, and due solely to fault and negligence on the part of those agents and employees of _____ in charge of _____ [commercial vessel] in that such persons: _____ [state alleged negligent acts].

7. By reason of the foregoing, _____ [owner] has sustained heavy damage consisting of the cost of salvaging _____ [yacht] loss of charter income and other substantial expenses necessarily incurred and to be incurred as a result of the collision; _____ [passenger] has sustained severe injuries to his person causing great pain and suffering and incurred substantial expenses and suffered substantial losses.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del. 1976), courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.

(n2)Footnote 2. See Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. See Form No. 1-6 *supra*.

* See 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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FORM No. 1-184 Complaint In Personam--Collision Between Yachtsn1

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties]* n2

4. The _____ [*plaintiff's vessel*] was purchased new by the plaintiff on or about _____, 20 _____, and was at all times prior to the incident complained of herein tight, staunch, and seaworthy.

5. On or about _____, 20 _____, the _____ [*plaintiff's vessel*] was tied up at a pier at _____ when it was struck by the _____ [*defendant's vessel*], which was being operated by the defendant in a dangerous and reckless manner by or with the privity and knowledge of the defendant. Specifically, defendant was guilty of one or more of the following negligent acts: _____ [*list alleged negligent acts*].

6. By reason of the above, the plaintiff has sustained damages in the amount of _____ dollars (\$) _____) as near as the same can now be estimated, no part of which has been paid although duly demanded of the defendant.

7. The damages to the _____ were solely due to the negligence, fault, and neglect of the defendant and were not caused contributed to by the plaintiff.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Moss v. Houseboat Margie II*, Civ. No. 80-2505 (E.D.N.Y. 1980).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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FORM No. 1-185 Counterclaim by Vessel Owner--Collisionn1

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2*

FIRST COUNTERCLAIM

4. At _____ hours on the _____th day of _____, 20_____, the vessel _____ while proceeding _____ from the Port of _____ on her starboard side of _____ Channel near channel buoy _____ was struck by the vessel _____ [*plaintiff's vessel*].

5. The aforesaid collision was caused by the negligence of the plaintiff and the unseaworthiness or negligence of the _____ in the following respects, among others, which will be shown on the trial of this action: _____ [*describe alleged unseaworthy and negligent acts*].

6. As a direct and proximate result of said collision the vessel _____ sustained serious structural damage requiring extensive repair.

7. By reason of the foregoing, defendant _____ sustained damages including the cost of repair, loss of use and other economic losses in the amount of approximately _____ as near as the sum can now be estimated.

8. The aforesaid collision and the resulting damages were not caused or contributed to in any manner by the fault, neglect or want of care on the part of the defendant, _____, its agents, servants or employees, or the negligence or unseaworthiness of the vessel _____.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Prudential Lines, Inc., v. Transmarittima Sarda Italnavi Flotte Riunite S.P.A.* (Genova), 2081 A.M.C. 415 (S.D.N.Y. 1980).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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FORM No. 1-186 Complaint In Personam--Collision With Sunken Vessel

[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1

4. At all times hereinafter mentioned, the vessel _____ [plaintiff's vessel] was seaworthy, and properly manned and equipped.

5. On or about _____, 20 _____, the vessel _____ [sunken vessel] lay in sunken condition in the _____ off _____, but her exact location underwater was unknown to the navigators in the channel and the _____ [plaintiff's vessel] or those in charge of her navigation.

6. On or about _____, 20 _____, at some time after _____ P.M. of that day, while the _____ was proceeding _____ in the _____ River, _____ [describe activity], she was caused without warning to strike and to run over the submerged hull of the _____ causing severe and serious damage and injury to the _____ [plaintiff's vessel] and her owners.

7. The said striking of the _____ [sunken vessel] as not caused and occasioned by any fault or neglect on the part of the _____ or those responsible for her navigation at the time, but was caused and occasioned solely by the fault, carelessness or negligence of the owner of the _____ [sunken vessel] or those in charge of her, in the following respects, among others which will be brought out at the trial, in that the owner of the _____ permitted her to lay sunken in a navigable channel; in permitting her to be a menace to navigation in said waters; in permitting her to lay in sunken condition without a buoy, flag or light to mark her presence in the channel so as to give fair and adequate notice to mariners of the said waters in which the wreck of the _____ lay sunken; in failing to give notice of her exact position in the channel, or, the notice of the

wreck, if any was given, was insufficient, ambiguous and incapable of warning navigators in the waters adjacent to said wreck of the exact location thereof.

8. By reason of the premises and of the collision aforesaid, plaintiff has sustained heavy and serious damage consisting of the cost of repairs to the hull of the _____, to the loss of the use of said tug, and to the loss of her fuel oil and other expenses of a total of \$ _____ as a result of the said collision, no part of which has been paid although duly demanded.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Forms Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-187

FORM No. 1-187 Complaint In Rem and In Personam Against the United States (Suits in Admiralty Act)--Collision

[Caption and Jurisdictional Statement] n1

2. At all the times hereinafter mentioned, the plaintiff was and still is a corporation organized and existing under and by virtue of the laws of the _____ of _____ and owner of the vessel _____ vessel _____ which, until the happening of the collision hereinafter described, was tight, staunch, seaworthy and in all respects properly equipped and manned.

3. At all the times herein mentioned, the defendant the United States of America, was and still is a sovereign which has by law consented to be sued herein.

4. At all the times herein mentioned, the United States of America was and still is the owner of the vessel _____ which at the time of the occurrence herein mentioned was operated by or for account of the defendant and at all the times herein mentioned was and still is employed as a merchant vessel.

5. The _____ [*U.S. vessel*] is now found or during the pendency of this action will be within the port of _____ and within this district.

6. [*statement of the facts and circumstances of the collision as in other cases*]

7. [*statement of the faults occasioning the collision as in other cases*]

8. [*statement of the plaintiff's damages as in other cases*]

9. This suit is brought under the Act of March 9, 1919, known as the Suits in Admiralty Act. The plaintiff hereby elects to have this cause proceed in accordance with the principles of actions *in rem* and desires also to seek relief *in personam*.

Wherefore, the plaintiff prays that the defendant, the United States of America, be required to appear and answer all and singular the matters aforesaid, and that the plaintiff have judgment for the amount of its damages, with interest and costs, and such other and further relief as may be just.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Forms Nos. 1-10, 1-11 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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FORM No. 1-188 Complaint In Personam Against the United States (Suits in Admiralty Act and Public Vessels Act)--Grounding Caused by Coast Guard's Failure to Mark a Reefn1

[Caption and Jurisdictional Statement] n2

2. Plaintiff, _____ [vessel owner], is a corporation organized and existing under the laws of the State of _____ with an office and place of business at _____.

3. Plaintiff, _____ [plaintiff operator], is a corporation organized and existing under the laws of the State of _____ with an office and place of business at _____.

4. Defendant United States of America is a sovereign, which by law has consented to be sued herein.

5. At all relevant times hereinafter mentioned, plaintiff _____ was and still is the owner of the vessel _____.

6. At all relevant times hereinafter mentioned, plaintiff _____ operated and controlled the vessel _____.

7. This action is brought pursuant to 46 U.S.C. § 741 *et seq.*, known as the Suits in Admiralty Act, and 46 U.S.C. § 781 *et seq.*, known as the Public Vessels Act.

8. At all dates and times hereinafter mentioned, beacons and buoys marking channels and hazards to navigation were established and maintained by the United States of America as aids to navigation for vessels proceeding from _____ north to _____ on the _____, and that the United States Coast Guard, an agency of the United States of America pursuant to Chapter 5 of Title 14 U.S.C., was charged with the

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responsibility of maintaining, keeping, and attending to said aids to navigation, including certain aids to navigation located in and about the area known as _____ located in the _____ in the vicinity of the mouth of _____ and the Town of _____.

9. Upon information and belief, all the aforesaid aids to navigation are customarily accepted and relied upon by navigators as aids to enable them to fix their position with relation to their proper and safe navigation of the _____ [*navigable waterway*].

10. The defendant, knowing _____ to be a dangerous obstruction to vessels navigating the _____ River, installed and over the years sought to maintain a single red and black buoy at the south end of the reef as the only aid to navigation operating vessels in the vicinity of _____ Reef.

11. On _____, 20 _____, the _____ while proceeding _____ to _____ in the _____ River grounded on the hard bottom west of the single red and black buoy established by the U.S. Coast Guard to mark the hazardous conditions at _____.

12. Despite the installation of the aforementioned buoy at the _____ end of _____, defendant, by its agent The United States Coast Guard, had notice and knowledge that numerous vessels navigating the _____ in the vicinity of _____ had been grounded at the southwest side of _____ prior to the incident complained of herein.

13. Defendant, by its agent The United States Coast Guard, knew or should have known that maintenance of a single buoy to mark the _____ end of _____ Reef was wholly inadequate to mark the western extremity of _____ and thereby avert groundings similar to the incident complained of herein.

14. The grounding of the _____ on _____, 20 _____, at _____ was not caused or contributed to by any fault or neglect on the part of the plaintiffs or the vessel _____, but was due solely to the fault, neglect, and want of care of the United States of America, its agents, servants, and employees, in the following particulars, among others, which will be brought out upon the trial of this action:

A. That defendant, having knowledge of the dangerous conditions existing at _____ Reef, failed to properly mark the obstruction.

B. That defendant knew or should have known that the single buoy at the southern end of _____ Reef was wholly inadequate to mark _____ Reef's southern extremity and failed to mark the western extremity of _____ Reef.

C. That defendant failed to maintain suitable aids to navigation in and around the vicinity of _____ Reef.

D. That defendant failed to warn mariners navigating the area in the vicinity of _____ Reef of the inadequacy of the aids to navigation at _____ Reef.

15. The grounding of the subject vessel _____ and all damages sustained by said vessel were proximately caused by the fault and negligence of the United States of America as aforesaid. Plaintiffs as owners and operators of the _____ have sustained damages by reason of defendant's negligence, fault, and want of care in the total amount of \$ _____

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Eklof Marine Corp. v. United States*, Civ. No. 84-2495 (E.D.N.Y. 1984).

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-189

FORM No. 1-189 Complaint In Rem and In Personam by Cargo Owner--Collision

[Caption and Jurisdictional Statement] n1

2. At all the times hereinafter mentioned the plaintiff, _____ Lumber Company was, and still is a corporation duly organized and existing under and by virtue of the laws of the State of _____, with its principal office and place of business in _____, and was and is the owner of several shipments of _____ on board the vessel _____ at the time of the collision hereinafter mentioned.

3. The vessel _____ [vessel] was carrying a full cargo of _____, and is now, or during the pendency of this action will be, within this district.

4. The defendants, _____ and _____, were and still are corporations duly organized and existing under and by virtue of the laws of the State of _____ with offices and places of business in _____ and were and are the owners and operators of the vessel _____.

5. The vessel _____ [describe events leading to collision].

6. The collision was caused through the negligence and fault of the vessel _____, and those in charge of her in the following respects, among others, which will be more particularly pointed out at the trial of this action: _____ [state alleged negligent acts].

7. As a result of such collision, the plaintiff has sustained damage to its cargo on the vessel _____, which as far as is now ascertainable is estimated will amount to \$ _____ including about \$ _____ as a general average contribution which the plaintiff's cargo will be compelled, because of the

collision, to make to the owner of the vessel _____.

[*Prayer for Process, Demand for Judgment and Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6, 1-10, 1-11 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-190

FORM No. 1-190 Complaint In Rem--Collision With Pier

[Caption and Jurisdictional Statement] n1

2. The plaintiff is a resident of the City of _____ and was at all times hereinafter mentioned and is now the owner of a certain pier at the foot of _____ Street, in the City of _____, State of _____, commonly known as Pier No. _____, at which the plaintiff permitted vessels and ships to dock for the purpose of discharging and receiving cargo.

3. The vessel _____ is a vessel documented under the laws of the Kingdom of _____, and was at all times hereinafter mentioned and is now owned and operated by the _____, which had requested and received from the plaintiff permission to dock the vessel _____ at the plaintiff's pier.

4. On or about _____, 20 _____, between the hours of _____ and _____ in the afternoon, the vessel _____, then on navigable waters of the United States, approached the plaintiff's pier for the purpose of docking, and in so approaching was using her own main engines and propeller and receiving assistance from certain tug boats employed for that purpose by the owner or agent of the vessel _____.

5. The docking of the vessel _____ was so negligently, carelessly and recklessly carried out by the vessel _____ and those in charge of her that the vessel _____ struck the plaintiff's pier with great force and violence, thereby causing substantial damage to the pier.

6. The damage resulting from the collision of the vessel _____ with the plaintiff's pier amounts to \$ _____, no part of which has been paid, although payment has been duly demanded from the owner of

the vessel _____.

[*Prayer for Process and Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-10 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-191

FORM No. 1-191 Complaint In Rem and In Personam--Collision With Piern1

[Caption] n2

1. This is an admiralty and maritime claim within the jurisdiction of the United States and this Honorable Court brought under the provisions of the Extension of Admiralty and Maritime Jurisdiction Act, 46 U.S.C. § 740, and within the meaning and intent of *Rule 9(h) of the Federal Rules of Civil Procedure*.

2. At all times pertinent herein, the plaintiff _____ was and still is a corporation organized and existing by virtue of the laws of the State of _____, authorized to do and doing business in the State of _____ and was and now is the owner of a wharf and grain shipment facility legally constructed and maintained adjacent to the left descending shore of the _____ River at _____.

3. The vessel _____ is a registered vessel of _____ gross tons, _____ net tons, and a length of _____", a beam of _____' _____" and a depth of _____' _____" with a home port at _____, that plaintiff believes on information and belief is owned and/or operated by defendant _____, a limited _____ exiting under the laws of _____, not authorized to do business in the State of _____ but amenable to service of process issued from this Honorable Court pursuant to _____ [state statutory authority], and which vessel is now or will be during the pendency of this action within the jurisdiction of this Honorable Court.

4. On or about _____, 20 _____, at approximately _____ hours, the vessel _____ while attempting to effect a landing at _____ was negligently allowed to and did come into collision with the aforesaid _____ facility causing extensive damages thereto.

4-I Benedict on Admiralty FORM No. 1-191

5. The cause of the collision was in no way the fault of plaintiff but was in all respects caused by the fault of vessel _____ and her operators in the following particulars, amongst others which will be shown at the trial of this matter: _____ [*state alleged negligent acts*].

6. By reason of the aforesaid collision the plaintiff has suffered damages in the amount of \$ _____ as nearly as same can presently be estimated.

7. All and singular the aforesaid premises are true and correct and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

[*Prayer for Process, Demand for Judgment, and Verification*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Bunge Corp. v. M/V Furness Bridge*, 390 F. Supp. 603 (E.D. La. 1974), and 396 F. Supp. 852, 2075 A.M.C. 1444 (E.D. La. 1975), courtesy of Monroe & Lemann, New Orleans, Louisiana.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. *See* Form Nos. 1-3, 1-6, 1-11 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-192

FORM No. 1-192 Complaint (Third-Party) In Rem and In Personam Collision With Pier

[Caption and Jurisdictional Statement] n1

2. Plaintiff, _____ has filed against defendant, _____, a complaint, a copy of which is hereto attached as Exhibit A, asserting an admiralty or maritime claim within the meaning of Rule 9(h).

3. At all times hereinafter mentioned defendant was and still is a _____ organized and existing under the laws of _____, having an office and place of business at _____, and is engaged, among other things, in furnishing tug boat and pilotage service.

4. Upon information and belief at all said times the _____ was and still is a corporation organized and existing under the laws of the state of _____ and having an office and place of business at _____, and the owner of the vessel _____.

5. Upon information and belief the vessel _____ is now, or during the pendency of this action will be, within this district.

6. The true facts with respect to the damage alleged in the complaint are as follows: _____ [state facts of collision].

7. The collision with the pier and the resulting damage were not caused or contributed to by any fault or negligence on the part of the defendant or of anyone for whom the defendant is responsible, but were wholly due to and solely caused by fault on the part of the vessel _____ and her owner, _____, its agents and employees in the following respects, among others: _____ [state alleged negligent acts].

4-I Benedict on Admiralty FORM No. 1-192

8. Defendant further alleges that it furnished towing assistance to the vessel _____ and _____ pursuant to a contract which provided, among other things: _____ [state contractual provision].

Defendant says that the vessel _____ was using her own propelling power, that defendant's tugs _____ and _____ and Captain _____, Master of the tug _____, were assisting the vessel _____, and that if any fault on the part of Captain _____, who was on board the vessel _____, caused or contributed to the collision between the vessel _____ and the pier, third party defendant _____ [vessel owner], and not the defendant, is liable therefor.

9. If the defendant is under any liability to the plaintiff by reason of the matters alleged in the complaint filed herein, which liability the defendant denies, then any and all such liability was caused by fault on the part of the vessel _____ and her owner, _____, its agents and employees, and any and all such liability should be borne by the vessel _____ and _____ Corporation.

Wherefore defendant prays:

1. That a warrant for the arrest of the vessel _____, her engines, boilers, etc., may issue, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid.
2. That a judgment may be entered against the claimant of _____ and against the third-party defendant (a) in favor of plaintiff, and (b) for all sums that may be adjudged against defendant in favor of plaintiff.
3. That defendant may have such other and further relief as the court may deem appropriate under the circumstances.

Attorney for Defendant

[Verification] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-11 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-193

FORM No. 1-193 Complaint In Personam Against Bridge Owner--Barge Collision With Bridgen1

[Caption and Jurisdictional Statement] n2

2. At all relevant times, plaintiff, _____, was and still is, a corporation duly organized and existing under and by virtue of the laws of the State of _____, with an office and place of business at _____, _____, and was the owner of the Barge _____, which, at all relevant times, was tight, staunch, strong and seaworthy, and properly manned, equipped and supplied.

3. Defendant, _____, was and still is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of _____, with its principal office at _____ Street, _____.

4. Defendant, the City of _____, was and still is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of _____, with its principal office at _____.

5. Heretofore and on or about _____, 20____, and _____, 20____, plaintiff duly delivered in writing to the defendants, and defendants received, notice of the claim hereinafter set forth, and upon which this action is founded, for adjustment, and notice that the claim arose out of a defective condition of the _____ Bridge, located at _____, _____.

6. More than 30 days have elapsed since such delivery and receipt of notice of said claim and said defendants have not adjusted the same and have neglected and refused to make any payment or adjustment of said claim and causes of action.

4-I Benedict on Admiralty FORM No. 1-193

7. This action was commenced within _____ [state time] after the cause of action occurred, and is not barred by any applicable statutes of limitation or laches.

8. At all times hereinafter mentioned, the defendant _____, owned _____ Bridge located at _____.

9. At all times hereinafter mentioned, the defendant _____ operated, managed and/or controlled the aforesaid _____ Bridge, by its agents, servants, designees and employees.

10. At all times hereinafter mentioned, the defendant, City of _____, owned the aforesaid _____ Bridge.

11. At all times hereinafter mentioned, the defendant, the City of _____, operated, managed and/or controlled the aforesaid _____ Bridge, by its agents, servants, designees and employees.

12. On or about _____, 20 _____, the Barge _____ while in tow of the Tug _____, and bound from _____, _____, came into collision with the Bridge, which collision resulted in severe and extensive damage to the Barge _____.

13. The collision and the damages resulting therefrom were not caused or contributed to by any fault or negligence on the part of the plaintiff herein or of those in charge of the Barge _____ or the Tug _____, nor by any unseaworthiness on the part of said Vessels, but rather were caused wholly by, and due solely to, the recklessness, carelessness, fault and negligence on the part of the defendants in that: _____ [state alleged negligent acts].

14. By reason of the premises and as a result of the collision, plaintiff has sustained damages consisting of the cost of surveys and repairs to the Barge _____, the loss of use of said vessel during the period required to effect the repairs, and substantial additional expenses necessarily incurred as a result of the collision, which, as nearly as can be estimated at present, will amount to approximately _____ (\$ _____) Dollars, no part of which has been paid, although payment thereof has been duly demanded.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *McAllister Bros. Inc. v. New York City Transit Authority*, Civ. No. 76C-532 (E.D.N.Y.).

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-194

FORM No. 1-194 Complaint (Counterclaim) by Bridge Owner Against Vessel Owner--Collision With Bridge

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. At all times hereinafter mentioned, defendant had, and still has, by virtue of an agreement with The City of _____ jurisdiction, control, possession and supervision of the _____ Bridge, also known as the _____ Bridge, including a steel platform on the bridge.
5. On or about _____, 20 _____, _____ [vessel owner], owned the vessel _____ and the tow _____.
6. On or about _____, 20 _____, _____ [vessel operator], operated, managed and controlled the tug _____ and the tow _____.
7. On or about or before _____, 20 _____, the vessel _____ and the tow _____ were attached together by the plaintiff, _____; the aforesaid attached tug and tow were traveling _____ through the _____ Bridge and struck and damaged a steel platform of the bridge.
8. Said collision caused damage to the steel platform of the bridge.
9. The aforesaid collision was not due to any fault or neglect on the part of the defendant, its agents, servants and/or employees.
10. The aforesaid accident was caused by the fault and neglect of the persons in charge of and operating the tug

_____ and the tow connected thereto, in that they failed to navigate and operate the tug and the tow connected therewith so as to prevent a collision with the bridge and the platform which was an integral part of the bridge; the tug was manned by incompetent persons who were inattentive to their duties; they did not keep and maintain an alert and efficient lookout; they misjudged the distance between the tug and the tow _____, on which a boom was affixed and was an integral part thereof, on the one hand, and the opened bridge on the other hand; they navigated too closely to the bridge fenders, and the bridge; they failed to keep the tug and tow under control so as to be able to stop the tug and tow from striking the bridge; they caused and permitted the tug and tow to strike the bridge; they failed to properly attach the tug and tow to each other in a proper manner so that they were under control at all times; they failed to secure the boom on the tow _____, and they failed to take into consideration the motion of the sea and navigated too closely to the center pier fender and bridge, and allowed the swaying boom to strike the bridge; they were proceeding at an excess rate of speed under the circumstances; they failed to take timely or proper steps to avoid the collision when the danger of collision was or should have been apparent.

11. By reason of the premises, defendant has sustained damages amounting to \$ _____ for the repair of the aforesaid steel platform of the aforesaid bridge.

Wherefore, the defendant demands judgment dismissing the complaint together with the costs and disbursements of this action and defendant further demands judgment against the plaintiff in the sum of \$ _____, with interest, together with costs and disbursements of this action, and that the plaintiff may have such other, further and different relief as may be just and proper.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Forms Nos. 1-1 and 1-5 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-195

FORM No. 1-195 Complaint--Negligence: Yacht Owner

[Caption] n1

Now comes the plaintiff, _____, as subrogee of _____, by its attorneys, _____, and complaining of the defendant _____ states as follows:

1. Plaintiff, _____ [*insurance carrier*], subrogee of _____, was at all times an insurance company licensed to do business in the State of _____ and had insured the vessel _____ owned and operated by its insured, _____.
2. The _____ was a _____ [*description of vessel*] yacht which was moored at _____ Harbor in _____ [*city, state*] on _____, 20 _____.
3. At all relevant times, the defendant _____, was the owner of the defendant yacht _____.
4. On or about _____, 20 _____, the _____ broke free from its moorings and struck the _____ causing it severe damage.
5. At all relevant times, _____ and the yacht _____ had the duty to properly secure and moor the _____ such that it would not break free and damage other yachts in the harbor.
6. Contrary to their duties, the defendant(s) was guilty of negligence in that they failed to properly secure and moor the _____ such that it would avoid causing damage to the yacht belonging to _____.

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7. As a direct and proximate result of the negligent acts of the defendant(s), the _____ was damaged in the amount of \$ _____.

8. At all material times, the _____ was in exercise of due care and caution for his own safety and the safety of his property.

9. As a result of the damage sustained by the _____, plaintiff _____ was obligated to expend money to reimburse its insured pursuant to its contract of insurance with _____.
_____ did expend the sum of \$ _____ and is subrogated to all of the rights and interest of its insured against the defendant(s) and may bring this action against the defendant(s) in its own name.

Wherefore, the plaintiff, _____ request judgment in its favor and against the defendant(s) for the amount of \$ _____ plus costs, interest and attorneys fees and such other further relief as this court deems proper.

By: _____,
One of its attorneys

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-196

FORM No. 1-196 Complaint--Vessel Damage--Negligent Tug Allision with Bridge

[Caption] n1

COMPLAINT

Now comes the plaintiff, _____, by its attorneys _____ and for its complaint states against the defendant _____, *in personam* and the tug _____, *in rem*, as follows:

1. This court has jurisdiction over this matter pursuant to its admiralty and maritime jurisdiction under 28 U.S.C. § 1333 and Rule 9(h) of the Federal Rules of Civil Procedure and has diversity jurisdiction under 28 U.S.C. § 1332 and is a claim in excess of \$50,000 exclusive of interest and costs.

2. Plaintiff _____, (hereinafter "_____") is a _____ corporation which does business in the United States and specifically, the State of _____.

3. At all times pertinent to this complaint, the _____ plaintiff was the owner and operator of the vessel _____ (hereinafter "_____"). The _____ is a _____ [describe vessel] with her port of registry at _____.

4. Defendant _____ (hereinafter "_____") was and is a corporation organized and existing under the laws of the State of _____ with its principal place of business in _____ and with an office in _____.

5. At all times pertinent, _____ was the owner and operator of the tug _____ and held itself out to be skillful, experienced and knowledgeable in the handling of said tug and in the safe and proper navigation of the _____. At all times material herein, defendant tug _____ is and

4-I Benedict on Admiralty FORM No. 1-196

will be within the jurisdiction of this court and subject to orders of this court.

6. On _____, _____, at _____ hours, the _____ [vessel] arrived at the dock of _____ at _____ [address] and discharged her cargo of _____. Said discharge was completed at _____ hours.

7. At _____ hours, the _____ [vessel] requested the tug assistance of _____ for the purpose of maneuvering the _____ [waterway] from the dock of _____ to the _____ dock in order to load a new cargo. Said request was acknowledged by _____ which dispatched the tug _____ to assist the _____ [vessel].

8. At _____ [time], the _____ [vessel] departed the _____ dock under the tow of the _____. Defendant _____ knew or should have known that it was the dominant mind in the performance of the _____ and that the _____ was under the direction and control of the _____.

9. Because the _____ [vessel] was under the direction and control of the _____, defendant _____ and the _____ had a duty to the plaintiff to exercise such care and skill as a prudent navigator would employ for the safe and proper performance of similar services under the circumstances.

10. The _____ made fast to the _____ [vessel] and maneuvered the _____ [vessel] ahead outbound on the _____ River. As the _____ approached the _____ Bridge, it was the duty of the defendant to communicate with the bridge to see to it that the bridge opened in time to allow safe passage of the _____ [vessel]. Further, it was the duty of the defendant to wait until the _____ Bridge was open before proceeding ahead with the _____ [vessel].

11. As the _____ [vessel] passed through the _____ Bridge, there was a collision between the draw of the Bridge and the _____ [vessel] such as to cause extensive damage to the vessel and, consequently, to the _____ plaintiff.

12. Said collision was the result of the negligence of _____ and the tug _____ in failing to:

a) communicate with the bridge tender to have the bridge opened in time to allow safe passage of the _____ [vessel];

b) wait until the _____ Bridge was open before proceeding ahead with the _____ [vessel]; and,

c) properly pass through the bridge draw, with the _____ [vessel] in tow having due regard for the operation of the bridge.

13. As a result of the negligence of _____ and the _____, plaintiff _____ was extensively damaged and incurred expenses in excess of \$ _____.

14. At all times pertinent, plaintiff was exercising due care and regard for its own safety.

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Wherefore, plaintiff _____, respectfully prays for judgment against defendant _____ and the tug _____ in the amount of \$ _____ plus interests and costs. Plaintiff further prays that process in the due form of law, according to the practice of this court in admiralty and maritime claims may issue against the tug _____, her engines, tackle, equipment and furnishings, and that all persons claiming any interests therein, may be required to appear and answer on oath, all and singular, matters aforesaid; and, that the tug _____ may be condemned and sold to satisfy the judgment of the plaintiff herein. Plaintiff also prays for such other, further and different relief as this court may deem just and proper in the premises.

[name of party represented]

By: _____

One of its attorneys

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty Form 1-197

Form 1-197 Complaint -- Collision -- Personal Watercraft

COMES NOW Defendant and Cross-Complainant [DEFENDANT NAME] (hereinafter "[DEFENDANT NAME]") and for a cause of action against the Cross-Defendants, and each of them, alleges as follows:

FIRST CAUSE OF ACTION

1. That the true and correct names or capacities, whether individual, corporate, associates or otherwise of the Cross-Defendants, ROES 1 through 10, inclusive, are unknown to Cross-Complainant who therefore sues the Cross-Defendants by such fictitious names. Cross-Complainant is informed and believes and upon such information and belief alleges that each of the Cross-Defendants designed herein as a ROE is legally responsible in some manner for the events and happenings referred to hereinafter and legally caused injuries and damage thereby to the Cross-Complainant, as hereinafter alleged. Cross-Complainant will seek leave of the court to amend this Cross-Complainant to show the true names and capacities of said ROE defendants when the same have been ascertained.
2. That Cross-Complainant is informed and believes and, upon such information and belief, alleges that at all times mentioned herein, some of the Cross-Defendants were the agent, servant or employee of the remaining Cross-Defendants and at all times herein were acting within the purpose and scope of said agency and/or employment.
3. That Cross-Complainant is informed and believes and, upon such information and belief, alleges that at all relevant times hereto, Cross-Defendant [PLAINTIFF NAME] was a resident of the [PLACE OF RESIDENCE].
4. That Cross-Complainant is informed and believes and, upon such information and belief, alleges that at all relevant times herein, [PLAINTIFF NAME] and ROES 1 through 10, inclusive, were the owners of a personal watercraft.
5. That Cross-Complainant is informed and believes and, upon such information and belief, alleges that at all relevant times therein [PLAINTIFF NAME] and ROES 11 through 20, inclusive, were piloting the aforementioned Kawasaki

personal watercraft with the knowledge, permission and consent of the owners of said personal watercraft.

6. That on or [DATE], at the [PLACE OF COLLISION], Cross-Defendant [PLAINTIFF NAME] and ROES 1 through 10, inclusive, were operating the aforescribed personal watercraft at the [PLACE OF COLLISION] entrance in close proximity to the personal watercraft operated by Cross-Complainant [DEFENDANT NAME].

7. That at said time and place, the Cross-Defendant and each of them, negligently, carelessly and unlawfully piloted, managed, maintained, drove, operated and manufactured said personal watercraft so that the same was caused to and did then and there collide with the personal watercraft operated by Cross-Complainant [DEFENDANT NAME].

8. That as a further direct and legal cause of the negligent, careless and unlawful conduct of the Cross-Defendants, and each of them, as aforesaid, Cross-Complainant's personal watercraft sustained certain property damages which are presently not fully ascertainable. Cross-Complainant will seek leave of court to amend this Cross-Complaint to show the true amount of said damages when the same have been fully ascertained.

WHEREFORE, Cross-Complaint prays for judgment against the Cross-Defendants, and each of them, as follows:

1. For property damage to the personal watercraft in an amount not presently ascertainable.

* See 2 Benedict on Admiralty § 10 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 21 and 32 (Matthew Bender 7th ed.).



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Volume 4: Practice and Procedure: Forms
CHAPTER I COMPLAINTS
CONTAINERS

4-I Benedict on Admiralty FORM No. 1-218

FORM No. 1-218 Complaint--Breach of Equipment Lease Agreements

[Caption] n1

Plaintiff, _____, by its attorneys, for its verified complaint against the defendants, alleges:

1. This is an Admiralty and Maritime claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*, and Rule D of the Supplemental Rules of Certain Admiralty and Maritime Claims, and is also a claim within this Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333. Plaintiff reserves the right to assert any *in personam* claims that may arise out of the facts herein.

2. Plaintiff _____ is a _____ corporation with its principal place of business located at _____.

Plaintiff is engaged in the business of leasing transportation equipment on a per diem and long-term basis. It leases containers for "intermodal" transportation of cargo over ocean-going trade routes and related land transportation, and chassis designed to transport intermodal containers overland.

3. Upon information and belief, defendant _____, is a _____ corporation, having an office located at _____ and is engaged in containership liner services for which it leases containers, chassis, and other equipment.

4. Defendant _____ has leased from plaintiff pursuant to various equipment lease agreements ("Leases") certain shipping containers, chassis, generator sets and tractors ("marine equipment"). Each item of equipment is identified by the serial number which appears in the first column of the computer printout annexed hereto as Exhibit A, and the identification number of the contract pursuant to which each item of equipment was leased to

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_____ is set forth in the second column of that computer printout annexed hereto as Exhibit [omitted].

5. Each of the Leases between plaintiff and defendant _____ for the use of the aforementioned marine equipment is a maritime contract.

6. Plaintiff and defendant _____ also entered into a Memorandum of Agreement ("Agreement") dated _____, 20 ____, a copy of which is attached hereto and incorporated herein as Exhibit B. By that Agreement, defendant _____ affirmed its obligations under the Leases and agreed to make certain payments on account of outstanding arrearages and to provide additional security to plaintiff. The Agreement further provides that the Leases are deemed to be in full force and effect, except as modified by the Agreement.

7. Pursuant to the terms of the Leases and the Agreement, _____ was obligated to make certain periodic payments for rentals and other charges, and on account of pre-existing arrearages.

8. Defendant _____ has failed to make timely payment of the rentals and other charges due under the Leases as well as the periodic payments due under the Agreement.

9. _____ is therefore in default on each of the Leases identified in Exhibit A and is also in default of its obligations under the Agreement.

10. Pursuant to the provisions of each of the Leases, upon default by _____, plaintiff may terminate _____'s possession of the marine equipment and demand the return of that equipment by written notice to _____. Plaintiff has exercised those rights by oral demand of _____ prior to _____, 20 ____ and by written notice to _____ dated _____, 20 ____, a copy of which is attached hereto and incorporated herein as Exhibit C.

11. _____ has failed and refused to return the aforesaid items of marine equipment to plaintiff.

12. Some of the aforesaid items of marine equipment are or will be within this district during the pendency of this litigation aboard _____'s vessels _____ and _____ or at _____'s facility located at _____.

Wherefore, plaintiff prays:

1. That process in due form of law, according to the course and practice of this Honorable court in causes of admiralty and maritime jurisdiction and pursuant to Rule D of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, may issue against the items of marine equipment identified by serial number in the first column of the computer printout annexed hereto as Exhibit A which may be found within this district;

2. That _____, and any other person claiming an interest in the aforesaid equipment may be cited to appear before this Honorable Court, and show cause why possession of the items of equipment should not be delivered to plaintiff as having full title to possession thereof;

3. That the Court order _____, to turn over to plaintiff the aforesaid items of equipment; and

4. That plaintiff may have such other and further relief as is just and proper.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.



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RESERVED

FORM No. 1-228RESERVED



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FORM No. 1-229 Complaint--Nonpayment for Metallurgical Testing Services

[Caption] n1

Plaintiff, _____, by its attorneys for its complaint against the defendant, _____, alleges on information and belief as follows:

1. The following constitutes an Admiralty or Maritime Claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure* and within the subject matter jurisdiction of this Court.

2. Plaintiff, _____, was and still is a corporation organized and existing under and by virtue of the laws of New York State with an office and place of business at _____.

3. Plaintiff was at all times pertinent to this action and still is engaged in the business of metallurgical consultation. As part of its business plaintiff performs metallurgical testing on various components of ocean vessels.

4. Defendant, _____, was and still is a corporation or other business entity organized and existing under and by virtue of the laws of one of the states of the United States with an office and principal place of business at _____.

5. On _____ and on _____, 20 _____, employees of plaintiff performed a survey of the main condensor and auxiliary condensor tubes on board the vessel _____ while the vessel was dry-docked at _____. This survey was performed at the request of defendant, _____. Plaintiff prepared a written report of the results of the survey dated _____, 20 _____, and forwarded the report to defendant.

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6. On _____, 20 ____, plaintiff invoiced defendant, _____, for \$ _____ representing the cost of the survey performed on board the vessel _____ described in paragraph 5 above. Despite repeated follow-up phone calls and letters requesting payment, to date plaintiff has not been paid for the survey performed on board the vessel at the request of defendant, _____ Corp.

7. At the request of defendant, _____, plaintiff performed a chemical analysis of two weld pad samples taken from the vessel _____. Plaintiff prepared a written report of the results of its analysis dated _____, 20 ____ and forwarded the report to defendant.

8. On _____, 20 ____, plaintiff invoiced defendant, _____, for \$ _____ representing the cost of the chemical analysis described in paragraph 7 above. Despite repeated follow-up phone calls and letters requesting payment, to date plaintiff has not been paid for the chemical analysis performed at the request of defendant, _____ Corp.

9. At the request of defendant, _____, plaintiff performed laboratory tests of drillings taken from a seal ring from the vessel _____. Plaintiff prepared a written report of the results of its laboratory analysis dated _____, 20 ____, and forwarded the report to defendant.

10. On _____, 20 ____, plaintiff invoiced defendant, _____, for \$ _____ representing the cost of the laboratory test described in paragraph 9 above. Despite repeated follow-up phone calls and letters requesting payment, to date plaintiff has not been paid for the laboratory tests performed at the request of defendant, _____.

11. On _____ and _____, 20 ____, employees of plaintiff performed a fiberoptic examination of the waste heat boiler coils on board the vessel _____ at _____. This examination was performed at the request of defendant, _____.

12. On _____, 20 ____ plaintiff invoiced defendant, _____, for \$ _____ representing the cost of the fiberoptic examination performed on board the vessel _____ as described in paragraph 11 above. Despite repeated follow-up phone calls and letters requesting payment, to date plaintiff has not been paid for the fiberoptic examination performed on board the vessel at the request of defendant, _____.

13. The total amount of the above described outstanding invoices is \$ _____. To date defendant, _____, has remitted a total of \$ _____ in connection with those invoices, leaving a balance due and owing of \$ _____.

14. By reason of the foregoing plaintiff has sustained damages in the amount of \$ _____ plus interest, no part of which has been paid although duly demanded.

[Prayer for Process, Demand for Judgment and Verification] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6, and 1-10 through 1-13 *supra*.



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*4-I Benedict on Admiralty FORM No. 1-230***FORM No. 1-230 Complaint--Nonpayment Under Data Processing Services Contract***[Caption and Jurisdictional Statement] n1*

AS AND FOR A FIRST CAUSE OF ACTION:
 BREACH OF CONTRACT

4. The plaintiff repeats and realleges each and every allegation set forth in paragraphs _____ through _____, above, as if fully set forth herein.

5. On or about _____, 20 ____ plaintiff, _____, for valuable consideration, entered into an agreement ("the data processing services contract") with defendant, _____, whereby plaintiff agreed to sell and defendant agreed to purchase certain data processing services which are essential to defendant, _____'s cargo loading and cargo discharging operations in the vessel services that it provides. On or about _____, 20 ____ the data processing services contract was renewed in full.

6. Pursuant to said contract plaintiff, _____, provided defendant, _____, all requested services which defendant, _____, accepted without protest or exception.

7. Defendant, _____, has failed and refused to make payment of the contract price for the services provided by the data processing-services contract although demanded properly by plaintiff, _____ via the below-described invoices in the amount of \$ _____:

Invoice No.	Invoice Date	Amount
_____	_____	\$ _____
_____	_____	_____
_____	_____	_____

8. Defendant _____ has failed and refused to make payment of the sums due and owing, although payment has been duly demanded by plaintiff, _____.

9. Plaintiff, _____, has performed all its obligations and satisfied any and all conditions of the data processing services contract.

10. By reason of defendant, _____'s breach of the contract, plaintiff, _____, has been damaged in the amount of \$ _____, plus interest and costs.

**AS AND A SECOND CAUSE OF ACTION:
ACCOUNT STATED**

11. Plaintiff, _____, repeats and realleges each and every allegation set forth in paragraphs _____ through _____, above, as if fully set forth herein.

12. After provision of the services pursuant to the contract was made, a full, just and true account was made and stated between defendant, _____, and plaintiff, _____, which showed a balance due and owing to plaintiff, _____; which account was delivered to, received and accepted by defendant, _____, and retained by said defendant without objection being made thereto or to any item thereof.

13. Defendant, _____, has failed and refused to pay the sum of \$ _____, said sum being the account stated although payment has been duly demanded by plaintiff, _____.

14. As a result of the foregoing, an account was stated between plaintiff, _____, and defendant, _____ which showed a balance due and owing by said defendant to said plaintiff, the consequence of which is to damage plaintiff, _____, in the amount of \$ _____, plus interest and costs.

Wherefore, plaintiff, _____, respectfully prays that this honorable Court will give the following judgments, alternatively, jointly or severally, as follows:

1. Under the first cause of action, payable to plaintiff, _____, in the amount of _____ (\$ _____), plus interest and costs, for breach of the data processing services contract.

2. Under the second cause of action, payable to plaintiff, _____, in the amount of _____ (\$ RU2), plus interest and costs, for failure to satisfy the account stated.

In addition, plaintiff, _____, prays that this honorable court grant judgment against defendant, _____, for the disbursements of this action and such other and further or different relief as may to this Court seem just and proper.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.



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FORM No. 1-231 Complaint--Maritime Lien--River Gambling Boats and Cityn1

[Caption]

COMPLAINT

Now comes the Plaintiff, _____ [city], by its attorney, _____, for its verified Complaint in Admiralty states as follows:

COUNT I MARITIME CONTRACT

Plaintiff, _____, for its Complaint in admiralty, against the Defendant, _____ [vessel owner], states:

1. Jurisdiction is based upon 28 U.S.C. § 1333 and 46 U.S.C. § 31342. For purposes of Rule 9(h) of the Federal Rules of Civil Procedure, this claim is within the admiralty and maritime jurisdiction of the Court.

2. City is a municipal corporation located in _____ on the _____ River, a navigable waterway.

3. _____ [vessel owner] is an _____ corporation with its principal place of business at _____.

4. The vessel, _____, Official Number _____, is a vessel of the United States with its home port at _____. Its owner is _____ and it is now within the navigable waters of this district and subject to the jurisdiction of this Court under Supplemental Rule B of the Admiralty jurisdiction of this Court.

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5. City and its Dock Board entered into a maritime contract entitled " _____ " [*the Lease*], as Landlords, with _____ [*vessel owner*], as Tenant, on the _____ day of _____ . A copy of the contract is attached as Exhibit "A". n2

6. Also a party to the Lease was _____, an _____ not-for-profit corporation, which currently holds a casino license for excursion riverboat gambling. _____ consists of three (3) representatives each from the river cities of _____ and was formed, under a regional concept, to secure a riverboat gambling license from the _____ Racing and Gaming Commission. _____ has entered into a License and Operations Agreement with _____ [*vessel owner*] and each of the three (3) river cities in _____, a copy of which is attached as Exhibit "B". Exhibit "B" designates City as a third party beneficiary.

7. Pursuant to the License and Operations Agreement and the Lease Agreement, _____ [*vessel owner*] purchased the riverboat, _____, and has operated her as an excursion/gambling riverboat out of a dock known as the _____ located in City's _____.

8. The _____ is the vessel contemplated by the License and Operations Agreement and the Lease.

9. The _____ [*dock*] was constructed for the vessel _____ and since its completion has been used exclusively by the _____. City's Lease Agreement runs for a term of _____ years starting _____, (page _____ of Exhibit "A") and calls for an annual wharfage payment of _____ Thousand Dollars payable in advance starting _____, and continuing each _____ thereafter during the term of the Lease Agreement (page _____ of Exhibit "A").

10. In the Lease, the consideration flowing to _____ was the erection, by City, of a docking facility whereby _____ could dock the _____ and operate its business of riverboat gambling. The cost of City's docking facility was _____ Million Dollars.

11. In the Lease the consideration flowing to City was:

1) docking lease fee consisting of _____ Thousand Dollars paid annually on _____,

2) a receipt tax [*statutory*] equaling one-half of one percent of the adjusted gross gambling receipts payable to City,

3) a gate tax [*statutory*] equaling _____ Cents for each person boarding off of City's dock; and

4) discretionary income--a fee charged by _____ based on the number of passengers boarding the riverboat per year. City receives _____ percent of the total fee charged by _____.

12. On _____, _____ [*vessel owner*] announced its intention to move the _____ [*vessel*] to _____. _____ [*vessel owner*] had given City no advance written notice of its intent to terminate, as required by paragraph _____ of the Lease.

13. _____'s announcement on _____ was an anticipatory breach of the Lease.

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14. _____'s anticipatory breach of the contract was a declaration of their intent to remove the _____ from _____ and perform no further under the Lease. That intent was subsequently expressed in a letter from _____ to City marked Exhibit "C".

15. _____'s anticipatory breach was a breach of each and every subsequent year of the term of the contract and City is entitled to damages for each and every subsequent year of the contract.

16. At the time _____ entered into the License and Operations Contract with _____ (wherein City was designated a third party beneficiary), all parties knew that the Contract provided for payment of discretionary income derived from _____'s riverboat gambling business to _____ and subsequent disbursement to City and that a loss of discretionary income would occur to City if _____ ceased operations.

17. The City's loss of revenue from the gate tax and receipts tax was a loss that was in contemplation of both parties at the time the Lease was executed--and foreseeable as a probable damage to City resulting from _____ ceasing operations.

18. _____ ceased doing business at the _____ on _____.

19. City is entitled to compensatory damages for the future loss of wharfage revenue and consequential damages for the future loss of the gate tax, and receipt tax.

20. As a third party beneficiary to the License and Operations Contract, City is entitled to compensatory damages for loss of future discretionary income.

21. City's claim for compensatory and consequential damages flow from _____'s breach of a maritime contract.

22. City's loss of future revenue totals _____ Dollars as shown by Exhibit "D" (Exhibit "D" is a calculation of estimated annual revenues from City's four sources of income, (gate tax, receipts tax, discretionary income, and annual wharfage payment under the Lease) based on the actual ridership and gaming receipts received during the _____ season and partial season of _____. Exhibit "D-1" is a calculation of their net present value and Exhibit "D-2" explains the conservative method of calculation.

23. City claims compensatory and consequential damages (loss of wharfage and loss of revenue) totaling _____ Dollars and seeks a writ of foreign attachment of the vessel, _____, under Supplemental Rule B of the Supplemental Rules of Admiralty of this Court.

Wherefore, City prays:

A. That process in due form of law according to the practice of this Court in causes of admiralty and maritime jurisdiction, issue against the Defendant, _____, and a writ of foreign attachment against the vessel and that all persons claiming an interest in the vessel be cited to appear and answer the complaint;

B. That the Lease be declared to be a maritime contract;

C. That this Court enter judgment against the Defendant, _____, *in personam*, in an amount to satisfy Plaintiff's claim for damages of _____ Dollars resulting from breach of its maritime contract, plus interest, costs, expenses and reasonable attorneys' fees.

D. That the Plaintiff may have such other and further relief as may be deemed just by this Court.

Respectfully submitted,

By: _____

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *The City of Fort Madison, Iowa v. Steamboat Southeast, Inc.*, 3-92-CV-70100 (E.D. Mo. 1993), courtesy of Warren J. Marwodel of Keck, Mahin & Cate.

(n2)Footnote 2. No exhibits are represented.



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Form 1-232 Complaint -- Breach of Contract -- Contract of Carriage

COMES NOW [PLAINTIFF NAME], (hereinafter referred to as "Plaintiff") and for its complaint against Defendant [DEFENDANT NAME] (hereinafter referred to as "Defendant "A""), [DEFENDANT NAME] (hereinafter referred to as "Defendant "B"")(collectively hereinafter referred to as "Defendants") and DOES One through Fifty alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff [PLAINTIFF NAME] is now, and at all material times was, a corporation duly organized under the laws of the State of [STATE], with an office in [PLACE OF BUSINESS]. [PLAINTIFF NAME] is, among other things, engaged in the provision of international freight forwarding services.
2. Plaintiff is informed and believes, and on such information alleges, that Defendant [DEFENDANT NAME] is, and at all material times was, a corporation doing business in the [PLACE OF BUSINESS]
3. Plaintiff is informed and believes, and on such information alleges, that Defendant [DEFENDANT NAME] is, and at all material times was, a corporation doing business in the [PLACE OF BUSINESS]. Plaintiff is informed and believes, and on such information alleges, that Defendant [DEFENDANT NAME] is, and at all material times was, an alter ego and or successor in interest to Defendant [DEFENDANT NAME].
4. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants Does One through Fifty, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such fictitious names and will ask leave of Court to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believes, and on such information and belief alleges, that each of said Defendants was negligent or in some other objectionable manner legally responsible for proximately causing the events, happenings, and occurrences referred to

herein.

5. Plaintiff has insufficient information to allege the place of business or residence of Defendants Does One through Fifty. Plaintiff requests leave of Court to amend this complaint when the true names and place of business or residence of Defendants One through Fifty is determined.

6. Plaintiff is informed and believes, and on such information and belief alleges, that Defendants Does One through Fifty, and each of them, at all relevant times, were individuals or corporations residing in or doing business in the [PLACE].

7. Plaintiff is informed and believes, and on such information alleges, that Defendants, and each of them, were the agents and or employees, joint venturers, partners, or in some manner agents and or principles for each other and acting with the course and scope of said agency and or employment.

FACTUAL BACKGROUND

8. On or about [DATE], an ocean shipment of cargo consisting of [TYPE OF CARGO] was loaded aboard the M/V [VESSEL NAME] at [PORT OF LOADING] pursuant to a bill of lading [BILL OF LADING NUMBER] issued by [CARRIER NAME] as carrier. Said bill of lading provided for discharge of the cargo at the [PORT OF DISCHARGE]. A true and correct copy of the bill of lading is attached hereto as Exhibit "A".

9. On or about [DATE], an ocean shipment of cargo consisting of [TYPE OF CARGO] was loaded aboard the M/V [VESSEL NAME] at [PORT OF LOADING] pursuant to a bill of lading [BILL OF LADING NUMBER] issued by [CARRIER NAME] as carrier. Said bill of lading provided for discharge of the cargo at the [PORT OF DISCHARGE]. A true and correct copy of the bill of lading is attached as Exhibit "B".

10. On or about [DATE], an ocean shipment of cargo consisting of [TYPE OF CARGO] was loaded aboard the M/V [VESSEL NAME] at [PORT OF LOADING] pursuant to a bill of lading [BILL OF LADING NUMBER] issued by [CARRIER NAME] as carrier. Said bill of lading provided for discharge of the cargo at the [PORT OF DISCHARGE]. A true and correct copy of the bill of lading is attached as Exhibit "C".

11. On or about [DATE], an ocean shipment of cargo consisting of [TYPE OF CARGO] was loaded aboard the M/V [VESSEL NAME] at [PORT OF LOADING] pursuant to a bill of lading [BILL OF LADING NUMBER] issued by [CARRIER NAME] as carrier. Said bill of lading provided for discharge of the cargo at the [PORT OF DISCHARGE]. A true and correct copy of the bill of lading is attached as Exhibit "D".

12. On or about [DATE], an ocean shipment of cargo consisting of [TYPE OF CARGO] was loaded aboard the M/V [VESSEL NAME] at [PORT OF LOADING] pursuant to a bill of lading [BILL OF LADING NUMBER] issued by [CARRIER NAME] as carrier. Said bill of lading provided for discharge of the cargo at the [PORT OF DISCHARGE]. A true and correct copy of the bill of lading is attached as Exhibit "E".

13. Said cartons of cargo were carried to and discharged at the [PORT OF DISCHARGE] without incident. Thereafter, Defendant [DEFENDANT NAME], as Consignee, issued to Plaintiff LETTER[S] OF INDEMNITY FOR DELIEVRY OF CARGO WITHOUT SURRENDER OF BILLS OF LADINGS (hereinafter referred to as the "Letters of Indemnity") to induce Plaintiff to release said cargo without production or surrender of the bill(s) of lading. The Letters of Indemnity expressly provided that "to induce [Plaintiff] to so deliver the goods without the prior production and surrender of the original of such negotiable bill or bills of lading, properly endorsed ... we warrant to pay to you on demand all freights, general average and other charges which may be due and chargeable in respect of said shipments; and to defend, indemnify and hold you, the vessel, her owners, charters, operators, masters, and agents, harmless from

all demands, claims, liabilities and actions." Attached hereto are true and correct copies of the Letters of Indemnity as Exhibit "F".

14. As a result of the warranties and guarantees made by Defendants in providing the Letters of Indemnity, Plaintiff released the cartons of cargo to Defendants without production of the original bills of lading.

15. A claim for money damages in the amount of [AMOUNT] was made against Plaintiff by the agent for the [SHIPPER] of said cargo, [SHIPPER NAME] (hereinafter referred to as "[SHIPPER]") on the basis that Defendants had not paid [SHIPPER] for the [TYPE OF CARGO] contained within said cartons of cargo. Plaintiff provided notice of the [SHIPPER]'s claim and tendered defense of said claim to Defendants and Defendants failed at all material times herein has refused to accept Plaintiff's tender and has refused to indemnify Plaintiff.

16. Plaintiff hereby demands that Defendants [DEFENDANT NAME], [DEFENDANT NAME], and Does One through Fifty, and each of them, indemnify Plaintiff for the claim made by the [SHIPPER]; for all costs and expenses incurred by Plaintiff associated with the claim; and for all costs and attorney's fees incurred by Plaintiff in this action.

FIRST CAUSE OF ACTION

(Against All Defendants for Breach of Contract and Indemnity)

17. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 16 above.

18. Plaintiff and Defendants were at all relevant times parties to a contract or contracts, pursuant to which Defendants agreed, for an agreed consideration, to release said cargo based on the Letters of Indemnity provided by Defendants.

19. Plaintiff performed all relevant covenants and conditions under said contract or contracts.

20. Plaintiff's potential liability to [SHIPPER], and the damages complained of by [SHIPPER], were the direct, proximate, and sole result of the breach by Defendants, and each of them, of their agreements and warranties, express or implied, under the aforesaid contract(s).

21. By reason of the foregoing, Defendants are obligated to indemnify Plaintiff in the amount of [AMOUNT], which amount Plaintiff is obligated to [SHIPPER]; such costs and expenses incurred by Plaintiff or its agents in defending such claim; and such costs, expenses, and attorney's fees that are incurred by Plaintiff in this action.

SECOND CAUSE OF ACTION

(Express Indemnity Pursuant to California Civil Code § 2772 et seq.)

22. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 21 above.

23. Plaintiff is informed and believes, and thereupon alleges, that on or prior to [DATE] it entered into a written agreement with Defendant [DEFENDANT NAME] and Does One through Fifty, whereby Defendants agreed to defend, hold harmless, and indemnify Plaintiff, its employees, its agents, and its direct or indirect subcontractors from all demands, claims, liabilities, and actions related to the release of the cargo to Defendants without surrender of the bill(s) of lading.

24. Plaintiff has performed all relevant covenants and conditions under said contract(s).

25. Plaintiff alleges that on or prior to [DATE], Defendants and Does One through Fifty took possession of said cargo

pursuant to the Letters of Indemnity. Having taken possession of said cargo, Defendants became obligated under the Letters of Indemnity to defend, hold harmless and indemnify Plaintiff, its employees, its agents and its direct or indirect subcontractors from any demands, claims, liabilities and actions related to the release of the cargo without surrender of the bill(s) of lading.

26. The claim made by [SHIPPER] has caused, and will continue to cause, Plaintiff damages, including, but not limited to, [AMOUNT], for claims made by [SHIPPER]; and the attorney's fees, expenses and costs incurred by Plaintiff in this action for indemnity. Plaintiff is not fully advised of the nature and extent of the unspecified items of damages and therefore begs leave to amend this complaint when more fully advised and to offer proof accordingly.

27. Plaintiff alleges that it is entitled to indemnity from Defendants and Does One through Fifty in the full amount of [AMOUNT] for claims made by [SHIPPER]; the costs and expenses incurred by Plaintiff or its agents in defending said claim; and the attorney's fees, expenses and costs incurred by Plaintiff in this action for indemnity.

THIRD CAUSE OF ACTION

(Fraud Against All Defendants)

28. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 27 above.

29. Plaintiff alleges that on or prior to [DATE], Defendants, and each of them, intentionally failed to inform Plaintiff that it had not paid [SHIPPER] for the goods subject to the bill(s) of lading and thus were not lawfully entitled to possession of the cargo. Defendants represented and warranted to Plaintiff that Defendants were "entitled to the possession of the goods and to the delivery thereof." In reliance on Defendants' representations and the execution of the Letters of Indemnity Plaintiff released said cargo.

30. Defendants, and each of them, represented and warranted that the failure to produce the bill(s) of lading was "due to the non-arrival or loss thereof." Defendants made these representations and warranties to "induce [Plaintiff] to deliver and release the goods without the prior production and surrender of the original of such negotiable bill or bills of lading. In fact, Defendants' failure to produce the bill(s) of lading was that Defendants had failed to pay [SHIPPER] for said goods.

31. Defendants' intentional misrepresentations and omissions proximately and legally caused injury to Plaintiff in an amount not less than [AMOUNT], the exact amount to be established according to proof.

32. Defendants' intentional misrepresentations and omissions were done maliciously and with reckless disregard for the rights of Plaintiff, warranting punitive damages.

FOURTH CAUSE OF ACTION

(Declaratory Relief Against All Defendants)

33. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 32 above.

34. There is an actual controversy between Plaintiff and Defendants relating to the legal rights and duties arising from the act alleged in this Complaint. Plaintiff contends that it is entitled to [AMOUNT] for claims made by [SHIPPER]; the costs and expenses incurred by Plaintiff or its agents in defending said claim; and such costs, expenses, and attorney's fees incurred by it in this action. The exact nature of the contentions of Defendants is unknown to Plaintiff, but it is informed and believes, and thereupon alleges, that Defendants deny and dispute in some manner the contentions of Plaintiff.

35. Plaintiff seeks a declaration of the rights and liabilities of Plaintiff and Defendants.

WHEREFORE, Plaintiff prays for judgment in its favor as follows:

1. That the Court declare the rights, duties and obligations of the parties herein;
2. That the Court order judgment in favor of Plaintiff [PLAINTIFF NAME] against Defendants [DEFENDANT NAME], [DEFENDANT NAME] and Does One through Fifty, and each of them, in the amount of [AMOUNT] for claims made by [SHIPPER] and all reasonable costs and expenses incurred in connection with the defense and settlement of said claim;
3. That the Court order judgment in favor of Plaintiff [PLAINTIFF NAME] against Defendants [DEFENDANT NAME], [DEFENDANT NAME] and Does One through Fifty, and each of them, for all reasonable costs, expenses and attorney's fees incurred by Eastern Shipping in connection with this action;
4. For costs of suit herein;
5. For interest on all of the above; and
6. For such other and further relief as the Court deems just and proper.



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4-I Benedict on Admiralty Form 1-233

Form 1-233 Breach of Contract -- Nonpayment for Marine Engines

COMES NOW [PLAINTIFF NAME] (hereinafter referred to as "Plaintiff") and for its complaint against Defendants [DEFENDANT NAME], *in personam*, [DEFENDANT NAME], *in personam*, (hereinafter referred to as "Defendants") and the M/v [VESSEL NAME], *in rem*, and the M/Y NO. 251, *in rem*, (hereinafter referred to as the "Defendant Vessels") alleges as follows:

GENERAL ALLEGATIONS

1. This is a case of admiralty jurisdiction as hereinafter more fully appears, and is an admiralty and marine claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*. This Court has jurisdiction over this action pursuant to *46 U.S.C. § 31341*, *28 U.S.C. § 1331*, and *28 U.S.C. § 1333*.
2. Plaintiff BOATSWAIN'S LOCKER, INC. is a California corporation, with an office in Costa Mesa, California. Plaintiff is, and at all material times was, engaged in furnishing marine engines and appurtenances to vessels of various kinds and descriptions.
3. Plaintiff is informed and believes, and on such information and belief alleges, that Defendant GENESIS CUSTOM SKIERS, INC. is, and at all material times was, a corporation doing business in the County of Riverside, California.
4. Plaintiff is informed and believes, and on such information and belief alleges, that Defendant GENESIS MARINE, INC. is, and at all material times was, an alter ego and or successor in interest to Defendant GENESIS CUSTOM SKIERS, INC.
5. M/Y NO. 217 is a fiberglass motor yacht with a 21-foot LOA and powered with a Mercury MerCruiser inboard marine engine. Plaintiff is informed and believes, and on such information and belief alleges, that the vessel is located within the jurisdiction of this Court.

6. M/Y NO. 251 is a fiberglass motor yacht with a 25-foot LOA and powered with a Mercury MerCruiser inboard marine engine. Plaintiff is informed and believes, and on such information and belief alleges, that the vessel is located within the jurisdiction of this Court.

7. On or about August 19, 2003, Defendant GENESIS CUSTOM SKIERS, INC. executed an Account Agreement (hereinafter referred to as the "Agreement") under which Defendant would purchase marine engines and supplies with payment due on the tenth day of the month following receipt of the goods. The Agreement also provided notice to Defendant that all parts and services furnished to vessels were secured by maritime liens for necessities and state liens arising under *Cal.Harb. & Nav. Code § 491*. A true and correct copy of the Agreement is attached hereto as Exhibit "A".

8. Plaintiff is informed and believes, and on such information and belief alleges, that on or about August 14, 2003, Defendant GENESIS CUSTOM SKIERS, INC., purchased from Plaintiff a Magnum inboard gasoline powered marine engine and various attendant appurtenances thereto for use on board a marine vessel in the amount of Eleven Thousand and Seven Hundred and Twenty Dollars and Seventy Five Cents. (\$11,720.75). A true and correct copy of Invoice No. 1090733 is attached hereto as Exhibit "B". The installation of the marine engine on board the vessel was necessary for her maintenance in seaworthy condition and contributed to her ability to navigate upon the waters of the United States.

9. Plaintiff is informed and believes, and on such information and belief alleges, that on or about August 14, 2003, Defendant GENESIS CUSTOM SKIERS, INC., purchased from Plaintiff a Magnum inboard gasoline powered engine and various attendant appurtenances thereto for use on a marine vessel in the amount of Thirteen Thousand Seven Hundred and Seventy One Dollars and Eleven Cents (\$13,771.11). A true and correct copy of Invoice No. 1090739 is attached hereto as Exhibit "C". The installation of the marine engine on board the vessel was necessary for her maintenance in seaworthy condition and contributed to her ability to navigate upon the waters of the United States of America.

10. Plaintiff is informed and believes, and on such information and belief alleges, that at all material times herein, the marine engines and appurtenances attendant thereto were necessities furnished to a vessel within the meaning of *46 U.S.C. § 31341* ("Commercial Instruments and Maritime Liens Act").

11. Following receipt of the marine engines and appurtenances furnished to the Defendant Vessels, GENESIS CUSTOM SKIERS, INC. failed to make timely payment for the goods supplied and several financial drafts that were received were returned for want of sufficient funds.

12. On or about February 26, 2004, Defendant GENESIS CUSTOM SKIERS, INC. granted to Plaintiff a security interest in the Defendant Vessels as security for the prior marine engine purchases. A true and correct copy of the Security Agreement is attached hereto as Exhibit "D".

13. On or about February 26, 2004, Defendant GENESIS CUSTOM SKIERS, INC. recorded liens on behalf of Plaintiff that were recorded on the Manufacturer's Statement of Origin to a Vessel Sold in the State of California (hereinafter referred to as the "Manufacturer's Statements") for the Defendant Vessels. Attached hereto are the Manufacturer's Statements for the Defendant Vessels as Exhibit "E".

14. On or about July 22, 2004, Plaintiff tendered written demand for payment of the outstanding balance of \$15,996.68 and provided notice to Defendants that it would commence an action to perfect its maritime liens.

FIRST CAUSE OF ACTION
(Against All Defendants for Breach of Contract)

15. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 14 above.

16. Plaintiff and Defendants were at all relevant times parties to a contract or contracts, pursuant to which Defendants agreed, for good and valid consideration, to purchase marine engines and attendant appurtenances for cash payment.

17. Plaintiff performed all relevant covenants and conditions under said contract or contracts.

18. By reason of Defendants' breach of the Agreement, Defendants are indebted to Plaintiff in the amount of \$15,996.68 plus interest commencing on September 15, 2004, plus costs of arrests and attachment, reasonable attorney's fees, costs of suit, and such other sums as the court may award.

SECOND CAUSE OF ACTION

(Against All Defendants for Open Book Account)

19. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 18 above.

20. Pursuant to the Agreement herein alleged between Plaintiff and Defendants, an open book account was kept regarding the monies owed, which illustrated the debits and credits in connection therewith, and against whom and in the favor of whom the entries were made. Such book account was entered in the regular course of business and was kept in a reasonable and permanent form.

21. From August 14, 2003 to September 13, 2004, Defendants became indebted to Plaintiff on an open book account for money due in an amount not less than \$15,996.68.

22. Neither the whole nor any part of the above sum has been paid, although a demand therefore has been made, and there is now due, owing, and unpaid a sum not less than \$15,996.68, with interest thereon at the prescribed rate.

THIRD CAUSE OF ACTION

(Action *in personam* Against All Defendants For
Necessaries Furnished Pursuant to 46 U.S.C. § 31341)

23. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 22 above.

24. On or about August 14, 2003, Plaintiff, at the order and request of Mr. Francisco Casillas, President, GENESIS CUSTOM SKIERS, INC., furnished and supplied to Defendant Vessels, said vessels received and accepted on board, certain marine engines and attendant appurtenances, which were of the reasonable and agreed value of \$25,491.86. In furnishing and supplying said marine engines and attendant appurtenances, Plaintiff relied on the credit of the Defendant Vessels.

25. Although Plaintiff has made demand upon the said Vessels and upon the *in personam* Defendants, for the payment of the outstanding sum of \$15,996.68, payment has been refused. The furnishing, supplying and delivery of the marine engines and attendant appurtenances, as aforesaid constitutes a maritime lien upon said Defendant Vessels in the amount herein mentioned.

FOURTH CAUSE OF ACTION

(Action *in rem* Against Defendant Vessels For
Necessaries Furnished Pursuant to 46 U.S.C. § 31341)

25. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 24 above.

26. On or about August 14, 2003, Plaintiff, at the order and request of GENESIS CUSTOM SKIERS, INC., furnished and supplied to Defendant Vessels, said vessels received and accepted on board, certain marine engines and attendant appurtenances, which were of the agreed value of \$25,491.86.

27. In furnishing and supplying said marine engines and attendant appurtenances, Plaintiff relied on the credit of the Defendant Vessels.

28. Although Plaintiff has made demand upon the said Vessels and upon the *in personam* Defendants, for the payment of the outstanding sum of \$15,996.68, payment has been refused. The furnishing, supplying and delivery of the marine engines and attendant appurtenances, as aforesaid constitutes a maritime lien upon said Defendant Vessels in the amount herein mentioned.

FIFTH CAUSE OF ACTION

(Action *in personam* Against All Defendants For Fraud)

29. Plaintiff refers to and incorporates by reference as if set forth herein at length its allegations in Paragraphs 1 through 28 above.

30. On or about February 26, 2004, Defendant GENESIS CUSTOM SKIERS, INC. recorded liens on behalf of Plaintiff that were recorded on the Manufacturer's Statements for the Defendant Vessels. The statements warranted that title to the Defendant Vessels was incapable of transfer prior to satisfaction of Plaintiff's liens. Plaintiff is informed and believes, and on such information and belief alleges, that title to the Defendant Vessels was transferred to parties unknown without disclosure of Plaintiff's liens and in violation of applicable state law requirements regarding disclosure of assignments and liens on manufacturer's statements.

31. Defendants' intentional misrepresentations and omissions proximately and legally caused injury to Plaintiff in an amount not less than \$15,996.68, the exact amount to be established according to proof.

32. Defendants' intentional misrepresentations and omissions were done maliciously and with reckless disregard for the rights of Plaintiff, warranting punitive damages.

WHEREFORE, Plaintiff prays for judgment in its favor as follows:

A. On the First Cause of Action Against All Defendants;

1. That the Court order judgment in favor of Plaintiff, against Defendants GENESIS CUSTOMS SKIERS, INC. and GENESIS MARINE, INC., and each of them, in the amount of \$15,996.68, plus costs of arrests and sale, reasonable costs, expenses and attorney's fees;

2. For costs of suit herein;

3. For interest on all of the above; and

4. For such other and further relief as the Court deems just and proper.

B. On the Second Cause of Action Against All Defendants;

1. That the Court order judgment in favor of Plaintiff, against Defendants GENESIS CUSTOMS SKIERS, INC. and GENESIS MARINE, INC., and each of them, in the amount of \$15,996.68, plus costs of arrests and sale, reasonable costs, expenses and attorney's fees;

2. For costs of suit herein;

3. For interest on all of the above; and

4. For such other and further relief as the Court deems just and proper.

C. On the Third and Fourth Causes of Action *in rem* and *in personam*;

1. That process *in rem* and warrant of arrest be issued in due form of law in accordance with the practice of this Honorable Court in cases of admiralty and maritime jurisdiction against the Vessel M/Y NO. 217, her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining, with notice to all persons claiming an interest therein to appear in answer to this Verified Complaint.

2. That process *in rem* and warrant of arrest be issued in due form of law in accordance with the practice of this Honorable Court in cases of admiralty and maritime jurisdiction against the Vessel M/Y NO. 251, her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining, with notice to all persons claiming an interest therein to appear in answer to this Verified Complaint.

3. That process *in rem* and warrant of arrest be issued in due form of law in accordance with the practice of this Honorable Court in cases of admiralty and maritime jurisdiction against any vessel maintained or owned by Defendants, their engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining, with notice to all persons claiming an interest therein to appear in answer to this Verified Complaint.

4. That the necessities provided to Defendant Vessels be declared valid and subsisting liens upon the DEFENDANT VESSELS, their engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining, prior and superior to the interests, liens, and claims of all persons whatsoever, except such persons as may hold preferred maritime liens on the DEFENDANT VESSELS.

5. That this Honorable Court shall direct and proscribe the manner in which the actual notice of the commencement of this suit shall be given by Plaintiff pursuant to 46 U.S.C. § 31301 *et seq.*

6. That the DEFENDANT VESSELS, their engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining be condemned and sold by order of this Honorable Court, and applied toward the amounts required to be paid by Defendants, including, without limitation, \$15,966.68, plus interest commencing on September 13, 2004, plus costs of retaking and sale, late fees, reasonable attorney's fees, costs of suit and all sums allowed by the Court.

7. That any VESSEL owned by Defendants GENESIS CUSTOM SKIERS, INC., and GENESIS MARINE, INC., and maintained in their fleet, their engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining be condemned and sold by order of this Honorable Court, and applied toward the amounts required to be paid by Defendants, including, without limitation, \$15,966.68, plus interest commencing on September 13, 2004, plus costs of retaking and sale, late fees, reasonable attorney's fees, costs of suit and all sums allowed by the Court.

8. That judgment be entered in favor of Plaintiff against Defendants GENESIS CUSTOM SKIERS, INC., and

GENESIS MARINE, INC., for the full amount of indebtedness or for any deficiency owed after the sale of the DEFENDANT VESSELS and distribution of the proceeds thereof; and

9. That it be decreed that any and all persons claiming an interest in the DEFENDANT VESSELS arising prior to the sale are thereafter barred and foreclosed of and from all right, equity of redemption, and claim of, in, or to the DEFENDANT VESSELS, and every part thereof, by reason of any such interest.

D. On the Fifth Cause of Action Against All Defendants;

1. For punitive damages in an amount to be determined by this Honorable Court.

2. For such other and further relief as the Court deems just and proper.



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CONTRACTS

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4-I Benedict on Admiralty FORM No. 1-253

FORM No. 1-253 Complaint In Personam by Assignor--Conversion of Vessel

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties]* n2

4. Before and on the _____ day of _____, 20____, _____ was the owner and was entitled to the immediate possession of the vessel named _____, and all its gear, fittings and hardware.

5. On or about the _____ day of _____, 20____, the vessel was in the possession of the defendant. The assignor requested the defendant to return the vessel to him, but the defendant refused, and ever since he has wrongfully detained the vessel and wrongfully converted the same to his own use, all to the damage of the assignor in the sum of \$_____.

6. On or about the _____ day of _____, 20____, _____, the assignor, assigned his claim against the defendant for conversion to plaintiff.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 3. *See* Form No. 1-6 *supra*.

1 *See* 2 Benedict on Admiralty § 6 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-254

FORM No. 1-254 Complaint In Personam--Conversion of Cargon1

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2*

4. Upon information and belief, on or about the _____ day of _____, 20_____,
_____, and at all times thereafter until the _____ day of _____,
20 _____ defendant, _____, was the owner of and entitled to immediate possession of a certain lot of
_____ with weight of _____.

5. Upon information and belief, on or about the _____ day of _____, 20 _____,
defendant, _____, delivered the lot of _____ to the ship _____
for shipment on the vessel.

6. Upon information and belief, on or about the _____ day of _____, 20 _____, the
Receiving Mate of the ship _____, acting as the appointed agent of defendants
_____, _____, _____ and _____, executed
and delivered to defendant a written receipt and contract (hereinafter referred to as the Mate's Receipt) wherein the
Receiving Mate acknowledged receipt from defendant, _____ of the lot of _____
for shipment on the vessel and it was agreed that "Ocean Bill of Lading to be Released Only Against Surrender of This
Mate's Receipt Properly Endorsed."

7. Upon information and belief, although the Mate's Receipt had not been surrendered, and without the knowledge or
consent of defendant, _____, or of the plaintiff, defendant _____, acting as
General Agent for defendants, _____, _____, _____ and
_____ and for the Master of the vessel _____, released an ocean bill of lading in

4-I Benedict on Admiralty FORM No. 1-254

the City of _____, County of _____, and State of _____ on or about the _____ day of _____, 20____, covering the lot of _____ as well as other _____ then located on the vessel _____. The bill of lading listed the _____ Company, _____, Street, _____, as the shipper of the _____ and the bill of lading was delivered on or about that date either to the _____ company or to its forwarding agent.

8. Upon information and belief, the bill of lading was a document of title and purported to transfer ownership of, title to, and the right to possession, of the lot of _____ to the _____ Company and its assigns.

9. On or about _____, 20____, in the City of _____, County of _____, and State of _____, plaintiff purchased the lot of _____ from defendant, _____, pursuant to prior contracts with defendant, _____, paid defendant, _____, the sum of \$ _____. Defendant, _____, thereupon transferred all of its right, title, and interest in the lot of _____ to plaintiff and endorsed and delivered the Mate's Receipt to plaintiff.

10. From and after _____, 20____, plaintiff was the owner entitled to immediate possession of the lot of _____ and was the assignee of all of the rights of defendant, _____, with respect thereto, including the right to recover damages for any prior conversion and all of defendant, _____'s, rights under the Mate's Receipt.

11. By releasing and delivering the bill of lading to the _____ Company, defendants _____, _____, and _____, aided and abetted by defendant, _____, wrongfully interfered with rights of defendant, _____, to ownership and possession of the lot of _____ and converted the lot to their own use and to the use of the _____ Company, or any assignee of the bill of lading, to plaintiff's damage as the assignee and purchaser from defendant, _____.

12. The value of the lot of _____ on _____ 20____, was \$_____.

13. By reason of the foregoing, plaintiff has been damaged in the sum of \$_____.

FOR A SECOND CAUSE OF ACTION AGAINST
DEFENDANTS _____ [set forth all defendants]

14. Plaintiff repeats Paragraphs 1 through 10 of this complaint.

15. On or about the _____ day of _____, 20____, upon discovering that an ocean bill of lading had been improperly released, plaintiff notified defendants, _____, _____, _____, and _____, by advice to their General Agent, defendant, _____, that the bill of lading had been improperly released and that plaintiff held the Mate's Receipt with respect to the lot of _____.

16. Upon information and belief, notwithstanding notice from plaintiff, defendants, _____, _____, _____, and _____, acted inconsistently with plaintiff's ownership of the lot of _____, still on board the vessel _____, and continued to

treat the lot of _____ as the property of the _____ company or of any assignee of the bill of lading, and to carry out instructions of the _____ Company with respect thereto.

17. By continuing to treat the bill of lading as valid and by continuing to treat the lot of _____ as the property of the _____ or of any assignee of the bill of lading, after notice from plaintiff, defendants, _____, _____, _____, _____, and _____, aided and abetted by defendant, _____, wrongfully interfered with plaintiff's rights of ownership and possession of the lot of _____ and converted the _____ to their own use and to the use of the _____ company or of any assignee of the bill of lading.

18. The value of the lot of _____ on _____, 20 _____, was \$_____.

19. By reason of the foregoing, plaintiff has been damaged in the sum of \$_____.

FOR A THIRD CAUSE OF ACTION AGAINST
DEFENDANTS _____ [set forth all defendants]

20. Plaintiff repeats Paragraphs 1 through 10, and Paragraph 15 of this complaint.

21. Upon information and belief, notwithstanding notice from plaintiff, defendants _____, _____, _____, _____, and _____, thereafter transferred and delivered the lot of _____ to an agent or agency of _____ Republic pursuant to an assignment of the bill of lading.

22. By reason of the foregoing, defendants, _____, _____, _____, _____, and aided-and abetted by defendant, _____, deprived plaintiff of its rights of ownership and possession in the lot of _____ and converted the _____ to their own use and to the use of _____.

23. At the time the lot of _____ was delivered to the _____ [state country], or within a reasonable time thereafter, its value was \$_____.

24. By reason of the foregoing, plaintiff has been damaged in the sum of \$_____.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in R.L. Rothstein Corp. v. Kerr S.S. Co., 15 N.Y.2d 897, 258 N.Y.S.2d 427 (1965), courtesy of Sherpick, Regan & Davis, New York, New York.

(n2)Footnote 2. See Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. See Form No. 1-6 *supra*.



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4-I Benedict on Admiralty FORM No. 1-255

FORM No. 1-255 Complaint In Personam Against Ocean Carrier--Conversion of Cargo by Wrongful Deliveryⁿ¹

[*Caption and Jurisdictional Statement*] ⁿ²

4. At all times herein, defendant _____ was a common carrier of goods by sea.
5. At all times herein, plaintiff _____ was the owner of and entitled to the immediate possession of the following goods: _____.
6. At all times herein, the goods were of the fair and reasonable market value of \$ _____.
7. On or about _____, 20 _____, plaintiff delivered to the defendant the goods described herein for transportation from _____ of _____ to _____, _____ to be delivered to the order of the _____ [*financial institution*] upon surrender of proper documentation.
8. Defendant converted the goods described herein by delivering them without authority to another not entitled thereto, on or about _____, _____, 20 _____.

[*Demand for Judgment*] ⁿ³

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Koreska v. United Cargo Corp.*, 23 A.D.2d 37, 258 N.Y.S.2d 432 (1965), courtesy of Wachtell Manheim & Grouf, New York, New York.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

1 *See* 2 Benedict on Admiralty § 6 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-256

FORM No. 1-256 Complaint In Rem and In Personam by Voyage Charterer and Cargo Interest Against Vessel Owner--Conversion and Wrongful Attachment of Cargo

[Caption and Jurisdictional Statements] n2

2. Plaintiff, _____, is a foreign corporation organized and existing under and by virtue of the laws of _____ with an office and place of business at _____ and is the voyage charterer of the Motor Tanker _____ pursuant to a charter dated _____, 20 _____, between Charterer and Defendant _____.

3. Plaintiff, _____, is a foreign corporation organized and existing under and by virtue of the laws of _____ with an office and place of business at _____ and is the owner of _____ [identify cargo] presently on board the vessel _____.

4. Defendant, _____, (hereinafter "Owner") is a foreign corporation with an office and place of business at _____ and is the registered owner of the vessel _____ which now is within the jurisdiction of this Court.

5. In or about the month of _____, 20 _____, at the port of _____ there was delivered to the defendant vessel in good order and condition a cargo of _____ which Owner and the vessel received, accepted, and agreed to transport for certain consideration to the Port of _____.

6. Thereafter the said vessel arrived at the Port of _____ where at the direction of Owner it refused to discharge and to deliver Plaintiff's cargo in accordance with the lawful orders of charterer but instead caused about _____ [state quantity] to be liened, allegedly as security for unpaid freight and demurrage.

7. Plaintiffs repeat and reallege each of the allegations contained in Paragraphs 1 through 5 hereof with the same force and effect as if same were set forth in full herein.

8. Under the terms and conditions of the governing charter party, a true copy of the working draft of which is attached and incorporated herein as Exhibit A, freight is payable _____ [*insert charter provision*]. Charterer directed the defendant vessel and Owner to discharge the entire cargo of unloaded gasoline into a barge, designated by Charterer. In these circumstances the charter party contract remains executory insofar as the right of Owner and the vessel to earn freight is concerned and, accordingly, the defendants have no rights to payment of freight at this time or to lien the cargo in respect of freight.

9. Under the terms and conditions of the governing charter party, demurrage is not payable by charterer unless _____ [*insert charter provision*]. No such claim with supporting documents has been received by Charterer from Owner in respect of demurrage at discharge. Demurrage for the load port has been paid in full by Charterer. In these circumstances, the defendants have no rights to payment of demurrage at this time or to lien the cargo in respect of demurrage.

10. By reason of the foregoing, Owner and the defendant vessel have wrongfully converted the remaining cargo to their use as a consequence of which plaintiff Cargo has suffered damages in the amount of \$ _____ (the value of the cargo remaining on board the vessel _____) no part of which has been paid.

FOR A SECOND CAUSE OF ACTION

11. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 5, 8, and hereof with the same force and effect as if same were set forth in full herein.

12. The lien of plaintiff Cargo's _____ was wrongful as a matter of law in breach of the charter party and of the governing bill of lading.

13. By reason of the foregoing, Owner and the defendant vessel have wrongfully converted the remaining cargo to their use as a consequence of which plaintiff has suffered damages in the amount of \$ _____ (the value of the cargo remaining on board the Motor Tanker _____) no part of which has been paid.

FOR A THIRD CAUSE OF ACTION

14. Plaintiffs repeat and reallege each of the allegations contained in Paragraphs 1 through 5 hereof with the same force and effect as if same were set forth in full herein.

15. Prior to arrival of the defendant vessel in the Port of _____ plaintiff Charterer and defendant Owner agreed, in a telex dated _____, 20 _____, sent by Owner's chartering broker to Charterer's chartering broker, as follows: _____ [*state terms*].

16. The exercise of the alleged lien on cargo was the breach of the agreement reached on _____, 20 _____.

17. By reason of the foregoing Owner and the defendant vessel have wrongfully converted the remaining cargo to their use as a consequence of which plaintiff cargo has suffered damages in the amount of \$ _____ (the value of the cargo remaining on board the Motor Tanker _____) no part of which has been paid.

18. Plaintiffs repeat and reallege each of the allegations contained in Paragraphs 1 through 5, 8, and 9 hereof with the

same force and effect as if same were set forth in full herein.

19. In consequence of the defendant vessel's wrongful failure to discharge in its entirety the cargo of unleaded gasoline, plaintiff Charterer has incurred damage in the form of barge hire and demurrage in the amount of \$ _____, insofar as same can now be estimated, no part of which has been paid by defendants.

[Prayer for Process, Demand for Judgment, and Verification] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Lagon Maritime Overseas Ltd. v. Motor Tanker Fort Kipp*, Civ. No. 84-2297 (E.D.N.Y. 1984).

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. *See* Form Nos. 1-3, 1-6 and 1-10 through 1-13 *supra*.

1 *See* 2 Benedict on Admiralty § 6 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-257

FORM No. 1-257 Complaint--Custom Broker's Conversion of Funds

[Caption and Jurisdictional Statement] n1

FIRST CASE OF ACTION

4. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 3 in plaintiff's complaint herein.

5. At all relevant times, plaintiff, _____, a freight forwarder, engaged defendant pursuant to a contract to perform certain services in the United States as a customhouse broker, freight forwarder, and breakbulk agent.

6. In or about _____ 20 _____, plaintiff engaged defendant as a Custom Broker to perform certain services for a shipment consigned to _____, which arrived aboard the vessel " _____ " on _____, 20 _____.

7. As a result of this shipment, plaintiff or its agent transferred to defendant's bank account \$ _____, the customs duty owing for said shipment. Defendant was to use these funds to pay the U.S. Customs Duty. Defendant, to date, has not accounted for these funds and has failed to pay U.S. Customs Service.

8. Plaintiff has called for the return of the \$ _____ but defendant has failed to return the same to plaintiff.

9. Defendant, in breach of its contract, express or implied, and in breach of its fiduciary duty, converted plaintiff's property to its own use.

10. By reason of the premises, plaintiff has sustained damages, no part of which has been paid, although duly demanded, in the amount of \$_____.

11. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 10 in plaintiff's complaint herein.

12. On or about _____, 20 _____, the U.S. Customs Service demanded \$ _____ liquidated damages for failure to file timely entry.

13. By reason of the premises, plaintiff has sustained damages, no part of which has been paid although duly demanded, in the amount of \$_____.

THIRD CAUSE OF ACTION

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 13 in plaintiff's complaint herein.

15. As a direct result of defendant's actions, plaintiff has suffered and will continue to suffer loss of good will and loss of profits from plaintiff's customers.

16. By reason of the premises, plaintiff has sustained damages, as nearly as the same can now be estimated, in the amount of \$_____.

FOURTH CAUSE OF ACTION

17. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 16 in plaintiff's Complaint herein.

18. By reason of said premises, plaintiff's customers have or will pay certain sums to U.S. Customs Service or other private or government organizations. Said customers have or will have claims against plaintiff. Plaintiff seeks full indemnity from defendant and to be held harmless against all claims against plaintiff arising out of this lawsuit.

FIFTH CAUSE OF ACTION

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 18 in plaintiff's Complaint herein.

20. Defendant represented to plaintiff that defendant would pay U.S. customs and represented that it had paid said U.S. Customs Duty to the U.S. Customs Service. Defendant has failed to pay said duty.

21. At the time of defendant's representations, defendant knew they were false or made them recklessly without knowing whether they were true and false.

22. Defendant made the representations with intent to deceive and defraud plaintiff and to induce plaintiff to act in accordance with the representations.

23. Plaintiff was ignorant of the falsity of the representations and believed them to be true. Plaintiff, in reliance on defendant's representations, paid defendant \$_____.

24. As a result of the false and fraudulent representations of the defendant, plaintiff was damaged in the sum of \$_____.

SIXTH CAUSE OF ACTION

25. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 24 in Plaintiff's Complaint herein.

26. That by virtue of the willful tort, breach of fiduciary duty, and fraudulent conduct, defendant is liable to plaintiff for punitive damages in the amount of \$_____.

Wherefore, plaintiff demands judgment against defendant in the amount of plaintiff's damages together with interest, costs, disbursements, reasonable attorney's fees and for such other and further relief as this Court may deem proper and just.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

1 *See* 2 Benedict on Admiralty § 6 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-258

FORM No. 1-258 Complaint by Plaintiff Cargo Owner--Loss of Cargo--Oil

[Caption] n1

_____, Plaintiff, by its attorneys _____ and _____, for its
Complaint against the vessel _____ and _____, (hereinafter "Defendant") says as
follows:

1. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears. This is an admiralty and maritime claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*.
2. At all times hereafter mentioned, Plaintiff was and is a corporation organized and existing under and by virtue of the laws of the State of _____ with offices in _____.
3. Upon information and belief, the vessel _____ is a vessel which is now, or will be during the pendency of this case, within the jurisdiction of this Honorable Court.
4. Upon information and belief, Defendant, _____, is a foreign corporation with an office in _____, that has no office, or place of business in the State of _____, and cannot be found within this District.
5. Under the terms of the applicable charter parties and bills of lading, disputes under the charter parties are to be resolved by arbitration, and Plaintiff hereby expressly asserts and reserves its rights to and in such arbitration in accordance with the provisions of *9 U.S.C. § 8*.
6. On _____, 20 _____, a charter party was entered into whereby a cargo of oil belonging to Plaintiff

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was carried on board the vessel _____. When the oil was offloaded, the quantity delivered was _____ barrels less than the quantity loaded, resulting in loss and damage to Plaintiff in the amount of \$ _____.

7. On _____, 20 _____, a charter party was entered into whereby a cargo of oil belonging to Plaintiff was carried on board the vessel _____. When the oil was offloaded, the quantity delivered was _____ barrels less than the quantity loaded, resulting in loss and damage to Plaintiff in the amount of \$ _____.

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

1 *See* 2 Benedict on Admiralty § 6 (Matthew Bender 7th ed.).



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DEMURRAGE *

4-I Benedict on Admiralty FORM No. 1-270

FORM No. 1-270 Complaint In Rem Against Cargo--Demurrage¹

[Caption and Jurisdictional Statement] n2

2. Plaintiff now is and at all the time hereinafter mentioned was a _____ duly organized and existing under and by virtue of the laws of _____, and at all of the times hereinafter mentioned was the owner of the vessel _____.

3 The _____ [state cargo] proceeded against herein are within the jurisdiction of this Honorable court.

4. On _____, 20 _____, plaintiff entered into a charter party with _____ for the charter of the vessel _____ in accordance with the terms of said charter party, a copy of which is attached and incorporated herein as "Exhibit A". Pursuant to the terms of said charter party the vessel _____ proceeded to the port of _____ and was made ready to receive cargo on _____, 20 _____. On the said date the master of the vessel _____ notified the agents of the charterers in writing that the said vessel was ready to commence loading, the said notice being as follows: _____ [state notice].

The said notice was renewed on _____, _____ and _____, 20 _____.

5. On _____, 20 _____, said master of the vessel _____ notified the agents of the said charterers that demurrage had begun to run on the vessel _____ from _____ P.M. _____, 20 _____ and notified the said charterers that he, the master of the vessel, would hold them responsible for all demurrage that might accrue.

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6. While the vessel _____ was in the port of _____, _____ & _____ loaded and placed on board the vessel _____ the _____ [cargo] aforesaid under the terms of a bill of lading which provided that the said cargo was to be delivered unto " _____ & _____ or to their assigns, they paying freight and all other conditions and exceptions to be as per charter party."

7. Thereafter and on or about the _____ day of _____ 20 _____, _____ & _____ directed the master of the vessel _____ to proceed to _____ for orders.

8. Pursuant to the said direction the vessel _____ sailed from the port of _____ on _____, 20 _____, and arrived at the port of _____ on _____, 20 _____, at _____ p.m. There were no orders awaiting the master of the vessel _____ at _____ and no orders were received by him until _____, 20 _____, at _____ a.m. The vessel was delayed at _____ because of the failure of the said charterers to give the master orders as provided in said charter party for a period of twenty hours.

9. Thereafter and on _____, 20 _____, at _____ p.m. the vessel _____ sailed from the port of _____ and arrived at the port of _____, _____, 20 _____, at _____ a.m. Notice of the arrival of the vessel _____ was immediately given to the charterers and the consignees of the said cargo. Thereafter the vessel _____ was ordered to a berth in _____, but said berth, being obstructed by ice and other substances, was not a dock or place where the vessel _____ could safely enter "at once," as provided by the said charter party. In consequence of the failure of the said charterers and of the said consignees to furnish a berth as provided in the said charter party, the discharge of the cargo has been greatly delayed.

10. Plaintiff estimates that the discharge of the said cargo will not be completed in the time allowed by the said charter party and that the said discharge will be delayed for a period of _____ or _____ days.

11. By reason of the premises, plaintiff has sustained the following losses as a result of the failure of the said charterers to perform the terms of the said charter party. For delay in loading at _____, _____ days at \$ _____ a day, or \$ _____; for a delay of _____ hours at _____, \$ _____; for a delay in discharging at _____, _____ days at \$ _____ a day, \$ _____.

12. Plaintiff, therefore claims a lien on the said cargo for the sum of \$ _____ and has demanded payment of the sums of money aforesaid, but no part thereof has been paid.

[Prayer for Process and Verification] n3

FOOTNOTES:

(n1)Footnote 1. See Form No. 1-284 *infra*.

(n2)Footnote 2. See Form No. 1-1 *supra*.

(n3)Footnote 3. See Form Nos. 1-10 and 1-12 *supra*.

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* *See* 1 Benedict on Admiralty § 236 (Matthew Bender 7th ed.).



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DEMURRAGE *

4-I Benedict on Admiralty FORM No. 1-271

FORM No. 1-271 Complaint In Personam Against Consignee of Cargo--Demurrage

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n1*

4. In the month of _____, 20____, at _____, _____ Co. shipped on board the vessel _____, _____ [state cargo], or thereabouts, to be therein carried from _____ to _____, and there delivered in like good order and condition, to defendant or his assigns, he or they paying freight for the same at the rate of \$ _____ per ton; and accordingly the master of the said vessel, at _____, on the _____ day of _____, 20____, signed the usual bill of lading.

5. Shortly thereafter, the vessel _____ set sail from _____ for _____, with the cargo on board, and there safely arrived on or about the _____ day of _____ 20____; and on the following day, _____, 20____, the master of the vessel _____ duly served upon defendant, the consignee and owner of the cargo, a notice that said vessel was ready to discharge cargo.

6. Defendant accepted the cargo, and commenced to receive it, but refused to take it save in very small quantities, and at irregular times, and detained the vessel until the _____ day of _____, 20____, on which day the last of the cargo was taken out by him and his agents, and the vessel completely discharged, the discharge of her cargo having taken _____ days.

7. The usual and reasonable time to discharge such a cargo is _____ days, and plaintiffs claim to be entitled to have of defendant the damages sustained by them by reason of the unjust detention of said vessel for the period of _____ days beyond that time, at a reasonable demurrage rate of \$ _____

per day, amounting in all to \$ _____.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 1 Benedict on Admiralty § 236 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-272

FORM No. 1-272 Complaint In Personam by Ship's Husband Against Charterers--Demurrage

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties] n1*

4. On the _____ of _____, 20 _____, plaintiff made and concluded with defendants a charter party of the vessel _____, wherein and whereby it was agreed between plaintiff and defendants, among other things, that defendants should have _____ lay days in _____ within which to load and dispatch the vessel _____ from the port of _____, and in case the vessel should be longer detained, defendants should pay plaintiff demurrage at the rate of \$ _____ per day, for each and every day so detained, provided such detention should happen by default of defendants or their agent; and it was further understood and agreed that the cargo should be received and delivered alongside, within reach of the vessel's tackles; and it was further understood and agreed that the charter, and the _____ days, should commence when the said vessel was ready to receive cargo at _____, her place of loading, and notice thereof was given to defendants or to their agent.

5. Plaintiff further alleges that the vessel was put in readiness to receive cargo at _____, and due notice thereof was given to defendants, pursuant to the terms of the charter party, on _____, 20 _____ and defendants commenced to furnish the cargo. But notwithstanding the fact that the vessel was, from that time, at the direction and disposal of defendants, and notwithstanding that there was no fault or remissness on the part of plaintiff, defendants, by their own default, did not load the said vessel within _____ days, but delayed her, contrary to the terms of the charter party, until the _____ day of _____ thereafter, and plaintiff became thereby entitled to receive from defendants demurrage for _____ days, at the rate of \$ _____ per day, amounting to the sum of \$ _____, which sum is still due.

[Demand for Judgment] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 1 Benedict on Admiralty § 236 (Matthew Bender 7th ed.).



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FREIGHT

4-I Benedict on Admiralty FORM No. 1-284

FORM No. 1-284 Complaint--Freight Charges

[Caption and Jurisdictional Statement] n1

2. At all times herein mentioned, the plaintiff was and now is a corporation, and the owner of the vessel _____, registered under the laws of the Republic of _____.
3. The _____ [*identify cargo*] lately laden on board the vessel _____ proceeded against are now located in railroad cars on the premises of the _____ near the _____ Pier, Baltimore, Maryland, and are within this district.
4. On or about _____, 20 _____, the plaintiff and _____, hereinafter called the charterer, entered into a charter party, which will be produced at the trial thereof, by the terms of which the vessel _____ was to proceed to _____, and there load a full and complete cargo of _____.
5. Pursuant to this charter party the vessel _____ proceeded to _____, and the Master of the vessel there requested on behalf of the owner that he be furnished with _____ of _____, but the charterer, its agents and representatives furnished the vessel with a cargo of only _____, which cargo is now within this district as aforesaid.
6. By reason of the failure of the charterer, its agents and representatives to furnish the _____ as requested, the charterer became liable for dead freight on the _____ which it failed to furnish at the rate of \$ _____ per ton, as provided in the charter party, or a total of \$ _____.
7. The plaintiff has demanded that the charterer pay the dead freight due the plaintiff as aforesaid, but the charterer has

failed and refused to pay the same.

8. The charter party provides in _____ thereof as follows:

[*state charter terms*]

9. The bill of lading issued at Manzanillo with respect to the _____ there loaded contains, among others, the following provisions:

[*state charter terms*]

10. The cargo has been discharged from the vessel _____ but kept in the possession of the plaintiff in order to retain and enforce its lien, and is now in railroad cars, subject to the order of the plaintiff. If the dead freight now due the plaintiff and the freight to become due are not promptly paid, demurrage and other charges will accrue against said cargo.

11. The plaintiff has duly performed all conditions and obligations on its part to be performed.

Wherefore the plaintiff prays that a warrant for the arrest of the _____ tons of _____ lately laden on board the _____ may issue, and that all persons claiming any interest therein may be cited to appear and answer the matters aforesaid, and that the plaintiffs may have judgment for the amount of the dead freight, and any other freight and other charges which may accrue on said _____, together with interest and costs, and that the _____ may be condemned and sold to pay the same, and that plaintiff may have such other and further relief as the justice of the cause may require.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-11 and 1-12 *supra*.



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*4-I Benedict on Admiralty FORM No. 1-285***FORM No. 1-285 Complaint In Rem Against Cargo--Enforcement of Bill of Lading Freight Lien**

[Caption, Jurisdictional Statement, and
 Allegations Concerning Parties and Property] n1

4. Pursuant to the terms of three certain bills of lading, photostatic copies of which are attached hereto and incorporated herein as Exhibits A, B, and C, respectively, _____, at the ports and times hereinafter mentioned, shipped on board the vessel _____ various quantities of _____ [cargo] to be carried to the port of _____ and there delivered to the order of Bank, _____, notify _____, _____, as follows:

Port	Date	Quantity	Bill of Lading
_____	_____, 20	_____ tons, more or less	Exhibit A
_____	_____, 20	_____ tons, more or less	Exhibit B
_____	_____, 20	_____ tons, more or less	Exhibit C

5. All of the bills of lading provide for the payment of freight at the rate of \$ _____ and that such freight is payable at destination. The bills of lading issued at _____ contain, among others, the following provision:

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[state terms]

The bill of lading issued at _____ contains, among others, the following provision:

[state terms]

6. The vessel _____, with the _____ properly loaded and stowed on board, sailed from the ports of _____ and _____ and duly arrived at the port of _____ on or about _____, 20____.

7. The plaintiff duly notified the shipper and consignee and the notify party, _____, that on arrival of the vessel at _____ delivery would be made in accordance with the contracts of carriage to the persons entitled thereto on presentation of the bills of lading and payment of freight and all other charges due and compliance with governmental or other requirements. The plaintiff further notified such parties that if the persons or parties entitled to delivery were not present and prepared to receive the cargo and meet all conditions necessary to delivery it would put the cargo in storage ashore subject to the liens of the vessel and the plaintiff for all freight and other expenses.

8. After the vessel arrived at _____ and was prepared to discharge and deliver the cargo no one appeared to receive delivery of the same and after the lapse of a reasonable time the plaintiff discharged the _____ from the vessel, had it weighed and put it in ground storage with the _____ Railroad Company in _____.

9. The outturn weight of the _____ when discharged from the vessel at _____ was _____ long tons and the freight earned and due thereon amounts to _____, which sum remains due and unpaid.

10. In addition the following expenses have been necessarily incurred by the plaintiff in connection with the weighing and storage of the aforesaid _____:

Expenses of weighing	\$ _____
----------------------	----------

_____	_____
-------	-------

Expenses of moving the _____	_____
------------------------------	-------

_____ from the ship's	_____
-----------------------	-------

side and storage expenses	_____
---------------------------	-------

_____	_____
-------	-------

3% tax on weighing and storage	_____
--------------------------------	-------

11. The storage of the _____ was made with the express understanding that the _____ Railroad Company would hold the _____ for the account of the plaintiff and the vessel and subject to the plaintiff's direction and control and subject also to its liens for freight and other expenses incurred in connection with the weighing and storage of the _____ and accordingly the plaintiff remains in possession of the cargo and the plaintiff retains its liens thereon for the freight due and other expenses necessarily incurred in connection with the weighing and storage of the _____.

12. After the _____ was placed in storage due demands were made for payment of the freight and

other expenses but to date these sums have not been paid.

13. The _____ still is in storage with the _____ Railroad Company in _____, and storage charges continue to accrue thereon and no one has made or offered to make payment of the freight and expenses, the bills of lading have not been surrendered to the plaintiff and no delivery of the cargo has been made nor has anyone demanded delivery or offered to comply with the requisites necessary to delivery.

14. The plaintiff has duly performed all conditions and obligations on its part to be performed.

[*Prayer for Process n2 and Verification*] n3

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form No. 1-284 *supra*.

(n3)Footnote 3. *See* Form Nos. 1-11 and 1-12 *supra*.



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4-I Benedict on Admiralty FORM No. 1-286

FORM No. 1-286 Complaint In Personam by Carrier Against Shipper--Freight and Demurrage¹

*[Caption, Jurisdictional Statement, and
Allegations Concerning Parties]* n2

4. At all times hereinafter mentioned, plaintiff was and still is an ocean carrier of goods for hire between _____ and _____.

5. From _____, 20 ____ through _____, 20 ____, defendant was a shipper, billing party and/or owner of shipments of household goods and personal effects, for which bills of lading were issued, which shipments were carried aboard vessels owned or operated by plaintiff from the port of _____ to _____ and there delivered to the respective consignees, pursuant to the terms of the aforesaid bill of lading contracts.

6. In connection with the aforesaid carriages, defendant agreed and otherwise became obligated to pay the accrued freight, demurrage and related charges in the total amount of \$ _____.

7. Despite demands by plaintiff, defendant has failed to pay said freight, demurrage and related charges in connection with said shipments and there is due and owing to plaintiff from defendant the amount of \$ _____ in connection with the aforesaid shipments.

[Demand for Judgment] n3

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Sea-Land Service, Inc. v. La Isla Transport Corporation*, Civ. No. 80-1821 (E.D.N.Y. 1980). *See also* Forms Nos. 1-270 through 1-272.

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.



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4-I Benedict on Admiralty FORM No. 1-287

FORM No. 1-287 Complaint in Personam by Trustee in Bankruptcy Against Shipper--Freightn1

[Caption and Jurisdictional Statement] n2

2. _____ and _____ were adjudicated bankrupt on _____, 20____, after having initiated proceedings for reorganization under Chapter 11 of the Bankruptcy Act, *11 U.S.C. § 1 et seq.* Prior to that time, _____ and _____ were _____ corporations, _____ with its principal place of business in _____ and _____ with its principal place of business in _____ respectively, and they were common carriers by water inter alia, in the foreign commerce of the United States as defined in the U.S. Shipping Act of 1984 and were common carriers in such commerce of defendant's cargoes as hereinafter set forth.

3. Defendant, _____, is a corporation organized and existing under and by virtue of the laws of one of the states of the United States having its principal place of business at _____ and is the shipper of the goods described in the bill of lading more particularly described below, and is within the jurisdiction of this Honorable Court.

4. On or about _____, 20____, the defendant delivered to the vessel _____
[describe terms of bill of lading].

5. Despite due demand, defendant, _____, has failed to pay the freight and charges due with respect to the aforesaid carriage of cargo from _____ to _____ and there is now due and owing to plaintiff from defendant, _____, the total of _____, together with interest thereon.

[Demand for Judgment] n3

Dated _____

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Wyle, Trustee, v. Nesmer, Inc.*, Civ. No. 80-177 (E.D.N.Y. 1980).

(n2)Footnote 2. *See* Form No. 1-1 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.



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4-I Benedict on Admiralty FORM No. 1-288

FORM No. 1-288 Complaint In Personam Against Vessel Owner--Prepaid Freight

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n1*

4. On or about _____, 20____, _____ [state delivering party] delivered to the defendant, certain goods to be transported by it in its vessel _____ from the City of _____, _____, in the United States, to the City of _____, in the _____, which goods consisted of [set forth description of goods].

5. On or about _____, 20____, defendant made and delivered to _____ [delivering party] a bill of lading dated _____, 20____, acknowledging receipt of the goods, and setting forth the terms and conditions under which the goods were to be transported. A copy of the bill of lading is attached hereto and incorporated herein as and Exhibit A.

6. On _____, 20____, _____ [delivering party] prepaid the freight charges to defendant in the sum of \$_____.

7. On _____, 20____, _____ [delivering party] assigned the bill of lading herein to plaintiff.

8. On or about _____, 20____, defendant placed the goods upon the vessel _____ for transportation.

9. On or about _____, 20____, the vessel _____ was sunk at sea and the goods were lost.

10. Defendant failed to deliver the goods and therefore the sum of \$ _____ paid to defendant by plaintiff as freight charges was not earned by defendant.

11. By reason of the foregoing, defendant owes plaintiff the sum of \$ _____ with interest.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-5 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.



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FREIGHT

4-I Benedict on Admiralty FORM No. 1-289

FORM No. 1-289 Complaint In Rem and In Personam/General Contractor's Failure To Pay Agreed Freight

[Caption] n1

Plaintiff, _____, by its attorneys, for its Complaint In Personam and In Rem, respectfully alleges as follows:

1. At all times hereinafter mentioned, plaintiff, _____, was and now is a _____ with its principal office and place of business at _____, within the jurisdiction of this Honorable Court.
2. At all times hereinafter mentioned _____, was engaged in the transportation of cargoes by barge.
3. At all times hereinafter mentioned defendant, _____, was and is a Pennsylvania Corporation and engaged in the construction industry.
4. At all times hereinafter mentioned defendant, _____, was the general contractor in connection with the construction of the _____ at _____ and is within the jurisdiction of this Honorable Court.
5. This is a maritime action In Personam and In Rem within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*.
6. That on or about _____, 20 _____, the plaintiff and the defendant entered into a written contract, evidenced by a sub-contract dated _____, 20 _____ and a letter dated _____, 20 _____ wherein plaintiff agreed to furnish transportation services to transport approximately _____

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short tons of _____ from _____, _____ to
 _____, _____ in two trips by barge.

7. By the terms of the aforementioned contract defendant agreed to pay plaintiff \$ _____ per trip for its services.

8. The first trip was scheduled to take place between _____, 20 ____ and _____, 20 ____, weather permitting, with payment for the trip to be made by defendant to plaintiff by _____, 20 ____.

9. The second trip was scheduled to take place between _____, 20 ____ and _____, 20 ____, weather permitting, with payment to be made by the defendant to the plaintiff by _____, 20 ____.

10. The plaintiff has performed the obligations it agreed to perform under the Contract with defendant and has demanded payment pursuant to the terms of the agreement.

11. The defendant has failed to pay the agreed freight and is indebted to the plaintiff in the sum of _____ \$ _____ Dollars.

12. The plaintiff has a lien against the cargo transported for the amount of the freight due and owing.

13. The _____ are presently laden on two barges owned by the plaintiff which are in the control and custody of the defendant either at _____, or a terminal used by the defendant at _____.

14. The defendant, as required, will remove the _____ from the barges _____ and _____ and incorporate them in the construction project.

15. If the defendant is permitted to carry out this operation the plaintiff will be irreparably harmed as it will be prohibited from identifying the cargo and asserting its lien against same for the transportation service performed.

Wherefore, plaintiff prays for the following relief:

1. That a warrant for the arrest of the cargo presently laded aboard the barges _____ and _____ may issue, and that all persons claiming any interest therein be cited to appear and answer the matters aforesaid.

2. That judgment may be entered in favor of the plaintiff and against the defendant, _____, and the cargo presently laden aboard the barges _____ and _____ for the sum of \$ _____ together with disbursements, interest and costs and that the cargo may be condemned and sold to satisfy said judgment.

3. That the defendant be restrained from discharging the cargo of presently on the barges _____ and _____

4. That plaintiff may have such other and further relief as may be just in the premises.

Dated _____

 Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.



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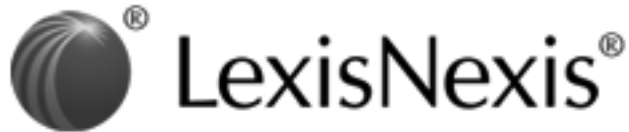
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GENERAL AVERAGE *

4-I Benedict on Admiralty FORM No. 1-313

FORM No. 1-313 Complaint In Rem by Cargo Owner--General Average

*[Capitol, Jurisdictional Statement, and
Allegations Concerning Parties] n1*

4. In the month of _____, 20 _____, the vessel _____ was at _____, having gone there to be loaded with a cargo of _____ at ports or roads in _____, and being so loaded to proceed through the _____ Canal to a port of the _____ discharge at _____.

5. In the months of _____ and _____, 20 _____, there was loaded by the plaintiffs upon the vessel _____ a cargo of _____, and bills of lading given therefor, in each of which the vessel master acknowledged the receipt of the cargo therein mentioned in good order, and well conditioned, and agreed to transport the cargo to the ordered port of discharge and there deliver the same in the like good order, to _____, who were the bankers of plaintiffs, to whose order the cargo was made deliverable, as security for moneys advanced, or agreed to be advanced by them on the account of the plaintiffs under letters of credit issued by the bankers, and the bankers have been paid in full for all advances made by them thereon, and have delivered the bills of lading to the plaintiffs, who were the owners of the _____.

6. Thereafter the vessel _____ sailed with the cargo laden on board consisting of _____, weighing _____, _____, having received orders to call at _____ as provided in the charter, and while she was prosecuting her voyage, and on or about _____, 20 _____, while on her way to _____, a fire was discovered in the No. 2 hold, located forward of the engine room, to extinguish which and prevent the total loss of the vessel, cargo and freight, the master of the vessel caused the hatches to be opened, holes cut in the deck and water poured through the hatches to extinguish the fire, the engines being kept going full speed in order to reach _____, to which the

master caused a call for assistance to be sent, and it being found impossible on account of the intensity of the fire to continue the voyage, the vessel was moored to the canal bank and like efforts to extinguish the fire continued, and assistance having been sent from _____, which reached the vessel on the same day, more water was on that day and the following day pumped into the No. 2 hold, and by flooding it and submerging the cargo there stowed, the fire was finally extinguished. That the water so poured into No. 2 hold destroyed the cargo and also destroyed a large part and greatly damaged a further portion of the cargo in the after holds.

7. The fire having been completely extinguished, the vessel _____, after discharging part of the cargo of sugar from No. 3 and No. 4 holds, and pumping the water out of her holds, was towed to _____, where she was repaired, and thereafter proceeded on her arrived in the port of _____ on _____, 20 _____, where she now is.

8. The vessel _____ is liable to contribute in general average for the value of the plaintiffs' cargo damaged and destroyed by the water poured into the vessel in order to extinguish the fire.

9. The value of the damaged and destroyed cargo is estimated at the sum of _____ dollars and the value of that brought forward about _____ dollars.

10. The contributory value of the vessel _____ is estimated at about the sum of _____ dollars.

11. The amount of the contribution in general average which the vessel _____ should pay is estimated at the sum of _____ dollars.

[*Prayer for Process and Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-2 *supra*.

(n2)Footnote 2. *See* Form Nos. 1-3, 1-10, 1-11 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.).



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CHAPTER I COMPLAINTS
GENERAL AVERAGE *

4-I Benedict on Admiralty FORM No. 1-314

FORM No. 1-314 Complaint In Personam for Readjustment/General Average

[Caption and Jurisdictional Statement] n1

2. Plaintiff now is, and at all of the times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of _____, with a place of business at _____.

3. Defendant, _____, is a corporation created under and existing by virtue of the laws of _____ carrying on business in _____, _____, and elsewhere as shipowner, and at all the times hereinafter mentioned, owned, and now owns, among other vessels, the vessel _____.

4. Defendants, _____ and _____ are, and at all the times hereinafter mentioned were, copartners doing business under the name of _____ in _____ as ship brokers and as agents for shipowners, including defendant, _____.

5. Defendant, _____, is a corporation created under and existing by virtue of the laws of the State of _____, carrying on business in _____, _____.

6. In _____, 20____, there was shipped at on board the vessel _____, as a common carrier, various cargoes of _____ in good order and condition belonging to plaintiff and consigned to or for plaintiff including _____ shipped on _____, 20____, by _____, created under and existing by virtue of the laws of _____, affiliated with plaintiff _____ [cargo] were consigned to _____ Bank of _____, or order, the said bank being the banker and representative of plaintiff as the lawful owner of

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said cargoes which was so shipped in consideration of an agreed freight and in accordance with the terms, in so far as the same were valid and binding on the shippers and plaintiff, of bills of lading then and there issued for the said shipment. Said cargoes were also shipped pursuant to an agreement of defendant, _____, to provide said vessel for the voyage and to convey such cargoes in properly equipped refrigerated spaces on said vessel, and to cause the same to be conveyed under customary bills of lading.

7. On _____, 20 _____, the vessel _____ sailed from _____ bound for _____, having on board said _____ [cargo] and a general cargo laden there and belonging in part to other owners than plaintiff.

8. On the morning of _____, 20 _____, the vessel _____ being off her course, stranded on _____ Reef, off _____ Island, near _____, and went on the reef at virtually full speed and with such force that the safety of the vessel, as well as of the cargo, was seriously in peril. Although her engines were worked in efforts to float her, the vessel remained fast and took a heavy list to starboard, pounding heavily, and in the course of the day took water into all bilges and tanks, so that her destruction and the loss of her cargo were imminent.

9. During the morning of _____, 20 _____, by order of the master, the cargo consisting of _____ belonging to plaintiff and consigned to its representative was jettisoned to lighten said vessel and save her from destruction, and the other cargo on said vessel from total loss. The jettison of _____ belonging to plaintiff was continued from day to day for the like purpose until on or after _____, 20 _____ with the result that said vessel was thereby enabled to be floated on _____, 20 _____, and after temporary repairs were effected at _____, was enabled to resume her voyage and thereafter to arrive at the port of _____ via where she put in and remained some four days.

10. The following is a statement of the quantity and values at the port of _____ as of the time of the arrival of the _____ at _____, of the cargo belonging to plaintiff which were jettisoned:

Total amount claimed in general average account _____ \$ _____

11. After the arrival of the vessel _____ at the port of _____ on _____, 20 _____, average bonds, dated _____, 20 _____, were taken from the various cargo owners, including plaintiff, for the purpose of securing payment of their general average contributions, plaintiff also making a money deposit. The bonds were made to defendant, _____, and/or defendant, _____, who were named in the bonds alternatively as trustees for all concerned, provision being made for an adjustment of general average by _____.

12. After completing the discharge of her cargo on _____, 20 _____, the vessel _____ sailed from the port of _____, defendant vessel _____, making, as plaintiff is informed, a settlement solely in accordance with the terms of the general average adjustment subsequently stated by said defendant _____.

13. In the general average adjustment, the adjusters erroneously value the jettisoned sound cargo, belonging to plaintiff at only \$ _____, instead of \$ _____, the true value of said cargo at the port of _____.

14. In the adjustment, the adjusters further erroneously excluded plaintiff from any recovery whatever in general average, either against defendant, _____, or the vessel _____, or against any of the

other owners of cargo saved by reason of the jettison of cargo belonging to plaintiff.

15. The statement of general average made by the adjusters was completed under date of _____, 20____, and from this statement it appears that the contributory value of said vessel as saved was fixed at \$ _____ and her proportionate contribution or payment at \$ _____ and the contributory value of shipowner's freight was fixed at \$ _____ and its proportionate contribution or payment at \$ _____, but that erroneously neither said vessel nor defendant, _____, as owner of the vessel, was required to pay or contribute in general average anything to plaintiff by reason of the jettison of cargo belonging to plaintiff.

16. It further appears from the statement of general average that the total contributory value of the cargo saved was adjusted at \$ _____ and the amount payable therefrom at \$ _____, and that the contributory value of the saved cargo of plaintiff was adjusted at \$ _____ and that the net payable by plaintiff was adjusted at \$ _____, but that erroneously the other owners of cargo saved were not required to contribute anything to plaintiff by reason of the jettison of cargo belonging to plaintiff.

17. Plaintiff has duly and repeatedly claimed and demanded of the adjusters that a readjustment in general average be made, in accordance with the claims of plaintiff as aforesaid, and that the trustees settle the claims of plaintiff accordingly, but said demands have been refused both by said defendants and on the part of the defendant, _____.

Wherefore plaintiff demands that defendants be cited to appear and answer all and singular the foregoing, and that by direction of this Honorable Court a readjustment in general average be made in accordance with the lawful claims of plaintiff herein set forth, and that plaintiff be decreed to recover from defendant, _____, the amounts properly recoverable in general average by plaintiff from said defendant by reason of the jettison of cargo belonging to plaintiff, as herein set forth, and that defendants, _____, as trustees under said average bonds, be decreed to pay or cause to be paid to plaintiff from the other cargo owners to the extent of their proper ratable contributions in general average by reason of the jettison of cargo belonging to plaintiff, as herein set forth, and that plaintiff have such other and further relief as may be just.

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

* *See* 2 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.).



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GENERAL AVERAGE *

4-I Benedict on Admiralty FORM No. 1-315

FORM No. 1-315 Complaint In Personam by Vessel Owner Against Charterer, General Averagen1

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties]* n2

4. On or about _____, 20____, plaintiff as owner of the vessel _____, and defendants entered into a charter party contract to carry a bulk cargo of _____ from the United States to India.

5. The aforesaid contract contained provisions under which defendants agreed to contribute in General Average under the circumstances hereinafter set forth.

6. On or about _____, 20____, with the contract cargo of _____ on board, the vessel _____, suffered a casualty which required her to enter a port of refuge for necessary repairs.

7. A General Average Statement was duly prepared and published by _____, Average Adjusters, which determined that defendants' contribution to General Average expense and loss arising out of the aforesaid incident should be _____ as of _____, 20____.

8. Plaintiff has duly performed all conditions required by it under the contract of transportation.

9. As a result of the defendants' breach, there is due and owing to plaintiff the sum of \$ _____, no part of which has been paid although duly demanded.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Malmonides Transportation Corp. v. India Supply Mission*, 76 Civ. 5676 (LPG) (S.D.N.Y. 1976).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-316

FORM No. 1-316 Complaint In Personam by Vessel Owner Against Marine Insurer/General Averagen1

*[Caption, Jurisdictional Statement and
Allegations Concerning Parties] n2*

4. At all times hereinafter mentioned, the vessel _____ was a containership of _____ tons deadweight capacity, with a gross registered tonnage of _____ tons, having dimensions of _____ feet, _____ inches in length overall, _____ feet, _____ inches in beam, and a draft when fully loaded on summer marks of _____ feet, _____ inches. At all times hereinafter mentioned, she was operated by the plaintiff in foreign trade between ports in _____ and ports in _____ and

5. On or about _____, 20 _____, the vessel _____ was enroute to ports in _____ and _____ having on board cargo in containers which had been loaded at _____ and _____ coast ports. She was at this time in the vicinity of _____ in the _____ Ocean. The cargo was being carried in accordance with and pursuant to the terms and conditions of certain bills of lading on the _____ form, all being of the same tenor, a copy of one of which is attached hereto and incorporated herein as Exhibit 1.

6. On _____, 20 _____, at about _____ hours, a fire broke out in the engine room. The fire was fought by the ship's crew using fire extinguishers, water and CO2. This is a formula - 2 should appear as a subscript At about _____ hours of the same day, it was extinguished, after having spread through the upper engine room trunk area and superstructure, the living quarters, radio room and bridge. The fire was extinguished before it spread to any of the cargo.

7. After the fire was extinguished, the vessel _____ was with- out power and in a position of peril.

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Assistance was obtained from another vessel, the vessel _____, for the sending of wireless messages. On _____, 20 _____, the vessel _____ came alongside and commenced towing the _____ to _____, _____, on the basis of a "no cure-no pay" salvage agreement.

8. The vessel _____ arrived at _____ in tow of the _____ on _____, 20 _____. At _____, the vessel was surveyed, and on the basis of the surveys and tenders received, it was determined that permanent repairs should be made at _____, _____.

9. On _____, 20 _____, _____ containers and _____ crib racks were discharged and transhipped to the vessel _____ and thereafter, it was arranged that the other cargo on board should be transhipped at _____ where adequate facilities were available, and carried on to final destinations in substitute vessels, all in accordance with the terms of the bills of lading, and that the vessel should then be towed to _____ for permanent repairs.

10. Before or at about the time the cargo was transhipped, representatives of the various cargo interests entered into an "Average Agreement and Non Separation of Interests Agreement", a copy of which is attached hereto and incorporated herein as Exhibit 2. All defendants herein have agreed to be and are bound by the said Average Agreement in addition to the terms and conditions of the original bills of lading issued for each shipment.

11. In accordance with the terms of the "Average Agreement and Non Separation of Interests Agreement", the defendants and/or other representatives of cargo interests agreed to pay to plaintiff a proportion of all proper General Average, Salvage, General Charges, Special Charges, and/or other expenses or sacrifices for which the cargo is liable as determined by an Adjustment to be stated by _____, under the Contract of Affreightment and the laws and usages applicable. In the said Agreement, said defendants and/or other representatives of the cargo interests further agreed that in consideration of not being charged a second freight, and in order to minimize expenses and damages and to insure prompt delivery of the cargo, that General Average items should be payable by the cargo interests with the same force and effect as if the cargo had been retained on board the _____ during a prolongation of the voyage while she was towed to _____ and underwent permanent repairs.

12. On _____, 20 _____, the _____ was towed from _____, _____ to _____ Marine Terminal at _____, where the remaining containers and other cargo were discharged.

13. The containers and other cargo discharged at _____ were reloaded into four vessels, the vessel _____, the vessel _____, the vessel _____ and the vessel _____, in which vessels they were carried to their original destinations and were discharged and delivered to the rightful consignees.

14. The vessel _____ was taken in tow by two tugs and was towed to _____, _____, where she arrived on _____, 20 _____. Between _____ and _____, 20 _____, she was surveyed, drydocked and repaired at _____. After trials in the _____, she sailed in ballast to _____, _____ to resume trading and arrived at _____ on _____, 20 _____.

15. The bills of lading under which the cargo on board the vessel _____ was carried, and by which the defendants herein are bound, contained the following clauses, among others:

[state general average clause]

16. The bills of lading were subject also to the provisions of the U.S. Carriage of Goods by Sea Act, approved April 16, 1936, Title 46, U.S.C. § 1300, *et seq.*, which governs the responsibilities and liabilities of the plaintiff and defendants herein. Section 4 of the said Act provides, among other things, 46 U.S.C. § 1304(2):

"Neither the carrier nor the ship shall be liable or responsible for loss or damage arising or resulting from * * *

(b) Fire, unless caused by the actual fault or privity of the carrier."

17. In addition, plaintiff, as owner of the vessel _____, was entitled to the protection of the U.S. Fire Statute, 46 U.S.C. § 182, which provides that no owner of any vessel shall be liable for loss or damage to any merchandise by reason of any fire happening on board a vessel unless such fire is caused by the design or neglect of such owner.

18. Under the aforesaid statutes and the contracts of carriage, the plaintiff is not responsible for the fire which occurred on board the vessel _____ on _____, 20 _____, or the consequences which followed therefrom, because it was not caused by any design or neglect or any actual fault or privity on the part of the plaintiff herein.

19. As a consequence of the aforesaid fire, plaintiff made and incurred certain sacrifices, disbursements and expenses of a General Average nature for the common benefit and to relieve the adventure of a common peril, for the payment of a proper share of which defendants have agreed to be and are bound.

20. Plaintiff appointed as General Average Adjusters, _____, of _____, and these average adjusters prepared a General Average Adjustment dated _____, 20 _____, according to which the proportion of General Average due from each of the respective cargo interests is therein stated.

21. Each of the respective defendants herein executed a General Average Guarantee at or before the time said cargo was delivered at its final destinations, by the terms of which they agreed to pay all proper General Average, salvage and/or special charges for certain specific goods named and listed in the respective General Average Guarantees. A list of the defendants herein and the respective amounts due from each under the terms of the General Average Guarantees executed by same is contained in Schedule A annexed hereto [*schedule omitted*]. The total amount of General Average contributions due from the defendants listed in Schedule A hereto is \$ _____.

22. Plaintiff has demanded payment of the aforesaid amount from the respective defendants hereto, but said defendants have failed and refused to pay their respective proportions of the General Average as stated by

_____.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Containerschiffsreederei T.S. Columbus New Zealand v. Corporation of Lloyd's*, 2081 A.M.C. 60 (S.D.N.Y. 1980).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-5 *supra*.

(n3)Footnote 3. *See* Form No. 1-5 *supra*.

* *See* 2 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.).



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GENERAL AVERAGE *

4-I Benedict on Admiralty FORM No. 1-317

FORM No. 1-317 Complaint In Personam by Average Adjusters Against Insurer of Cargo/General Average

[Caption and Jurisdictional Statement] n1

2. The plaintiffs are and at all the times herein mentioned were general average adjusters with an office and place of business in the City of _____, Republic of _____.

3. _____ is and at all the times herein mentioned was a corporation, incorporated under the laws of the Republic of _____, with an office and place of business at _____ Street, _____, _____, and at all times was a carrier of passengers and merchandise for hire between the ports on the west coast of _____ and ports of the _____, including the port of _____, owning and operating in connection with its business various vessels, including the vessel _____.

4. The defendant is and at all times herein mentioned was a corporation incorporated under the laws of the Kingdom of _____, with an office and place of business at _____ Street, _____.

5. In the month of _____, 20 _____, the vessel _____ was at _____, where she took on a cargo of general merchandise to be carried to the port of _____.

6. In the month of _____, 20 _____, among other cargo loaded upon the vessel _____ were _____ of _____, which were to be carried to _____ United States of America and there delivered to the order of _____, which were to be carried to _____ United States of America and there delivered to the order of _____.

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_____. Bills of lading were issued therefor and delivered to the shippers of the respective lots of merchandise, wherein and whereby it was agreed and provided that subject to the various terms and exceptions contained in the bills of lading the goods were to be carried and delivered as agreed in consideration of the payment of the freight therein stipulated.

7. Thereafter the vessel _____, with the cargo, described on board, sailed from the port of _____ and proceeded on her voyage for the port of _____, and while on her voyage she accidentally ran aground and stranded, causing heavy damages and sacrifices and the expenditure of large sums of money in the salvaging of the steamer and her cargo in the continued prosecution of her voyage.

8. By reason of the foregoing, it was necessary to separate the vessel and cargo at the port of _____ and transship the cargo on the vessel _____, also owned and operated by the owner of the _____, for the port of _____, where in due course the vessel arrived prepared to deliver to the various consignees the cargo.

9. The cargo shipped upon the vessel _____, became and was liable to contribute in general average for the value of the sacrifices, damages and expenditures made and suffered by the vessel owner as hereinbefore described.

10. The amount of general average to be contributed by the cargo, including the particular lots hereinbefore described by the contract of carriage, as well as by the general law maritime, was subject to and determined by the laws, regulations and customs obtaining and in force at the port of _____, where the vessel and cargo interests were separated, and that under and by virtue of those laws, regulations and customs the contributing value of the cargo for purposes of general average is _____ % of its real value and the contributing value of the vessel is _____ % of its real value.

11. Thereafter and pursuant to its rights under the contract of carriage, as well as the general law maritime, the plaintiffs were appointed by the vessel owner as its adjusters to draw up a statement of general average, including the amount payable by the various vessel and cargo interests therein, and proceeded to make up a statement of the general average payable by all of the interest at risk including the cargo and the particular lots of cargo hereinbefore described, and plaintiffs were by agreement between the consignees of the cargo hereinbefore particularly described and the vessel owner, made trustees therefor in the collection of the general average that might be found due from the one to the other.

12. Upon the arrival of the cargo, including the lots hereinbefore described, at the port of the _____, the defendant for a valuable consideration gave at the port of _____ to the plaintiffs a general average agreement in writing to the effect that in consideration of the delivery to the consignees of the two lots of merchandise hereinbefore described, the defendant agreed to pay and guarantee the payment of all general average, salvage and/or special charges for which the merchandise was liable, and thereupon and solely in consideration of the agreement the vessel owner delivered the merchandise to the respective consignees thereof free and clear of all liens, claims, or demands for the payment of the cargo "s share of the general average.

13. The amount of the contribution found by the adjusters to be due in general average from the _____ is \$ _____, and the amount of the contribution found by the adjusters to be due in general average from the _____ is \$ _____, making a total of \$ _____ due from the defendant to the plaintiffs herein as trustees for the vessel owner.

14. The sums of \$ _____, and \$ _____ respectively, represent the amount properly and reasonably due and payable from and by the _____ bales of consigned to _____, and the _____ cases of consigned to _____ Company.

15. By reason of the foregoing the defendant owes plaintiffs the sum of \$ _____ with interest from the _____ day of _____, 20 _____, which sum has been demanded but no part of which has been paid.

[*Demand for Judgment*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-1 *supra*.

(n2)Footnote 2. *See* Form No. 1-6 *supra*.

* *See* 2 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-328

RESERVED

FORM No. 1-328RESERVED



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CHAPTER I COMPLAINTS
INDEMNITY

4-I Benedict on Admiralty FORM No. 1-329

FORM No. 1-329 Complaint by Vessel Owner--Indemnification for Seaman's Wrongful Death Due to Negligent Maintenance of Dock

[Caption] n2

Now COMES _____, plaintiff, and for its complaint against _____, defendant, alleges on information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*.

2. Plaintiff, a _____, is now and was at all times herein mentioned, sole owner and operator of the vessel _____, a vessel of United States registry of several thousand tons burden, duly enrolled and licensed and engaged in commerce and navigation on the _____, their connecting and tributary waters.

3. Defendant, _____, a corporation organized and existing under and by virtue of the laws of the State of _____, with an office and place of business in _____, owned, operated and/or controlled certain premises and docks situated on the _____ in _____, known as the _____ used for the purpose of _____.

4. On or about _____, 20 _____, the vessel _____ was directed by defendant to proceed to _____ Dock No. _____ at _____ for the purpose of loading a cargo of _____. When the _____ arrived at said dock in accordance with defendant's instructions, several crew members, including _____, were put ashore on defendant's dock for the purpose of handling mooring cables in the process of securing the vessel prior to loading the cargo. During the performance of said work, _____ [*identify seaman*] fell from the dock into the

water and died.

5. At the time of the occurrence, _____ was employed by plaintiff as a seaman aboard the vessel _____, and as a consequence of his being so employed, claim for wrongful death was made by his personal representative pursuant to the Jones Act, 46 U.S.C. § 688.

6. Defendant was advised of the claim of _____'s personal representative, and thereafter, plaintiff tendered defense of the claim to defendant. Defendant rejected the tender and plaintiff negotiated a reasonable settlement with _____'s personal representative.

7. While defendant agreed that the terms of the proposed settlement were reasonable, defendant declined to accept liability for the claim, and thus, plaintiff concluded settlement with _____'s personal representative by paying a total sum of \$_____.

8. The maintenance, care and condition of the _____ Dock No. _____ and its appurtenances were under the sole and exclusive direction and control of the defendant.

9. The claim for damages arising as a result of the death of _____ is a claim for which defendant impliedly agreed to assume responsibility and to indemnify plaintiff.

10. *[state reason for death of employee]*

11. Defendant invited the _____ to the _____ Dock No. _____ without disclosing the existence of the power failure and without disclosing the existence of unsafe conditions at the dock.

12. Defendant warranted and agreed to keep its dock in a reasonably safe condition and to reimburse plaintiff for any damages arising from defendant's breach of said obligation and to indemnify and safe harmless plaintiff from and against any and all liability to third persons caused by negligent breach by defendant of its said warranties.

13. The death of _____ was not caused or contributed to by any negligence, fault or want of care on the part of plaintiff or any unseaworthiness on the part of the vessel _____, but was directly and immediately due to the negligent failure of defendant, its officers, agents and employees to maintain its dock in a reasonable safe condition and to provide plaintiff with a safe berth.

14. Plaintiff's liability for damages to _____'s personal representative resulted from the negligent breach by defendant of its obligation to maintain its dock for use by the crew of the vessel _____ by reason whereof plaintiff, by way of remedy over, contribution, indemnity or otherwise, is entitled to full recovery against defendant for the settlement amount of \$ _____ together with interest thereon from _____, 20 _____, as well as reasonable attorneys' fees, costs, expenses and disbursements.

15. At all times mentioned herein, the vessel _____ was on the navigable waters of the United States and the rights, duties and liabilities of the parties are governed by the general maritime law of the United States.

Wherefore, plaintiff prays for judgment against defendant in the amount of \$ _____ with interest thereon from _____, 20 _____, together with reasonable attorneys' fees, costs, expenses and disbursements and for such other and further relief as may be just and proper in the premises.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adopted from papers filed in *Oglebay Norton Co. v. CSX Corp.*, 788 F.2d 361 (7th Cir. 1986). Papers furnished through the courtesy of Thompson, Hine and Flory, Cleveland, Ohio.

(n2)Footnote 2. *See* Form No. 1-1 *supra*.



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CHAPTER I COMPLAINTS

INDEMNITY

4-I Benedict on Admiralty FORM No. 1-340

RESERVED

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