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Benedict on Admiralty

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Volume 4: Practice and Procedure: Forms

CHAPTER I COMPLAINTS

INJURY AND DEATH (SEAMEN) *

4-I Benedict on Admiralty FORM No. 1-341

FORM No. 1-341 Complaint In Rem and In Personam by Seaman--Maintenance and Cure

[Caption and Jurisdictional Statement] n1

2. The plaintiff, _____, was at all times hereinafter mentioned and is now a merchant seaman and entitled under the provisions of 28 U.S.C. § 2016 to bring this complaint without prepayment of costs.

3. The vessel _____ is now, or during the pendency of this action will be, within this district; and, on information and belief, at all times hereinafter mentioned the defendant, _____ was and still is a corporation organized and existing under and by virtue of the laws of _____ with an office and place of business at _____, and owned and operated the vessel _____.

4. On or about _____, 20 _____, the plaintiff signed articles at _____ to serve on board the vessel _____ in the capacity of ordinary seaman for a voyage from the port of _____ to _____ and back to a port of discharge _____.

5. On or about _____, 20 _____, the plaintiff was in the performance of his duties aboard the vessel _____ and on orders of the defendant, through its agents, officers and servants aboard the vessel, _____ [describe activities causing injuries].

6. As a result of the injuries sustained by the plaintiff, and without regard to the question of liability or negligence on the part of the defendant, the defendant became obligated to provide the plaintiff with proper medical care and attention and with the means with which to sustain and maintain himself while receiving outpatient medical care and attention and while unable to resume his normal duties.

7. The plaintiff was a hospital patient at _____ in _____ from 20 _____, to

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_____, 20 _____, and since _____, 20 _____, has been an outpatient at that hospital, and continues to receive treatment and remain an outpatient at the hospital. The defendant has paid the plaintiff his maintenance at the rate of \$ _____ per day through _____, 20 _____, but has failed and refused to pay the plaintiff his maintenance since that date.

8. By reason of the matters and facts above set forth the plaintiff was and is entitled to receive his maintenance for the period from _____, 20 _____, until he has been cured. The amount due and to become due to the plaintiff is \$ _____ as nearly as the same can now be estimated.

[*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 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-342

FORM No. 1-342 Complaint In Rem and In Personam by Seaman--Injury; Maintenance and Cure

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

5. On or about the _____ day of _____, 20 ____ while said vessel was lying at pier _____ the plaintiff, in the performance of his duties and in the exercise of due care and caution, was [*describe seaman's activities and unseaworthy condition*].

6. Said injuries were not caused by any fault or negligence on the part of plaintiff but wholly and solely by reason of the unseaworthiness of the vessel _____, as aforesaid.

7. Plaintiff thereby became sick, sore, lame and disabled and was thereafter removed to a hospital for treatment; has been and will, for some time to come, be confined to his home; has been and will be prevented from working; has lost and will lose large sums of money which he otherwise would have earned; has suffered and will suffer great pain; will, as he is informed and believes, have to pay large sums of money for medical and surgical attendance and medicine, and has been permanently injured, all to his damage in the sum of \$ _____.

FOR A SECOND CAUSE OF ACTION

Plaintiff realleges all the facts set forth in the first cause of action herein and in addition thereto, respectfully shows and alleges:

8. Upon information and belief it was the duty of the master to furnish plaintiff with prompt and proper medical and surgical care and medicines; that the plaintiff was forced to remain on board said vessel for a period of _____ without proper medical and surgical attendance; that during the said time, plaintiff was

suffering intense pain and agony and was in need of immediate medical and surgical attendance but was not furnished with medical aid and attendance and was not removed to a hospital for treatment until the _____ day of _____, 20____.

9. By reason of the aforesaid failure and negligence on the part of the master, the plaintiff suffered excruciating pain and agony, his injuries were greatly aggravated and, as he is informed and believes, have been rendered permanent and incurable and he has been damaged in the further sum of \$_____.

FOR A THIRD CAUSE OF ACTION

Plaintiff realleges all the facts set forth in the first cause of action herein and in addition thereto respectfully shows-and alleges:

10. By reason of the premises, plaintiff is entitled to maintenance, care and cure so long as he shall be disabled and unable to work by reason of the said injury, and to wages for the duration of the voyage on which the said vessel was engaged at the time of said injury to plaintiff.

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

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-341 *supra*.

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

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-343

FORM No. 1-343 Complaint In Rem by Seaman--Maintenance and Cure; Wages

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

4. Some time in the month of _____, 20____, the master, _____, of vessel _____, then lying in the port of _____ and destined on a _____ years' voyage to _____, by himself or his agent hired the plaintiff as a green hand aboard the vessel _____ for the voyage aforesaid, on the two hundred and twenty-fifth lay of share of what should be taken, as wages, and the plaintiff signed the shipping articles, which contract is set forth as Exhibit A to this complaint.

5. On or about _____, 20____, the plaintiff went on board and into the service of the vessel _____ as a green hand, and the said vessel, with the plaintiff on board, proceeded on her intended voyage, and cruised about the _____ and other places for the period of about _____ months, when the vessel had arrived at _____.

6. As the vessel _____ was going out of the harbor at _____, on or about _____, 20____, the plaintiff while engaged in the service of said vessel, and while doing his duty and obeying the commands of the master, _____ [*describe event causing injuries*].

7. While the plaintiff was so confined in the hospital the vessel _____ went to _____, and cruised thereabouts until the month of _____, 20____, and on her way touched at _____ on or about _____, 20____, and took the plaintiff on board, and then proceeded direct to the port of _____, where she arrived on or about, _____ 20____ and has since come to this port, where she is now.

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8. During the said voyage the vessel _____ took a cargo of _____ of great value, being, as the plaintiff is informed and believes, _____; and the plaintiff claims to be entitled to demand and have of and from the said ship, her master and owners, his share, or lay of said cargo, being the two hundred and twenty-fifth part thereof, worth, as the plaintiff verily believes, the sum of _____ dollars and upwards, which the master and owners of the said ship have hitherto refused and still refuse to pay, to the great damage of the plaintiff.

9. By reason of the injuries so received in the service of the said vessel, as above stated, the plaintiff _____ [*state injuries*].

[*Prayer for Process and Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 1-1 and 1-341 *supra*.

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

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-344

FORM No. 1-344 Complaint In Personam by Seaman (Jones Act)--Injury

[Caption] n1

1. This action arises under 46 U.S.C. § 688, as hereinafter more fully appears.
2. During all the times herein mentioned defendant was the owner of the vessel _____ and used it in the transportation of freight for hire by water in interstate and foreign commerce.
3. During the first part of [month and year] at _____ plaintiff entered the employ of defendant as an able seaman on said vessel under seaman's articles of customary form for a voyage from _____ ports to the Orient and return at a wage of _____ dollars per month and found, which is equal to a wage of _____ dollars per month as a shore worker.
4. On _____, said vessel was _____ days out of the port of _____ and was being navigated by the master and crew on the return voyage to _____ ports. [here describe weather conditions and the condition of the ship and state as in an ordinary complaint for personal injuries the negligent conduct of defendant]
5. By reason of defendant's negligence in thus [brief statement of defendant's negligent conduct] and the unseaworthiness of said steamship, plaintiff was [describe plaintiff's injuries].
6. Prior to these injuries, plaintiff was a strong, able bodied man, capable of earning and actually earning _____ dollars per day. By these injuries he has been made incapable of any gainful activity; has suffered great physical and mental pain, and has incurred expense in the amount of _____ dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of _____ dollars and costs. n2

FOOTNOTES:

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

(n2)Footnote 2. This is substantially Form 15 of the Official Forms annexed to the Federal Rules of Civil Procedure.

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-345

FORM No. 1-345 Complaint In Personam by Seaman (Jones Act)/Injury to Crewmember of Yacht

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

A FIRST CAUSE OF ACTION

4. That at all times herein set forth, the defendant, _____ upon information and belief, owns, operates, manages, and controls a certain yacht called _____ registered and documented under the Laws of the United States and flying the American flag.

5. That at all times herein set forth, the plaintiff was in the employ of the defendant as a member of the crew of the yacht _____ serving on board said vessel in the capacity of _____.

6. That on or about _____, 20____, _____ *[state where yacht was located]*, plaintiff was caused to sustain serious injuries as the result of an accident that occurred while she was boarding said yacht.

7. That said accident with resulting injuries was caused by reason of the following negligence of the defendant and the defendant's agents, servants, and employees in that the defendant: *[state alleged acts of negligence]*.

8. That the plaintiff sustained her injuries solely and alone by reason of the negligence of the defendant and defendant's agents, servants, and employees and did not contribute in any way to the injuries sustained by her.

9. That as a result of the accident and resulting injuries plaintiff was caused to sustain and endure pain and suffering and to further sustain and incur a loss of wages and upon information and belief plaintiff is permanently injured and damaged all in the sum of \$ _____.

A SECOND CAUSE OF ACTION

10. Plaintiff repeats, reiterates, and realleges each and every allegation set forth in the Complaint numbered 1 through 10 inclusive with the same force and effect as if set forth herein at length.

11. That on or about _____, 20 _____, while the yacht _____ was docked at the _____, plaintiff was caused to sustain serious and severe injuries, all by reason of the unseaworthiness of said vessel, its appliances, appurtenances, and equipment.

12. That said yacht _____ was unseaworthy on the date and time aforesaid when the plaintiff sustained her accident and injuries, in that [*describe alleged unseaworthiness*].

A THIRD CAUSE OF ACTION

13. Plaintiff repeats, reiterates, and realleges each and every allegation set forth in the Complaint numbered 1 through 13 inclusive with the same force and effect as if set forth herein at length.

14. That the plaintiff, having become injured as herein related by reason of the negligence of the defendant and the unseaworthiness of the vessel, required prompt, adequate medical aid, care, and attention; that it was the defendant's duty and obligation to furnish to the plaintiff prompt and adequate medical aid, care, and attention, which the defendant failed to provide and afford; that by reason of the defendant's failure to provide adequate and prompt medical care, aid, and attention, the plaintiff sustained further and additional pain and suffering and more serious physical damage and, upon information and belief, plaintiff is permanently injured and damaged.

15. That by reason of the premises, plaintiff suffered damages in the sum of \$ _____.

A FOURTH CAUSE OF ACTION

16. Plaintiff repeats and realleges all of the foregoing paragraphs of the complaint numbered 1 through 16 inclusive, with the same force and effect as if herein set forth at length.

17. That upon information and belief, on _____, 20 _____, the plaintiff was caused to suffer in the course of her employment aboard the yacht _____ an aggravation of a preexisting non-disabling condition solely and alone through the negligence of the defendant and the unseaworthiness of the vessel.

18. That by reason of the foregoing, the plaintiff has been required to seek and obtain medical treatment and has been disabled from her employment and will be required to undergo further medical care and attention, all to her damage in the sum of \$ _____.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Littlejohn v. Bakwin*, Civ. No. 83-4343 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 1-1 and 1-5 *supra*.

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

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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INJURY AND DEATH (SEAMEN) *

4-I Benedict on Admiralty FORM No. 1-346

FORM No. 1-346 Complaint In Personam by Seaman for Maintenance and Cure, Attorney Fees, and Double Wages Under Jones Act--Injury n1

[Caption, Jurisdictional Statement and Allegation Concerning Parties] n2

3. At all times material hereto, Plaintiff, _____, was a Jones Act seaman who was entitled to all of the protections of the Jones Act as enumerated therein.

4. This action is brought under the purview of 46 U.S.C. § 688, hereinafter referred to as the Jones Act, and for breach of the general maritime law of the shipowner's duty to maintain a seaworthy vessel. Plaintiff would show that on or about the _____ day of _____, 20____, he received serious and disabling injuries in the course and scope of employment while serving on board the vessel _____. The injuries which your plaintiff received and herein complains of were proximately caused by and resulted solely through the negligence of the defendants, their master, agents, servants, and employees and/or because of the unseaworthiness of the aforementioned vessel in that:

[state alleged acts of negligent]

5. Plaintiff would show that by reason of the injuries sustained as a result of the accident which occurred on or about the _____ day of _____, 20____, he has suffered severe and disabling injuries. As a result of said injuries, plaintiff has suffered the loss of earnings in the past, and the disability from which plaintiff now suffers and will, in all reasonable medical probability, continue to suffer for the rest of his life has caused his earning capacity to be permanently and materially diminished. In addition, plaintiff has suffered great physical pain and mental anguish in the past, and, in all reasonable medical probability, will continue to suffer on a permanent basis great

physical pain and mental anguish. Furthermore, as a result of the injuries which your plaintiff sustained, he has been permanently disfigured and afflicted with a substantial degree of physical impairment which, in all reasonable medical probability, is permanent. Plaintiff has also been forced to incur expenses for medical and hospital care as a direct result of the injuries complained of herein and, in all reasonable medical probability, as a result of the injuries complained of herein plaintiff will continue to incur medical and hospital expenses for the remainder of his lifetime. By reason of the foregoing, plaintiff has been damaged by the defendants in an amount that exceeds the jurisdiction of this Honorable Court.

6. At all times material hereto, the plaintiff was a Jones Act seaman and, as such, he is entitled to all of the protections and remedies enumerated under the Jones Act. Defendants are, therefore, liable to your plaintiff to pay maintenance and cure to plaintiff until such time as plaintiff obtains his maximum medical improvement. Defendants have failed and neglected to honor their obligations to plaintiff to pay the expenses of his maintenance and cure while incapacitated as a result of the injuries complained of herein. Further, plaintiff would show that although demand has been made upon the defendants to pay the plaintiff the maintenance and cure that is properly due and owing him under law, defendants without just cause have wholly failed and refused to pay plaintiff the maintenance and cure to which he is legally entitled. Defendants' refusal to pay neither has nor had any basis in law or in fact, and defendants have not asserted and do not now assert that plaintiff did not become disabled while in service of the aforementioned vessel. By reason of the foregoing, the plaintiff has been required to obtain legal counsel to assist him in collecting sums which are rightfully due him as maintenance and cure, and has obligated himself to pay reasonable attorneys' fees for legal services rendered in regard to the collection of maintenance and cure which is rightfully due your plaintiff. Plaintiff herein prays that upon final trial of this cause, defendants be ordered to pay all maintenance and cure due and owing him, together with interest thereon, and a reasonable attorneys' fee to the undersigned counsel for legal counsel and assistance rendered in collecting said maintenance and cure.

7. In addition to the damages which plaintiff has heretofore complained of, the plaintiff has not been paid wages which are rightfully due and owing to your plaintiff until the end of the voyage of the aforementioned vessel, the ending date of said voyage being currently unknown to your plaintiff. Plaintiff has been refused payment of such wages without any basis in law or in fact. Therefore, under applicable provisions of the Jones Act, plaintiff is entitled to the statutory recovery of double the amount of wages originally due and owing to him. Plaintiff prays that upon final trial of this cause, he be awarded all past due wages, interest on these wages until date of judgment, and all amounts due him as penalties under applicable provisions of the Jones Act.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *De Oliveria v. Delta Marine Drilling Co.*, 684 F.2d 337 (5th Cir. 1982), furnished through the courtesy of Dixie Smith, Esq., Fulbright & Jaworski, Houston, Texas.

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

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

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-347

FORM No. 1-347 Complaint In Rem and In Personam by Seaman--Injury

[*Caption and Jurisdictional Statement*] n1

[*Allegations Concerning Parties as in Form No. 1-341, supra*]

4. On or about _____, 20 ____, the plaintiff signed articles at _____ to serve on board the vessel _____ the capacity of able seaman, at wages of \$ _____ per month, plus overtime, for a voyage from the port of _____ to _____, and back to the port of discharge.

5. The plaintiff entered into the performance of his duties aboard the vessel _____ and on or about _____, 20 ____, while the vessel was at sea on her return voyage to the United States, the plaintiff was ordered by the defendant through its officers, agents and servants aboard the vessel _____, [*describe job activities*].

6. [*state nature of accident, cause and alleged negligent acts, unseaworthiness fault of owner*]

A FOURTH CAUSE OF ACTION AGAINST
THE UNITED STATES OF AMERICA

25. Plaintiff repeats and realleges all of the foregoing para graphs with the same force and effect as though herein set forth.

26. As a result of defendant's unwarranted refusal to pay maintenance and cure plaintiff has been forced to retain

attorneys and has incurred liability for attorneys fees and legal expenses.

27. As a result of the foregoing plaintiff has been damaged in the sum of \$_____.

[*Demand for Judgment*] n2

Dated _____

Attorney for Plaintiff

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-348

FORM No. 1-348 Complaint (Third Party) Against the United State--Personal Injury

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

4. At all times hereinafter mentioned, the third-party defendant _____ was and is the owner of a vessel _____, its identification number and/or registration number being unknown at this time.

5. Third-party plaintiff _____ repeats and reiterates each and every allegation of its answer, a copy of said answer being attached hereto and incorporated herein as Exhibit A.

6. The complaint of the plaintiff herein alleges that plaintiff sustained certain injuries and/or damages the cause thereof alleged is readily seen upon a review thereof, a copy of said complaint being attached hereto and incorporated herein as Exhibit B.

7. If the plaintiff herein did sustain certain injuries and damages, as set forth in plaintiff's complaint, through any negligence, breaches of warranty or strict products liability, other than the plaintiff's own negligence, said injuries and/or damages were sustained wholly or in part by reason of the primary and active negligence, breach of warranty and strict products liability of the third-party defendant herein with the negligence, if any, of the defendant and third party plaintiff being secondary and derivative only.

8. If judgment is rendered against defendant and third-party plaintiff based on the occurrences alleged in plaintiff's complaint, this defendant and third-party plaintiff would have been cast into damages by operation of law and thereby harmed and therefore this defendant and third party plaintiff is entitled to judgment over and against, in whole or in part, the third party defendant.

4-I Benedict on Admiralty FORM No. 1-348

Wherefore, said third-party plaintiff _____ demands judgment dismissing plaintiff's complaint as to this defendant and third-party plaintiff _____ further demands that the ultimate rights of the defendant and third-party plaintiff be determined in this action, and that said defendant and third-party plaintiff _____ have judgment over and against, in whole or in part, the third-party defendant _____ for any verdict or judgment which may be obtained herein by the plaintiff against this defendant and third-party plaintiff with costs and disbursements to abide the event.
Dated: _____

Attorney for Defendant and
Third-Party Plaintiff _____

FOOTNOTES:

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

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-349

FORM No. 1-349 Complaint In Personam by Seaman's Estate (Jones Act)--Wrongful Death

[Caption and Jurisdictional Statement] n1

2. The plaintiff, _____, is the duly appointed and qualified administrator of the estate of _____, deceased, late of the City of _____, State of _____, under letters of administration issued by the _____ Court of the City of _____, State of _____, dated the _____ day of _____, 20 ____.

3. On information and belief at all times hereinafter mentioned the defendant _____ was and still is a _____ duly organized and existing under the laws of the State of _____ with its principal office and place of business in the City of _____, State of _____, and was the owner and operator of the vessel _____.

4. On or about the _____ day of _____, 20 ____, the plaintiff's decedent was employed by the defendant to serve aboard the vessel _____ as a member of her crew in the capacity of able seaman at wages of \$ _____ per month, plus food and overtime.

5. On or about the _____ day of _____, 20 ____, while the vessel _____ was lying in navigable waters of the United States in the port of _____, the plaintiff's decedent was ordered by his superior officers [*state orders*].

6. Pursuant to such orders the plaintiff's decedent _____ [*state activities prior to death*] as a result of which the plaintiff's decedent sustained serious injuries, rendering him unconscious and subsequently causing his death by drowning.

7. The injuries to and ensuing death of the plaintiff's decedent were caused solely by the carelessness and negligence of the defendant, its officers, and agents and servants in:

[state alleged negligent acts and unseaworthy conditions]

8. The plaintiff's decedent left surviving him as his heirs and next of kin his wife, _____, and two infant sons, _____ and _____, all of whom have sustained and will sustain pecuniary losses by reason of the decedent's death, all to their damage in the estimated sum of \$_____.

[Demand for Judgment] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-350

FORM No. 1-350 Seaman's Complaint Under Suits in Admiralty Act, Public Vessel Act, and Pursuant to the Provisions of 28 U.S.C.A. 2016 Permitting Seaman to File Suit Without Prepayment of Costs

[Caption] n1

The Complaint of _____, plaintiff, by and _____, his attorneys, against the United States of America, in an action of tort, civil and maritime, respectfully represents:

FIRST CAUSE OF ACTION

1. That this Honorable Court has jurisdiction over the above entitled action by reason of the Suits in Admiralty Act (*46 U.S.C. Sec. 741, et seq.*) and by reason of the Public Vessels Act (*47 U.S.C. Sec. 786*).
2. That this is an admiralty or maritime claim within the meaning of *Fed. R. Civ. P. 9(h)*.
3. That all and singular matters set forth herein are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.
4. That at all times hereinafter mentioned, the United States of America was and still is a sovereign which has, by law, consented to be sued herein.
5. That at all times hereinafter mentioned, the United States of America owned, operated and had in its possession and control the _____, a merchant and/or public vessel sailing under United States registry.
6. That the plaintiff was employed as a seamen in the capacity of _____ aboard the _____.

7. That on or about _____, 20 _____, the plaintiff entered upon the performance of his duties aboard the aforesaid vessel and was in good health and physical condition.

8. That on or about _____, 20 _____, the plaintiff was caused to be severely injured when, [*describe incident*].

9. That the plaintiff sailed out of the port of _____ in the State of _____.

10. That as a result of the injury sustained by the plaintiff as aforesaid, he has suffered and will continue to suffer great pain and agony and he has required extensive medical care and attention, and he may require additional medical care and attention, and he has lost and may continue to lose large sums of money which he otherwise would have earned, and he has suffered and may continue to suffer severe pain and agony, and he will be permanently partially disabled as a result thereof.

11. That all of said losses, damages and injuries are a direct result of the negligent failure of the defendant to

[*state alleged negligent acts*]

Wherefore, the plaintiff has sustained losses and damages and makes claim in the amount of _____ Dollars (\$ _____).

SECOND CAUSE OF ACTION

12. Plaintiff repeats and realleges Paragraphs 1 through 11 of this complaint with the same force and effect as if set forth herein at length, and in addition alleges:

13. That all of said losses, damages and injuries are a direct result of the failure of the defendant to provide the plaintiff with a safe and seaworthy vessel and with safe and seaworthy personnel, and as a result of the failure of the defendant, to provide and maintain in a proper, safe and seaworthy condition the equipment and appurtenances of the aforesaid vessel; and in that the vessel was otherwise unsafe and unseaworthy.

Wherefore, the plaintiff has sustained losses and damages and makes claim in the amount of _____ Dollars (\$ RU2).

Attorney for Plaintiff

FOOTNOTES:

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

* *See* 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty Form 1-351

Form 1-351 Complaint -- Denial of Payment to Hospital for Medical Treatment

Plaintiff [HOSPITAL], complains and alleges:

INTRODUCTORY ALLEGATIONS

1. This court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1332(a) in that the matter in controversy exceeds the sum or value of \$50,000, exclusive of interest and costs, and the action is between citizens of different states.
2. Venue is properly laid within the central district of California pursuant to 28 U.S.C. Section 1391(a)(2) because the acts complained of have occurred within this district; pursuant to 28 U.S.C. Section 1391 (a)(3) at least one of the defendants is subject to personal jurisdiction in this district at the time this action is commenced and there is no district in which the action may be brought otherwise; and because the ends of justice so require.
3. This action seeks damages, costs, and other appropriate relief for the improper, erroneous and illegal denial of payment for medical, surgical and hospital benefits provided to Defendant [SHIP OWNER]'s employee, [SEAMAN NAME]

THE PARTIES, AND THEIR RELATIONSHIPS

2. Plaintiff [HOSPITAL] (hereinafter referred to as "Plaintiff") is, and at all times mentioned herein mentioned was, a [STATE] corporation duly organized and existing under and by virtue of the laws of the State of [STATE] with its principal place of business in the [PLACE OF BUSINESS].
3. Defendant, [SHIP OWNER], (hereinafter referred to as "[SHIP OWNER]") is and at all relevant times herein mentioned was, a corporation, association, partnership or other business entity duly organized and existing under and by virtue of the laws of Argentina, with its principal place of business in Buenos Aires, Argentina. Defendant [SHIP

OWNER] was authorized to transact and was transacting business in the State of California through its own employees and through agents, including shipping agents, Defendant [AGENT].

4. Defendant [AGENT] (hereinafter referred to as "[AGENT]"), DOES 1-100, inclusive. DOES 1 through 100 inclusive, are, and at all relevant times herein mentioned were corporations, associations, partnerships or other business entities duly organized and existing under and by virtue of the laws of the State of [STATE], authorized to and doing business within the State of [STATE], and maintaining offices in [PLACE OF BUSINESS], [AGENT] is the onshore shipping agent for the defendant [SHIP OWNER], in charge of onshore business for [SHIP OWNER], including, but not limited procuring crew, provisions and medical services for [SHIP OWNER]'s employees.

5. Defendant [CHARTERER'S AGENT] (hereinafter referred to as "[CHARTERER'S AGENT]"), DOES 1 through 100, inclusive. DOES 1-100 inclusive, are, and at all relevant times herein mentioned were, corporations, associations, partnerships or other business entities duly organized and existing under and by virtue of the laws of the State of [STATE]. [CHARTERER'S AGENT] is the onshore shipping agent in charge of onshore business for defendant [SHIP OWNER].

6. Plaintiff is informed and believes and thereon alleges that [AGENT] and [CHARTERER'S AGENT] are the same entity or are alter egos of each other. They share ownership, senior executives, corporate headquarters in [STATE] and office space throughout the United States, including two offices in [PLACE OF BUSINESS].

7. The true names or capacities, whether corporate, associate, or otherwise, of defendants DOES 1 through 100, inclusive are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and on such information and belief alleges, that each of the Defendants sued herein as a DOE is legally responsible in some manner for the events and happening referred to herein and will ask leave of this court to amend this complaint to insert their true names and capacities in place and instead of the fictitious names when the same become known to Plaintiff.

8. The true names or capacities, whether individual, or otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and on such information and by such fictitious names. Plaintiff is informed and believes, and on such information and belief alleges, that each of the Defendants sued herein as a DOE is legally responsible in some manner for the events and happening referred to herein and will ask leave of this court to amend this complaint to insert their true names and capacities in place and instead of the fictitious names when the same become known to Plaintiff.

9. At all relevant times, Defendants, and each of them, were the agents, independent contractors, joint ventures and employees of each of the remaining Defendants, and were at all times acting within the purpose and scope of said agency, independent contract, joint venture and employment, and each Defendant has ratified and approved the acts of each of the remaining Defendants.

10. At all relevant times, Defendants, and each of them, were co-conspirators with each of the other Defendants, and were at all times acting within the purpose and scope of said conspiracy, and each Defendant has ratified and approved the acts of each of the remaining Defendants.

11. At all times herein mentioned, Defendants [AGENT] and [SHIP OWNER] operated, managed, maintained, supervised, directed and controlled the activities of each of the other Defendants so that the activities, acts and omissions of each of the other Defendants were and are in reality the activities, acts and omissions of Defendants [AGENT] and [SHIP OWNER].

12. Defendants, and each of them entered into an oral contract with Plaintiff [HOSPITAL], in the State of [STATE], on [DATE]. In other ways and on other occasions, Defendants had availed themselves of the laws and benefits of the State

of [STATE] and/or have other connections with the State of [STATE], such that personal jurisdiction over those Defendants exists in this court.

FACTUAL BACKGROUND

13. On [DATE], sixty-two-year merchant mariner, [SEAMAN NAME] of the cargo ship, Senator, arrived at the port of [HOSPITAL]. Upon arrival, [SEAMAN] suddenly experienced acute weakness, difficulty in breathing and coughing. He was subsequently seen at the medical offices of [DOCTOR] at the [HOSPITAL] Medical Clinic, where he was determined to be having either pneumonia or severe heart problems. [SEAMAN] was then transferred to [HOSPITAL] Doctor's Hospital and referred to [DOCTOR], who diagnosed [SEAMAN] condition as pulmonary edema. His condition was deteriorating and a coronary angiogram was deemed necessary. Because [HOSPITAL] Doctor's Hospital did not have the necessary equipment and was unable to perform this procedure, [SEAMAN] was transferred to [HOSPITAL].

14. [SEAMAN] was admitted to [HOSPITAL] and a coronary angiogram was performed. The coronary angiogram revealed that [SEAMAN] was afflicted with severely diseased left coronary artery disease. [SEAMAN] was found to have experienced an acute anterior wall myocardial infarction (heart attack) with cardiogenic shock.

15. On [DATE], [SEAMAN] was employed as a Chief Engineer by Defendant [SHIP OWNER], based in Buenos Aires, Argentina, where [SEAMAN] is a resident. [SEAMAN] had arrived at the port of [HOSPITAL] that same day.

16. On [DATE], [HOSPITAL] telephoned [AGENT] and verified [SEAMAN] insurance coverage. Additional verbal pre-authorization of benefits was obtained by [HOSPITAL] from [AGENT], prior to [SEAMAN] admission to [HOSPITAL].

17. Defendant [AGENT] informed [HOSPITAL] that [SEAMAN] was a visiting seaman from another country and that he was fully insured. [AGENT] orally agreed, warranted and guaranteed that it would pay all of [HOSPITAL]'s billed charges if [HOSPITAL] would provide immediate medical services to [SEAMAN]. Further, [AGENT] provided [HOSPITAL] with the phone number and billing address of [AGENT], identifying itself as the entity to which claims should be submitted. Thereafter, [SEAMAN] was admitted to [HOSPITAL] for medical treatment of acute anterior wall myocardial infarction with cardiogenic shock.

18. On [DATE], [SEAMAN] received emergent multiple coronary artery bypass surgery at [HOSPITAL] Memorial Hospital. On [DATE], [SEAMAN] was released from [HOSPITAL]. He subsequently returned to his home in [COUNTRY].

19. Beginning on [DATE] and continuing through [DATE], [HOSPITAL] submitted billing invoices and statements to [AGENT] and [SHIP OWNER] and had continuing telephonic communications with [AGENT] and [SHIP OWNER] requesting payments of insurance benefits. Alternatively, [HOSPITAL] requested that it be provided a written denial of benefits and an explanation for why Defendants refused and failed to reimburse [HOSPITAL] for the cost of [SEAMAN] emergent treatment.

20. On [DATE], [SHIP OWNER] offered "on a voluntary basis" to pay 50% of the charges for [SEAMAN] treatment. [HOSPITAL] refused this offer.

21. On [DATE], [SHIP OWNER] and [HOSPITAL] agreed to a settlement in which [SHIP OWNER] would pay 90% of the charges for [SEAMAN] treatment. No payment of any amount was ever received by [HOSPITAL].

22. On [DATE], [SHIP OWNER] represented to [HOSPITAL] that it had determined that its employee, [SEAMAN], had no insurance coverage and that [SHIP OWNER] was not responsible for the charges related to his emergent

admission and treatment at [HOSPITAL]. [SHIP OWNER] then offered to reinstate its original offer to pay only 50% of the charges for [SEAMAN] treatment "on a voluntary basis."

23. To date, [SHIP OWNER] and [AGENT] have failed and refused to provide any payments for medical services provided to [SEAMAN] by [HOSPITAL].

24. In detrimental reliance upon the aforementioned oral contract, verification, pre-certification and pre-authorization provided by Defendants, and each of them, [HOSPITAL] admitted [SEAMAN] and provided medical services and treatment to [SEAMAN]. Had representations of coverage not been made by Defendants, and each of them, [HOSPITAL] would not have allowed [SEAMAN] to be admitted nor would it have rendered services to him.

FIRST COUNT: FOR BREACH OF ORAL CONTRACT AGAINST ALL DEFENDANTS

25. The allegations of paragraphs 1 through 24, inclusive, are incorporated herein by reference.

26. At all relevant times, an oral contract was in full force and effect between [HOSPITAL] and Defendants [SHIP OWNER], [AGENT], ROES, 1 through 100, inclusive, and DOES 1 through 100, inclusive.

27. Pursuant to the terms of the oral contract, Defendants [SHIP OWNER], [AGENT], ROES 1 through 100 inclusive, and DOES 1 through 100, inclusive, and each of them, agreed to pay all of the charges billed by [HOSPITAL], if [HOSPITAL] would provide immediate medical services and treatment to [SEAMAN], their employee/insured. Further, Defendants, and each of them, agreed to reimburse and indemnify [HOSPITAL] for the cost of the treatments and services provided to [SEAMAN], as long as [HOSPITAL] submitted billing statements to [AGENT] after the treatments or services were rendered to [SEAMAN]. Further, under Maritime Laws, [SHIP OWNER] was liable for all of [SEAMAN] necessities, including emergency medical care and treatment.

28. [HOSPITAL] has performed and satisfied all obligations and conditions precedent required on its part to be performed pursuant to the oral contract. At no time prior to the time that [HOSPITAL] rendered medical services to [SEAMAN], did Defendants in any way qualify their guarantee or warrantee that they would pay [HOSPITAL] 100% of its billed charges for services rendered to [SEAMAN].

29. The Defendants, and each of them, have failed and refused and continue to fail and refuse to provide payment, indemnification and reimbursement to [HOSPITAL] for the cost of the treatment and services rendered to [SEAMAN]. In denying coverage for said care and treatment, Defendants, and each of them, have breached their obligation as set forth in the subject oral contract, without excuse or justification.

30. As an actual, legal and proximate result of the aforementioned conduct of Defendants, and each of them, [HOSPITAL] has suffered, and will continue to suffer in the future, damages pursuant to the oral contract, plus interest, and other economic and consequential damages, for a total amount to be shown at the time of trial.

SECOND COUNT: FOR FRAUD AND INTENTIONAL MISREPRESENTATION AGAINST ALL DEFENDANTS

31. The allegations of paragraphs 1 through 30, inclusive, are incorporated herein by reference.

32. Defendant [AGENT] specifically represented to [HOSPITAL] that [SEAMAN] was fully insured for the medically necessary services and treatments which [AGENT] requested that [HOSPITAL] perform. Additionally, Defendant [AGENT] assured, guaranteed, and warranted that Defendants would pay Plaintiff [HOSPITAL] 100% of the costs incurred by [SEAMAN].

33. Defendants, and each of them, falsely and fraudulently represented to Plaintiff [HOSPITAL] that Plaintiff could rely upon the accuracy and validity of [AGENT]'s representations that [SEAMAN] had insurance coverage. Defendants, and each of them, falsely and fraudulently represented to [HOSPITAL] that Plaintiff could rely upon the accuracy and validity of Defendants' verifications, pre-authorizations and pre-certifications of coverage. Defendants falsely and fraudulently represented that [SEAMAN] had insurance coverage and that they would be responsible for payment of 100% of the costs associated with [SEAMAN] medical treatment which was performed by Plaintiff [HOSPITAL].

34. As described above, Plaintiff [HOSPITAL] obtained verification of the insurance benefits for [SEAMAN] from the Defendants, and each of them, prior to performing the necessary medical treatment and services. Defendants, and each of them, represented that [SEAMAN] had insurance coverage and provided pre-certification and authorization for the medical treatment and services. Defendants, and each of them, further represented that the costs of the medical treatment and services would be covered fully under the insurance policy.

35. The representations made by the Defendants, and each of them, were in fact false in that Defendants, and each of them, have refused to pay for the claims submitted by [HOSPITAL] according to the above described representations made by the Defendants and each of them.

36. When the Defendants, and each of them, made these representations they knew them to be false. These representations were made by all of the Defendants with the intent to induce [HOSPITAL] to act in the manner herein alleged.

37. In reliance on the representations of Defendants, and each of them, [HOSPITAL] admitted [SEAMAN] and provided necessary medical services and treatment. [HOSPITAL] did not have knowledge of the falsity of the Defendants' representations and believed them to be true.

38. If [HOSPITAL] had been aware of the existence of the facts not disclosed by Defendants, and each of them, [HOSPITAL] would not have admitted [SEAMAN] into its hospital and provided the medical services and treatment claimed herein.

39. [HOSPITAL]'s reliance on the representations of the Defendants, and each of them was justified. [HOSPITAL] did not have the access to the information in the Defendants' control at the time the medical services and treatment were rendered by [HOSPITAL], nor could it have known that the misrepresentations made by Defendants, and each of them, were false or fraudulent.

40. As a proximate result of the conduct of Defendants, and each of them, in intentionally misrepresenting the health insurance benefits for [SEAMAN] and in fraudulently and intentionally misrepresenting that they would pay for the care rendered to [SEAMAN], [SEAMAN] was admitted to [HOSPITAL] and was allowed to receive medical services and treatment from [HOSPITAL] and its doctors, thereby damaging [HOSPITAL] in an amount according to proof.

41. As a further proximate result of the breach of the oral contract and the intentional misrepresentations of Defendants, and each of them, [HOSPITAL] has incurred other damages, including, but not limited to costs of suit, interest charges and the loss of use of proceeds for the medical services rendered.

42. The aforementioned conduct of Defendants, and each of them, was an intentional misrepresentation, deceit or concealment of material facts known to the Defendant and each of them, with the intention on the part of Defendants of thereby inducing [HOSPITAL] to expend time and money in their services to [SEAMAN], and as such was despicable conduct that subject [HOSPITAL] to unjust hardship in conscious disregard of [HOSPITAL]'s rights, so as to justify an award of exemplary and punitive damages pursuant to *California Civil Code section 3294*.

THIRD COUNT: NEGLIGENT MISREPRESENTATION AGAINST ALL DEFENDANTS

43. The allegations of paragraphs 1 through 42, inclusive, are incorporated herein by reference.

44. Defendants, and each of them, represented to Plaintiff [HOSPITAL] that Plaintiff could rely upon the accuracy and validity of [AGENT]'s representations that [SEAMAN] had insurance coverage and/or that Defendants would pay for the costs of the medical services rendered to [SEAMAN]. Specifically, Defendants, and each of them, represented to [HOSPITAL] that Plaintiff could rely upon the accuracy and validity of Defendants' verifications, pre-authorizations and pre-certifications of coverage. Defendants represented that [SEAMAN] had insurance coverage and that Defendants would be responsible for payment of 100% of the costs associated with [SEAMAN] medical treatment which was performed by Plaintiff [HOSPITAL].

45. As described above, Plaintiff [HOSPITAL] sought verification of the insurance benefits for [SEAMAN] from the Defendants, and each of them, prior to performing the necessary medical treatment and services. In response, Defendants, and each of them, represented that [SEAMAN] had insurance coverage and provided pre-certification and authorization for the medical treatment and services and further represented that the costs of the medical treatment and services would be fully covered under the policy.

46. The representations made by Defendants, and each of them, were in fact false. Defendants, and each of them, knew or should have known of the falsity of their misrepresentations when those misrepresentations were made. Defendants and each of them have refused to cover, and continue to refuse to cover, have refused to pay and continue to refuse to pay the costs and loss incurred by Plaintiff [HOSPITAL] in providing medical services and treatments to [SEAMAN].

47. The Defendants, and each of them, made these representations with no reasonable ground for believing them to be true. Plaintiff is informed and believes and, based upon such information and belief, alleges that Defendants, and each of them, did not have accurate information concerning the existence of insurance coverage for [SEAMAN], and that Defendants, and each of them, were aware that without such information they could not accurately make the representations herein alleged. Further, the Defendants, and each of them, did not perform a reasonable investigation of [SEAMAN] coverage. If the Defendants, and each of them had performed a reasonable investigation, they would have been discovered that Juan Fernando did not, in fact, have insurance coverage. At the time that the Defendants made these representations, and at all times thereafter, Defendants, and each of them, concealed from Plaintiff their lack of investigation of the facts.

48. These representations made by the Defendants, and each of them, were made with the intent to induce Plaintiff to act in the manner herein alleged in reliance thereon and these representations were made with negligent disregard of the truth.

49. In reliance upon the representations of Defendants, and each of them, Plaintiff [HOSPITAL] performed the medical services and has provided treatment to [SEAMAN]. Plaintiff [HOSPITAL] had no knowledge of the falsity of the representations of the Defendants, and each of them, and believed them to be true, when made.

50. Plaintiff [HOSPITAL] could not have discovered the true facts concerning [SEAMAN] lack of insurance coverage before the medical services and treatment were rendered to [SEAMAN]. If [HOSPITAL] had been aware that the representations made by the Defendants, and each of them, were false, Plaintiff would not have performed the medical services or rendered treatment to [SEAMAN].

51. Plaintiff's reliance upon the representations that insurance existed for [SEAMAN] treatment was justified and reasonable in that Defendants, and each of them, provided Plaintiff with pre-certification and pre-authorization to proceed with the hospital admission, and verified the existence of [SEAMAN] coverage. Further [AGENT] represented that Defendants, and each of them, would be responsible for payment of the costs associated with the medical services and treatment rendered to [SEAMAN].

52. As an actual, legal and proximate result of the conduct of the Defendants, and each of them, in making the above mentioned misrepresentations, Plaintiff performed the necessary medical services and provided treatment to [SEAMAN]. Plaintiff has thereby sustained damages in an amount according to proof at the time of trial.

FOURTH COUNT
ESTOPPEL AGAINST ALL DEFENDANTS

53. The allegations of paragraphs 1 through 52, inclusive, are incorporated herein by reference.

54. At the time of [SEAMAN] emergent transfer and admission to [HOSPITAL], the Defendants, and each of them, represented to [HOSPITAL] that [HOSPITAL] could rely upon the accuracy and validity of Defendants' representations regarding verification, pre-authorization and pre-certification of coverage and guaranteed payment for [SEAMAN] medical service and treatment.

55. At the time of [SEAMAN] emergent transfer and admission to [HOSPITAL], Defendants had contacted [HOSPITAL] and verified, pre-authorized and pre-certified coverage regarding [SEAMAN]. At that time, the Defendants, and each of them, represented to [HOSPITAL] that [SEAMAN] was eligible for coverage and that Defendants, and each of them, would reimburse [HOSPITAL] for the costs associated with the care and treatment rendered to [SEAMAN].

56. The representations made by the Defendants, and each of them, as to the verification, pre-certification and pre-authorization of coverage, regarding [SEAMAN], pursuant to the oral contract, were in fact false. The true facts, which were unknown to [HOSPITAL], were that no insurance policy, under which [SEAMAN] medical services and treatment was to be covered, existed, leaving no coverage for the costs of the medical services and treatments rendered by [HOSPITAL].

57. In detrimental reliance upon the representations made by the Defendants, and each of them, [HOSPITAL] was induced to and did rely on the representations to provide, and in fact did provide the services as hereinbefore alleged. Had [HOSPITAL] known of the true facts, it would not have provided services to its detriment.

58. Defendants, and each of them, knew or reasonably should have known that [HOSPITAL] would rely on their representations as [HOSPITAL] was not otherwise inclined to allow [SEAMAN] admission and would not allow [SEAMAN] admission without a guarantee and assurance of payment.

59. The detriment suffered by the [HOSPITAL] is the amount required to reimburse [HOSPITAL] for the time, costs and money expended in rendering the subject services to [SEAMAN]. As a further direct, legal and proximate result of [HOSPITAL]'s detrimental reliance on the oral contract and the misrepresentations of Defendants, and each of them, [HOSPITAL] has been harmed in that it has incurred costs of suit, and [HOSPITAL] has been damaged due to the loss of monies expended in rendering said services for which it was not paid and has suffered damages in the loss of use of the proceeds and income to be derived from the services rendered to which it is entitled.

* See 1 Benedict on Admiralty, ch. XIII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, ch. VII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-371

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FORM No. 1-371RESERVED



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4-I Benedict on Admiralty FORM No. 1-372

FORM No. 1-372 Complaint In Rem by Longshoreman--Injury

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

4. On or about the _____, 20 _____, the plaintiff _____ was employed as a longshoreman by and under the direction of _____ in and about the vessel _____ then lying alongside of the pier at the foot of _____ Street, City of _____ and within this district.

5. *[describe activities of the plaintiff]*

6. *[describe how accident happened]*

7. The accident was caused, without any contributing fault or neglect on the part of the plaintiff, solely by the defective and unsafe condition of the vessel and by the fault and negligence of the master and crew of the vessel _____ in the following, among other particulars, which will be pointed out on the trial of this action:

[state alleged negligent acts, fault and unseaworthiness]

8. By reason of the premises, the plaintiff has sustained severe bodily injuries _____ *[describe injuries]*.

9. The plaintiff is _____ years of age, by occupation a longshoreman and up to the time of the accident as herein set forth, he had earned, on an average, wages of _____ dollars (\$

_____) per week.

10. The plaintiff, in addition to the expenses incurred by him and incapacity to labor, heretofore and hereafter, caused by his injuries, has been put to much expense for treatment and such expense is still continuing and he is unable to state the full amount thereof.

11. By reason of the premises the plaintiff has sustained personal injuries and has been and will be put to expense in the treatment thereof, all to his damage in the estimated sum of \$ _____.

[*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 and 1-12 *supra*.

* *See* 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-373

FORM No. 1-373 Complaint In Personam by Longshoreman--Injury

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

4. Upon information and belief, on _____, 20 _____, the defendant, _____, was the owner or charterer of the vessel _____, and was in possession and control of said vessel; on said day said vessel was lying at _____ of _____, and a cargo of _____ was being discharged from said vessel upon a lighter lying alongside thereof, and that _____, was the contracting stevedore for the discharge of said cargo.

5. Upon information and belief, the defendant, _____, furnished to the said _____, for use in the discharge of said cargo, certain winches, derricks, including the booms thereof, and the falls, blocks and tackle, stays, and other appurtenances to said derricks, all of which were a part of the said vessel's equipment.

6. On the day aforesaid the plaintiff was in the employ of the said _____, as _____, and *[describe activities at time of injury]*.

7. Upon information and belief, the aforesaid happening occurred solely by reason of the negligence of the defendant, in that *[describe negligent acts]*.

8. *[allege injuries 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* 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-374

FORM No. 1-374 Complaint In Personam by Longshoreworker Against Vessel Owner and Chemical Manufacturer--Injury

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

4. On _____, 20 ____, the defendant, _____, owned, operated, managed, and controlled a certain steamship or vessel known as the _____, which was berthed on said date, and for several days prior thereto, at _____.

5. On _____, 20 ____, and for several days prior thereto, plaintiff's employer, _____ [stevedore], was engaged in loading cargo on the _____ at the direction and request, and with the knowledge and supervision, of the defendant, _____; at the time, plaintiff was employed by the _____ as a longshoreman in the said loading; and on _____, 20 ____, he was lawfully in Hold No. _____ on said vessel _____ in the course of his employment.

6. On _____, 20 ____, and for some time prior thereto, there were stored in Hold No. _____ of said vessel certain drums containing dangerous, noxious chemicals or other substances; said drums were in defective, unsafe, damaged, or leaking condition; the defendant, _____ [vessel holder], had knowledge and notice thereof, but the plaintiff had no such knowledge or notice, nor did the defendant warn him thereof, or take an precautions or care as to the condition of said drums or the manner of their storage or presence on said vessel.

7. On _____, 20 ____, while the plaintiff was lawfully in Hold No. _____ of said vessel, the defendant so negligently and carelessly conducted the management, operation, supervision, maintenance, and

control of said vessel and Hold No. _____ thereof, and the drums aforementioned, that the said hold was caused or permitted to become and be filled with noxious, deleterious, dangerous, and harmful fumes and gases, so as to cause the plaintiff to be overcome and to sustain severe external and internal injuries and shock.

8. The aforesaid occurrence and the injuries which the plaintiff sustained thereby were due solely and wholly to the negligence and carelessness of the defendant, its officers, agents, servants, or employees which consisted of the following: in failing to notify the plaintiff that Hold No. _____ where he was required to be and was duly and lawfully engaged in doing his work, was dangerous or harmful to his health and safety and an unfit place in which to work; in accepting or keeping said cargo of drums, containing dangerous, deleterious, and harmful chemicals and substances in defective, damaged, unsafe, or leaking conditions; in causing or permitting said drums to be stored in or about Hold No. _____; in permitting the contents of said drums, or some of them, to leak and be emitted into the hold in which the plaintiff was working, as aforesaid; in failing to warn the plaintiff of the inherent danger of the said cargo of drums; in failing to make a proper and sufficient inspection of the said drums and of said vessel, and, more particularly, of Hold No. _____ thereof; in violating the laws of the United States with reference to the transportation and stowage of dangerous and hazardous articles; in permitting the plaintiff to work in Hold No. _____ at a time when it knew or in the exercise of due care should have known the said hold was a dangerous and unfit place in which to work; and in failing to take any steps to prevent the occurrence complained of.

CAUSE OF ACTION AGAINST DEFENDANT, _____,
CHEMICAL MANUFACTURING CO.

9. On or about _____, 20 _____, the defendant, _____ Chemical Company, delivered to defendant, _____, for carriage to _____ via the _____ steel drums containing _____.

10. Said shipment was loaded and stowed in the Hold No. _____, also known as No. _____ deep tank of the _____ on _____, 20 _____.

11. On _____, 20 _____, and for several days prior thereto, the _____ was engaged in loading cargo on the vessel _____; the plaintiff was employed by the _____ as a stevedore in the said loading; on _____, 20 _____, he was lawfully in Hold No. _____, also known as No. _____ deep tank, on said _____ in the course of his said employment.

12. Defendant, _____ [chemical company], delivered said shipment of _____, for carriage by the defendant, _____, in inadequate, defective, unsafe, and dangerous containers or drums; defendant, _____, knew or should have known that such containers or drums were inadequate, defective, unsafe, and dangerous, and did not warn of or in any way make known to plaintiff the inadequate, defective, unsafe, and dangerous condition of such containers or drums; as a result of this inadequate, defective, unsafe, and dangerous condition of such containers or drums, the contents of certain of said drums seeped out, as a result of which the No. _____ deep tank of the _____, into which this shipment had been loaded as aforesaid, became contaminated with noxious and harmful fumes, and on _____, 20 _____, plaintiff herein was overcome upon entering the aforesaid deep tank.

13. The aforesaid occurrence and the injuries which the plaintiff sustained thereby were due to the negligence of said defendant, _____, its agents, servants, and employees, in failing to have said _____ properly contained in adequate, proper and safe containers for export shipment; in further causing delivery of said shipment in containers that were inadequate, defective, unsafe, and dangerous; and in failing to

warn anyone, including the plaintiff, that said containers were inadequate, unsafe, and dangerous.

14. [*allege injuries 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* 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-375

FORM No. 1-375 Complaint (Cross-Claim) by Vessel Owner Against Marine Chemist--Injury to Harborworkern1

[Caption] n2

CROSS-CLAIM

Now COMES DEFENDANT, _____, Cross-claimant herein, and without abandoning or waiving any defense heretofore asserted in the above entitled cause of action and expressly reserving benefits thereof, for a cross-claim in the alternative, and only in the alternative, against _____ states as follows:

1. Plaintiff, has filed a complaint against cross-claimant, _____ Company, Inc., alleging that plaintiff was injured on the asphalt vessel _____ owned by _____ and that cross-claimant allegedly committed negligent acts making cross-claimant liable to plaintiff, all as are more completely set forth in plaintiff's complaint.

2. In connection with the repair of the vessel _____ at _____ shipyard on the _____ in _____, _____, a marine chemist and president of the _____, performed tests on the _____ and issued certificates dated _____, 20 ____ and _____, 20 ____ certifying that the _____ was "safe for hot work" and "safe for men."

3. Cross-claimant herein avers that the damages alleged by plaintiff in the main demand and any loss and damages ensuing therefrom were not caused or contributed to by any fault, neglect or want of care on the part of cross-claimant, or cross-defendant, but, in the alternative, and only in the alternative, that if cross-claimant, _____, is found liable to plaintiff herein, then cross-defendant is liable to cross-claimant for full indemnity and/or contribution for any sums which may be judged in favor of plaintiff in the main demand and against cross-claimant herein, together with

all costs, expenses and attorneys' fees incurred by cross-claimant herein as a result of cross-defendant's negligence, fault, breach of contract, and breach of express and implied warranties arising out of cross-defendant's performance of services onboard the _____.

4. In the further alternative, and only in the alternative, that if there should be a determination by this Court that there was negligence on the part of cross-claimant, which is specifically denied, then cross-claimant avers that such fault was only technical, secondary and passive, as contrasted to the acts of primary negligence on the part of cross-defendant herein. Cross-claimant avers that it is, therefore, entitled to full indemnity and/or contribution from cross-defendant, plus all costs, expenses and attorneys' fees incurred by cross-claimant in this action.

Wherefore, cross-claimant, in the alternative and only in the alternative, prays for judgment in favor of cross-claimant and against cross-defendant, _____, for full indemnity and/or contribution for any sums which may be adjudged in favor of plaintiff in the main demand and against cross-claimant herein, together with all costs, expenses and attorneys' fees incurred by cross-claimant in this litigation.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Magee v. Bayou Teche*, 548 F. Supp. 270 (E.D. La. 1982), furnished through the courtesy of James A. Cobb, Jr., Esq., Emmett, Cobb, Waits & Kessenich, New Orleans, Louisiana.

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

* *See* 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-376

FORM No. 1-376 Petition for Review--Denial of Claim Under Longshoremen's and Harborworkers' Compensation Act Based on Ruling that Petitioner was Not Engaged in Maritime Employmentn1

[Caption] n2

_____, petitioner herein submits his Petition for Review:

ISSUES RAISED

1. The issue raised for purposes of this appeal is whether or not an employee of a boat building employer, who is injured while testing and sorting a boat for his employer on a navigable waterway, and who in addition, performs other boat inspection and evaluation functions for his employer, is an employee covered under the Longshoremen's and Harbor Workers' Compensation Act.

CONTENTION OF PETITIONER

2. The contention of the petitioner here is that he is an employee covered under the Longshoremen's and Harbor Workers' Compensation Act. In that he was injured while testing a boat in the _____ Estuary, there is no question that the petitioner has satisfied the situs requirement of the LHWCA. In addition, petitioner asserts that since he was testing a vessel for his employer at the time he was injured and, in that, he repeatedly performed similar testing and development tasks for his employer, and, in that, he continually and repeatedly performed other vessel inspection and evaluation functions for his employer, that he has also satisfied the status requirement of the LHWCA. Petitioner consequently contends that, in that he has satisfied both status and situs requirements of the Longshoremen's and Harbor Workers' Compensation Act that he is therefore to be considered a maritime employee within the purview and coverage of that act.

Wherefore, the petitioner respectfully submits that the case should be remanded to the administrative law judge with directions to resolve any remaining issues affecting the amount of compensation payable under the Longshoremen's and Harborworkers' Compensation Act and to enter a compensation order awarding benefits in accordance with such resolution.

Dated: _____

Attorney for Petitioner

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Schwabenland v. Sanger Boats*, 683 F.2d 309 (9th Cir. 1982), furnished through the courtesy of Richard C. Watters, Esq., Miles, Sears & Eanni, Fresno, California.

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

* *See* 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-377

FORM No. 1-377 Complaint In Personam by Longshoreworker's Estate--Wrongful Death

[Caption and Jurisdictional Statement] n1

2. Prior to the commencement of this action, and on or about _____, 20 _____, in and by a decree duly made and entered in the office of the Clerk of the _____ Court of the County of _____, the plaintiff was duly appointed personal representative of the estate of _____, deceased, and has duly qualified and is now acting as such.

3. At the time hereinafter mentioned the defendant, _____, was and still is a foreign corporation and owned, operated and controlled the vessel _____.

4. At the time hereinafter mentioned, the plaintiff's intestate was in the employ of the _____.

5. At the time hereinafter mentioned, the defendant and its agents or representatives contracted with the _____ for the purpose of making certain repairs to the vessel _____.

6. At the time hereinafter mentioned, the plaintiff's intestate was lawfully upon the vessel _____ and was lawfully engaged in the course of his employment thereon.

7. At the time hereinafter mentioned, the vessel _____ was lying in the navigable waters of the United States, at _____ [state location] Street.

8. On or about _____, 20 _____, while plaintiff's intestate was lawfully engaged in the course of his employment upon the vessel _____, the plaintiff's intestate suddenly, without any fault on his part, and wholly and solely through the carelessness and negligence of the defendant, its officers, agents, servants and

employees, was caused to _____ [*describe injuries*] as a result of which he sustained such severe injuries that he thereafter died.

9. [*describe negligent acts of vessel owner*]

10. The plaintiff's intestate left him surviving as his sole heirs and next of kin, _____, his widow, his son, _____ and _____, his daughters, who have incurred funeral expenses and suffered damages, including loss of society, nurture and guidance, all in the sum of _____ dollars (\$ _____).

[*Demand for Judgment*] n2

FOOTNOTES:

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

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

* *See* 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-378

FORM No. 1-378 Complaint In Personam by Estate of Harborworker--Wrongful Deathn1

[Caption and Jurisdictional Statement] n2

2. Plaintiff, _____, is the surviving widow of _____, deceased, and was at all times material hereto and now is a resident of _____, County of _____, State of _____ has been appointed and now is the personal representative of the estate of _____, deceased, under _____ County Probate Cause No. _____.

3. Defendant, _____, a corporation of the State of _____, was at all times material hereto and now is the owner of the vessel involved in the casualty in question, and the owner of a certain batter pile used in the piledriving operation that was underway at the time of the casualty in question.

4. On or about _____, 20 _____, _____, while working in the course and scope of his employment with defendant, was aboard the vessel _____ [describe accident].

5. The death of _____ occurred as a direct and proximate result of defendant's violation of the maritime duties owed to R.M., deceased. The aforesaid breach of maritime duties includes, but is not limited to, _____ [describe alleged negligence].

6. _____ was born on _____, 20 _____, and was at the time of his death _____ years of age, with a working life expectancy of _____ years and a life expectancy of _____ years. He was, prior to his demise, in good health and was earning and was capable of earning between approximately \$ _____ and \$ _____ per year. He left surviving him his _____, and _____ children, _____ of whom

was dependent upon him at the time of his death. The family and/or surviving wife, independently, have been deprived of the love, society, affection, consortium, care, comfort, services, companionship, guidance, training, and support which _____ provided and each member of the family has sustained pecuniary loss by reason of his death in addition thereto. Expenses for funeral and related items have been incurred in an amount which will be set forth at or prior to the time of trial. _____ underwent extreme pain, both physical and mental, and related suffering between the date of the casualty on _____, 20 _____, and the date of his demise on _____, 20 _____. The estate of _____, deceased, has been deprived of the present value of accumulated income and earnings of said decedent had he lived out his normal life plus his non-market services less the present value of his future personal consumption. Plaintiff, _____, as personal representative and individually is entitled to all other additional or different damages now or hereafter by law allowed.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in In the Matter of the Complaint of Hurlen Construction Co., 551 F. Supp. 854 (W.D. Wash. 1982), furnished through the courtesy of Shannon Stafford, Esq., Stafford, Frey & Mertel, Seattle, Washington.

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

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

* *See* 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-379

FORM No. 1-379 Complaint by Longshoreman Against Foreign Vessel Owner--Injury Caused by Fall Through Hole in Ramp

[Caption] n1

The Complaint of _____, individually; and _____ and, as Husband and Wife, by their Attorney, sue _____, Inc. and _____ Lines, as owners and operators of _____, defendant, as follows:

1. That the plaintiffs are citizens of the State of _____ and that the defendant, _____, Inc. and _____ Lines, are body corporates duly organized and existing under the laws of _____, and that the amount in controversy exceeds Fifty Thousand Dollars (\$50,000.00) exclusive of interests and costs pursuant to *Title 28, Section 1332, U.S.C.A.*
2. That the plaintiff, _____, is a longshoreman who is a resident of the State of _____ and that the defendants, at the times of the wrongs alleged, owned, managed, and operated a vessel, namely the _____, using the waterways of the State of _____ and then and there doing business and performing work within the State of _____.
3. That at all times hereinafter mentioned, the plaintiff was employed as a longshoreman by the _____ Corporation.

COUNT I

4. That on or about _____, 20 _____, said vessel was afloat in Berth # _____, State of _____ at the _____ Terminal.

5. That the ship when moored at the aforementioned terminal was afloat on a waterway of the State of _____.

6. That through its duly authorized agents, the defendants authorized, permitted and invited the employees of _____ Corporation, including the plaintiff, a longshoreman, to board said vessel and perform certain work thereon at the aforesaid time and place.

7. That in the performance of his duties, the plaintiff, followed by fellow longshoremen, boarded the defendants' vessel to perform certain work aboard said vessel. After boarding the vessel, the plaintiff was caused to be injured when he stepped into a hole in the ramp. That the plaintiff's fall was caused by reason of the fact that the hole was left uncovered and the ramp was not properly lighted.

8. That as a result thereof, the plaintiff was caused to sustain serious, painful and permanent injuries to his person, was caused to endure considerable pain and suffering, and that as a result thereof was obliged to obtain medical care and treatment, was caused to lose time from his employment, and to sustain the monetary and financial loss occasioned by said loss of work from his employment, he has been prevented and will continue to be prevented from engaging in his usual occupations, pastimes and pursuits which he would have engaged in but for the injury aforementioned. And that plaintiff was otherwise injured and damaged.

9. That all of the injuries and damages herein complained of were caused by the negligence and want of care on the part of the defendants, their agents, servants and employees in that the defendants negligently failed to correct the dangerous condition created by the hole in the ramp and negligently failed to warn the plaintiff and other workmen of the hole. And the defendants, their agents, servants and employees knew or should have known of the existence of said hole in ramp and negligently failed to correct same or warn of same as herein complained of. And the defendants, their agents, servants and employees were otherwise, careless, reckless and negligent.

10. That all of the injuries and damages herein complained of were caused solely by the negligence and want of care on the part of the defendants, their agents, servants and employees without any negligence on the part of the plaintiff contributing thereunto.

Wherefore, this suit is brought and the plaintiff claims _____ Dollars (\$ _____) damages.

COUNT II

_____ and _____, as Husband and Wife, complaining of the defendants herein, respectfully allege:

11. That the plaintiffs do hereby incorporate and adopt by reference all of the allegations of fact, duties and negligence on the part of the defendants, their agents, servants and employees, as set forth in Paragraph First through Tenth herein; and they further allege that they were Husband and Wife at the time of the occurrence set forth in Paragraphs First through Tenth; and as Husband and Wife, they further allege that they have suffered interference with, damage, and injury to their marriage relationship as a result of the injuries sustained by the plaintiff, _____, resulting from the negligence of the defendants.

Wherefore, this action is brought and the plaintiffs, _____ and _____, claim _____ Dollars (\$ _____) damages.

Attorney for Plaintiffs

FOOTNOTES:

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

* *See* 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-399

RESERVED

FORM No. 1-399RESERVED



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4-I Benedict on Admiralty FORM No. 1-400

FORM No. 1-400 Complaint In Rem and In Personam by Passenger--Injury

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

4. On or about _____, 20 _____, the plaintiff was lawfully a passenger for hire aboard the vessel _____ and had paid the compensation required to be paid the defendant for transportation from _____ to _____.

5. On _____, 20 _____, at about _____ o'clock of the day while the plaintiff was going down a stairway provided for the use of the passengers on the vessel _____, the plaintiff was caused to stumble and trip on a _____ and as a result the plaintiff fell down the stairway, sustaining serious bodily injuries.

6. The plaintiff's injuries were caused solely by the negligence of the defendant and without any negligence on the part of the plaintiff contributing thereto.

7. The negligence of the defendant consisted in failing to [*state alleged negligence*].

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 1-10 through 1-13 *supra*.

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-401

FORM No. 1-401 Complaint In Rem and In Personam by Passenger Who Fell in Stateroom--Injuryn1

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

3. That on _____, 20 _____, plaintiff, in consideration of the payment of a specified sum of money, boarded the vessel _____ as a passenger to be transported between the Port of _____.

4. That on _____, 20 _____, plaintiff requested that the personnel of the vessel place a ladder in his cabin to facilitate his ascent and descent from the upper berth to which he had been assigned.

5. That on _____, 20 _____, plaintiff, while utilizing the ladder supplied, sustained a fractured nose and multiple contusions of the face and head due to the defective condition of the bunk, cabin, and ladder.

6. That the aforesaid injuries were sustained solely by the fault, negligence, and carelessness of the defendants, their agents, employees, and officers and crew.

7. That the aforesaid injuries were not caused or contributed to by the plaintiff in any way, but were solely the fault of the defendants.

8. That by reason of such injuries plaintiff has suffered and will continue to suffer physical and mental pain, all to his damage in the sum of \$ _____.

9. That plaintiff has been compelled to spend large sums of money for medical treatment and care and for operative procedures and has lost time from work, all to his further damage in the sum of \$ _____.

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

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Iannucci v. Costa Armatori S.p.A.*, Civ. No. 84-2653 (E.D.N.Y. 1984).

(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 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-402

FORM No. 1-402 Complaint In Personam By Passenger--Injury Due to Defective Door

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

4. On the _____ day of _____, 20 _____, plaintiff was lawfully a passenger on defendant's vessel, _____.

5. On the _____ day of _____, 20 _____, during a heavy rainstorm at sea, plaintiff was thrown by the sudden rolling of the ship against a door jamb and while he was holding himself against it, the door suddenly slammed shut on plaintiff's hand and plaintiff sustained the injuries hereinafter alleged.

6. The accident and the injuries to plaintiff resulting therefrom were caused solely by the negligence of the defendant in maintaining the door in a defective and dangerous condition with its fastenings defective and insufficient for the purpose of holding the door shut, permitting the door to swing open as the ship rolled at sea and to close violently.

7. Defendant had notice and knowledge of the defective condition but it failed to repair the same or warn passengers and in particular this plaintiff of the dangerous and defective condition of the door and its fastenings.

[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 § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-403

FORM No. 1-403 Complaint In Personam by Passenger for Failure to Provide Adequate Medical Care, With Claim for Loss of Consortium--Injury

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

3. At all times hereinafter mentioned, plaintiffs were lawfully passengers on a cruise ship named the _____.

4. Upon information and belief, defendant _____ at all times hereinafter mentioned, owned the _____.

5. Upon information and belief, defendant, _____, at all times hereinafter mentioned operated, managed and/or otherwise controlled the _____.

6. Upon information and belief, defendant, _____, was at all times hereinafter mentioned engaged in the business of a common carrier of passengers for hire.

FIRST CAUSE OF ACTION

7. From _____, 20 _____, to _____, 20 _____, plaintiff, _____, was lawfully a passenger aboard the aforesaid _____.

8. During said period of time, while plaintiff was lawfully aboard said vessel, plaintiff experienced _____ *[describe medical problems]*.

9. During said period of time, while plaintiff was lawfully aboard said vessel, plaintiff sought medical assistance aboard the vessel.

10. During said period of time, while plaintiff was lawfully aboard said vessel, plaintiff received medical assistance on board said vessel.

11. The medical assistance, services, and facilities provided by defendant, _____, were inadequate and improper.

12. Defendant, _____, had a duty to provide adequate medical care to its passengers while they were in the exclusive custody of said defendant.

13. Defendant, _____, negligently and carelessly failed to provide adequate medical coverage for its passengers, more particularly, plaintiff herein.

14. As a result of defendant's negligence, plaintiff was caused to sustain serious personal injuries. [*describe*]

15. As a result of the negligence of defendant, _____, plaintiff was damaged in the amount of \$ _____.

SECOND CAUSE OF ACTION

16. Plaintiff, _____, repeats and realleges each and every allegation contained in paragraphs 1 through 15 with the same force and effect as if fully set forth at length herein.

17. Due to the aforementioned injuries sustained by plaintiff, _____, herein, plaintiff _____ was deprived of her husband's services.

18. As a result of the negligence of defendant, _____, plaintiff, _____, was damaged in the amount of \$ _____.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Schachner v. Costa Lines, Inc.*, Civ. No. 84-1656 (E.D.N.Y. 1984).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-4 *supra*.

(n3)Footnote 3. *See* Form No. 1-5 *supra*.

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-404

FORM No. 1-404 Complaint In Personam by Passenger--Unsafe Passageway

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

4. Upon information and belief, at all the times herein mentioned, the defendants owned, operated, managed, and controlled a certain vessel known as the _____ and were engaged in the business of common carrier of passengers for hire between _____ and _____.

5. On or about the _____ day of _____, 20 _____, plaintiff was lawfully a passenger for hire aboard the said vessel _____ and had paid the compensation required to be paid the defendant for such transportation from _____ and to _____.

6. At all the times herein mentioned, the laws of _____ applied and under such laws and the contract that then and there existed between the plaintiff and the defendant the defendant was required to furnish the plaintiff with a passage on the said ship and to provide her with a reasonable safe passageway and a reasonable safe place to live and go about on the ship and to refrain from injuring her and to protect her from dangerous contrivances and to maintain the ship and its appliances throughout the voyage in a seaworthy condition.

7. On the _____ day of _____, 20 _____, at about _____ o'clock in the _____, while plaintiff was lawfully aboard the said vessel as a passenger for hire and was going through a passageway provided for the use of the passengers on the said vessel, plaintiff was caused to sustain the injuries hereinafter alleged when _____ *[describe incident]*.

8. The injuries were caused solely by the negligence of the defendant.

9. The negligence of the defendant consisted in [*state alleged negligent acts*]

10. [*allege injuries 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* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-405

FORM No. 1-405 Complaint In Personam by Passenger Thrown from Motor Boat--Injury

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

4. The defendants, A _____ or B _____ or both of them, were at all times hereinafter mentioned and in particular on _____, 20 _____, the owners of a planed bottom _____-foot outboard motor boat, the exact description of which is unknown to the plaintiffs, but which is known to the defendants, A _____ and B _____. The defendant, A _____, used the aforesaid motor boat with the full knowledge, consent, and permission of the defendant, B _____, on _____, 20 _____.

5. On or about _____, 20 _____, at approximately _____ .m., in the _____, a navigable waterway, near the _____, the defendant, A _____ requested and permitted the defendant, C _____, to operate and steer the aforesaid motor boat. The defendant, B _____, knew, or should have known, that the defendant, A _____, was going to use the boat and to permit the defendant, C _____, to operate and steer the said boat. Both the defendants, A _____ and _____ knew, or should have known that the defendant, C _____, was an inexperienced boat operator, yet, despite this knowledge, the defendant, A _____, permitted the defendant C _____, A _____, to operate the aforesaid motor boat.

6. At the aforesaid time and place, the defendant, C _____, negligently swerved and turned the boat in such fashion as to cause the plaintiff to be thrown from the boat and to be struck by the stern of the boat, as it completed its swerve, or the boat, while under the negligent control of C _____ and/or A _____, did return to the area where the plaintiff was in a position of peril from which she could not

extricate herself and did then strike and injure her.

7. As a direct and proximate result of the carelessness and negligence of the defendant(s) [*allege injuries 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* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-406

FORM No. 1-406 Complaint In Personam by Passenger Against Boat Owner, Power Company and Boat Manufacturer--Injuryn1

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

4. On or about the _____ day of _____, 20 _____ the plaintiff,
_____, and _____, were passengers on a certain _____, the
property of _____.

5. At the said time and at all times relevant to this complaint, C was piloting the vessel on the _____
in a _____ direction in the vicinity of certain high tension wires owned and maintained by the
Defendant, _____, which high tension wires crossed the _____ approximately
_____.

6. For a considerable period of time prior to _____ 20 _____, the _____ in the
vicinity described was navigable water and each and all of the defendants knew that many sailing vessels and other
vessels frequented this area for purposes of both pleasure and commerce.

7. At the said time and place, the negligence of each and all of the defendants hereinafter described jointly and
concurrently combined to cause injury and harm to the plaintiffs as hereinafter described.

8. At the said time and place, the _____ [power company] well knew that many sailing vessels
frequented the navigable water of the _____ and the _____ [power company]
failed to establish its power lines at a sufficient height to give safe passage across the navigable waters.

4-I Benedict on Admiralty FORM No. 1-406

9. The _____ [power company] was guilty of negligence as hereinafter described:

(a) Maintaining power lines carrying high voltage electricity across navigable waters at a height and under conditions that constituted a hazard to navigation.

(b) Inadequately maintaining their power lines by permitting undue sag in them over navigable waters and installing inadequate and improper circuitry and circuit breakers.

(c) Failing to warn or put warning signs in any way to lawful users of said navigable waters at the time and place described when the _____ [power company] knew or should have known their lines constituted a hazard to and interference with navigation.

10. The action of _____ [power company] obstructing navigable waters in an unreasonable and illegal way constituted a public and private nuisance.

11. _____ was the senior instructor at _____ placed a \$750.00 deposit with _____ to purchase a 22 foot sail boat and while that boat was on order, _____ entrusted a dangerous instrumentality, to wit, the " _____ " 22 foot sailing vessel hereinbefore described to _____. The act of entrusting said dangerous instrumentality to _____ was an act of negligence because in the exercise of reasonable caution the said _____ knew or should have known that _____ was an inexperienced pilot and unfamiliar with the waters of the _____ and the hazards connected with an encounter between the mast of the vessel and the high tension lines of the _____. Furthermore, _____ knew or should have known when he entrusted said dangerous instrumentality to _____ that _____ would be using the boat as a pleasure craft for the transportation of passengers and as a result of said negligent entrustment injury to said passengers was foreseeable by the defendant, _____. The said _____ as also negligent in that he failed to warn _____ of dangers in connection with the navigation of the sailing vessel in the vicinity of the _____ lines.

12. _____, a _____ corporation, was the owner of the vessel entrusted by the said _____ to _____, and said _____ was acting as the agent and servant of _____, at the time of the said entrustment.

13. The vessel as operated by _____ was a dangerous instrumentality and therefore, _____, was liable for the negligence and carelessness of the operators of the craft.

14. At the said time and place, _____ did sail the 22 foot sailboat hereinbefore described in such a way as to cause the mast of the said vessel to contact or come sufficiently close to certain high tension wires that belong to the _____ that a charge of high intensity electricity was caused to run down the mast and into the vessel, inflicting injury and harm on the plaintiffs as hereinafter described.

15. _____ was negligent in installing a mast on a vessel sold by it with the " _____ " 22 foot sailboat which was in no way grounded to avoid the effects of electrical shocks from either the contact with high tension wires or from lightning, and further in installing on the said craft sails of a high degree of inflammability, thereby creating a danger of great proportions to the occupants of the sailing vessel.

16. As a direct and proximate result of the negligence and carelessness of the defendants hereinabove described, the plaintiff, _____, was severely burned on a large portion of her body; the injuries sustained by her are permanent. The said _____, permanently mutilated and scarred, has suffered severe physical pain and suffering and mental distress, and will continue to do so for a long period of time in the future, to-wit, permanently. The

earning capacity of the said B has been severely impaired.

17. As a direct and proximate result of the negligence and carelessness of the defendants hereinabove described, the plaintiff A sustained the following damages:

(a) She was caused to expend large sums of money for the care and treatment of her child,
_____.

(b) She was required to render nursing care and custodial care to her daughter, there being no other source of such care, thereby causing the said _____ to lose her job and to suffer severe loss of income.

(c) She has lost the services of her daughter _____, for a long period of time.

(d) She was personally injured and burned as a result of the negligence and carelessness of the defendants hereinabove described and was caused thereby to sustain severe physical pain and suffering and mental distress and to incur medical expenses for the treatment of her own injuries.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Jowanowitch v. Florida Power & Light Co.*, 277 So. 2d 799 (Fla. Dist. Ct. App. 1973).

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

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

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-407

FORM No. 1-407 Complaint In Personam by Passenger's Estate (Death on the High Seas Act)--Wrongful Deathn1

[Caption] n2

COUNT I

1. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears.
2. Jurisdiction is founded upon *46 U.S.C. § 761 et seq.*, commonly known as the Death on the High Seas Act, in that the negligent act or default leading to the death of plaintiff's decedent, _____, occurred on the high seas beyond a marine league from the shore of any state, territory or dependency of the United States.
3. Plaintiff, _____, resides in _____, _____, and is the widow of _____, intestate decedent, and was appointed administratrix of the estate of _____ by _____ for _____ County, State of _____, on _____, 20____, and is bringing this action on her own behalf and as administratrix and personal representative of the estate of _____.
4. Plaintiffs, _____, a minor, and _____, a minor, are the stepchildren of _____ and they reside with their mother. _____ is their mother, natural guardian and next friend and is also bringing this action on their behalf.
5. At the time of _____ death he was in good health and had a life expectancy of _____ years.
6. Mr. and Mrs. _____ are the father and mother of decedent, _____, and are also

4-I Benedict on Admiralty FORM No. 1-407

designated beneficiaries under the Death on the High Seas Act, 46 U.S.C. § 761 *et seq.* They are residents of _____.

7. Defendant, _____, is the Executrix of the Estate of _____ and resides in _____ County, _____. He was a resident of _____ prior to his death.

8. On or about _____, 20 _____, the yacht _____ (official number _____, Port of _____, _____) owned and operated by defendant's decedent, _____, was docked at Isla Mujeres, Yucatan, Mexico and at all time mentioned herein the _____ [vessel] was under the control and direction of the aforementioned _____.

9. On said date unsettled weather and adverse weather conditions were forecast for the Florida Straits between the United States and Cuba and for the Gulf of Mexico between Isla Mujeres and Marathon, Florida.

10. On said date plaintiff's decedent along with other persons boarded the _____ and at the directions of _____, the _____ [vessel] departed Isla Mujeres bound for Marathon, Florida.

11. On or about _____, 20 _____, on the high seas, a place beyond a marine league from the shores of any state, territory or dependency of the United States, the yacht _____ sank causing its passengers to transfer to a life raft on the high seas.

12. From about _____, 20 _____, until _____, 20 _____, plaintiff's decedent continuously suffered great physical pain and mental anguish because of exposure to the high seas and wind and lack of food, water, and shelter, and he suffered mental anguish because of the jeopardy to his life.

13. On or about _____, 20 _____, _____ disappeared from the life raft and his body was never recovered.

14. The sinking of the _____ and the pain, suffering and death of _____ were a direct and proximate result of the willful and/or wanton carelessness or negligence of defendant's decedent, _____, in at least the following respects: _____ [state alleged negligence]

15. As a result of the death of _____ that was proximately caused by the carelessness and negligence of the defendant, plaintiffs and beneficiaries named by 46 U.S.C. § 761 have been damaged in the sum of _____ Dollars (\$ _____).

Wherefore, plaintiffs demand judgment against defendants in the amount of _____ Dollars (\$ _____).

COUNT II

16. Plaintiffs repeat and reallege paragraphs 1 through paragraph 14 herein.

17. Plaintiffs bring this action pursuant to the provisions of _____ [state survival statute] and under the admiralty and maritime jurisdiction of the Court.

18. By reason of the pain and suffering due to exposure and the mental anguish in contemplation of pending death, plaintiff's decedent, _____, was damaged in the sum of _____ Dollars (\$ _____).

_____) by the conscious pain and suffering up until the time of his death that was proximately caused by the willful and/or wanton carelessness and negligence of the defendant.

Wherefore, plaintiffs demand judgment against defendant in the amount of _____ Dollars (\$ _____) for the pain and suffering endured by plaintiff's decedent between the time of the sinking of the _____ and the time of his death, together with punitive damages in the amount of _____ Dollars (\$ _____).

COUNT III

19. Plaintiffs repeat and reallege paragraph 1 through paragraph 14.

20. The sinking of the _____ and the pain, suffering and death of _____ were a direct and proximate result of the carelessness and negligence of defendant's decedent, _____, in that he negligently caused additional fuel tanks to be placed thereon, which tanks broke away during the stormy weather in the Florida Straits, causing the hold of the _____ to be exposed to the open sea and to take on water thereby causing the _____ to sink.

21. Plaintiffs have been damaged as follows:

(a) _____ (\$ _____) Dollars for the pain and suffering of _____

(b) _____ (\$ _____) Dollars for the wrongful death of _____

Wherefore, plaintiff's demand judgment against defendant in the amount of _____ (\$ _____) Dollars for the pain and suffering endured by plaintiff's decedent between the time of the sinking of the _____ and the time of his death, and _____ (\$ _____) Dollars for the wrongful death of plaintiff's decedent.

COUNT IV

22. Plaintiffs repeat and reallege paragraphs 1 through paragraph 11, paragraph 13 and paragraph 15.

23. At all times pertinent hereto the operation and maintenance of the yacht _____ was within the exclusive control of the defendant's decedent, _____.

24. Plaintiffs are without knowledge as to the precise negligent acts or omissions causing the sinking of the yacht _____, which ultimately caused the pain, suffering and death of _____ and relies on the doctrine of res ipsa loquitur in that the sinking of the yacht _____ would not ordinarily occur in the absence of negligence by the owner and operator, _____, defendant's decedent.

Wherefore, plaintiffs demand _____ (\$ _____) Dollars for the death of plaintiff's decedent and _____ (\$ _____) Dollars for conscious pain and suffering by plaintiff's decedent from the time of the sinking of the _____ until his death.

Wherefore, plaintiff prays that process in due form of law, according to the course and practice of this Honorable Court in cases of admiralty and maritime jurisdiction, issue against said defendant, citing it to appear and answer under oath all and singular matters aforesaid; that plaintiff be awarded a decree for its damages as aforesaid and costs, against said

defendant; and that plaintiff be granted such other and further relief as may be proper.

Attorney for Plaintiff

Dated: _____

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Spaulding v. Denton*, 407 F. Supp. 931, 2076 A.M.C. 1225 (D. Del. 1976), courtesy of Abramo & Abramo, Wilmington, Delaware.

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

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-408

FORM No. 1-408 Complaint In Personam by Passenger's Estate (Death on the High Seas Act)--Wrongful Death

[Caption and Jurisdictional Statement] n1

2. The plaintiff is the duly appointed administratrix of the estate of _____, deceased, late of _____ County, State of _____, under letters of administration of the County Court of _____ County, State of dated _____, 20 ____.

3. At all times hereinafter mentioned, the defendant 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 at _____ in the City of _____, State of _____.

4. On or about _____, 20 ____, the defendant was the owner and operator of a certain vessel of the United States, known as the _____.

5. The defendant, as a common carrier for hire, agreed to transport _____ from _____ to _____, and pursuant to that agreement _____ became a passenger on the _____ on or about _____, 20 ____.

6. After departing from _____ for _____, on _____, 20 ____, with _____ on board as a passenger, the _____ never arrived at _____, but so far as is known met with some disaster at sea as a result of which the vessel st or destroyed.

7. As a result of the disaster _____ was killed or was so injured that he died at the time of the disaster or shortly thereafter, together with all the other persons on the vessel.

8. A quantity of wreckage was recovered floating on the waters of the _____ Ocean approximately 500 miles from _____, and more than three miles from the nearest land, including various articles that had been in the possession of _____.

9. Neither the body of _____ nor that of any other person in the vessel was recovered.

10. The death of _____ was caused solely, directly and proximately by the wrongful act of the defendant, its servants and employees, in causing or permitting the disaster aforesaid.

11. The death of _____ was caused by the wrongful act, neglect, default or carelessness of the defendant, and such act, neglect, default or carelessness was such as would have entitled _____, if death had not ensued, to maintain an action against and to recover damages from the defendant in respect thereof.

12. _____ was the husband of _____ and the father of _____ and _____, infants; he was _____ years of age at the time of his death, and was then employed by the _____ Company in the capacity of foreign agent stationed at _____; he was the sole support of his wife and minor children; at the time of his death he was earning wages in the employ of the _____ Company of dollars per month plus expenses while traveling in the _____; he devoted to the maintenance and support of his wife and minor children everything necessary for their care, maintenance and education; and by reason of his death they have been deprived of his care, guidance, love and protection, as well as his financial support, all to their loss and damage.

13. The plaintiff, by virtue of the statutes in such case made and provided, is vested with a cause or causes of action as administratrix against the defendant for negligently causing the death of the decedent _____.

14. By reason of the premises, the estate of the decedent _____ and his wife and children have sustained damages in the amount of _____ dollars, no part of which has been paid.

[Demand for Judgment] n2

FOOTNOTES:

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

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

* *See 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).*



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4-I Benedict on Admiralty FORM No. 1-409

FORM No. 1-409 Complaint In Personam by Business Invitee Against Vessel Owner and Charterer--Injury

[Caption and Jurisdictional Statement] n1

2. On information and belief, at all the times hereinafter mentioned, the defendants _____ and _____ were the owners of a certain vessel known as _____.

3. On information and belief, on the _____ day of _____ 20 _____, the defendant, _____ Corporation had possession, custody, and control of the said vessel _____ under and by virtue of an agreement or charter party with the defendants _____ and _____, the owners thereof.

4. Under and by virtue of the agreement, the defendant _____ Corporation among other things was required to keep the barge in a reasonably safe condition.

5. On the _____ day of _____ 20 _____, plaintiff was lawfully and legally upon the said barge upon the request of the defendants and with their permission and consent and he was performing his usual duties for one _____, his employer, which duties were required to be performed on the said barge and were so performed at the invitation and with the consent of the defendants.

6. During the performance of his duties at the time and place aforesaid, while plaintiff was assisting in removing a beam which supported a cover over a hatchway, he was required to support and protect himself from falling through said hatchway by holding on to another beam which likewise supported the hatch cover; while he was doing this the beam to which he was holding gave way and broke precipitating the plaintiff through the hatchway into the hold of the said barge, causing him to sustain the injuries hereinafter set forth.

7. The accident and the injuries resulting to plaintiff therefrom were caused wholly and solely by reason of the negligence and carelessness of the defendants and each of them.

8. Such negligence consisted in failing to keep the said barge and in particular the said hatch cover and the beams supporting it in proper repair, in permitting the beam which gave way to be insecurely and improperly fastened to the said vessel, and in permitting a defective and improper beam to be attached to said barge.

9. [*allege injuries and damages suffered*]

[*Demand for Judgment*] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-410

FORM No. 1-410 Complaint by Cruise Ship Passenger Against Vessel Owner--Head Injury Due to Driven Golf Ball

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

I. NEGLIGENCE

1. On or about _____, 20 _____, Plaintiffs and _____ boarded one of Defendant's owned and operated cruise ships, the "_____", which departed from _____, _____, with planned port of calls in the Caribbean. Plaintiffs _____ and _____ had previously contracted with and paid Defendant _____ Inc., _____ Dollars (\$ _____) for reservations upon the said cruise ship, the "_____", one of four cruise ships owned and operated by the Defendant _____, Inc.

2. On _____, 20 _____, at approximately _____ .m., Plaintiffs, while still being paid invitees and passengers, were on the _____ side of the _____. Shortly after _____ .m., Plaintiff, _____, and another passenger proceeded toward the "Lido Bar," adjacent to the "Lido Deck," which is located at the stern (rear) and on the top of the ship. At the very rear of the "_____" is a golf platform used for golf driving. A person who is using the golf platform takes three steps up from the "_____" to get to the golf platform. The golfer then drives shots from the platform out into the ocean away from the body of the ship. The golf platform is semi-enclosed by two small fences on the sides of the platform. Alongside one of these fences is a tall flagpole. Approximately _____ feet directly across from the golf platform is the "_____."

3. While Plaintiff _____ was approaching the "Lido Bar," approximately _____

feet therefrom, a golf ball which had been driven from the golf platform, struck an object and ricocheted back to strike Plaintiff _____ on the left side of his head, above his left ear.

4. The Plaintiff _____, who was at all times acting in a careful and prudent manner and without any negligence contributing to the aforesaid incident, was immediately rendered unconscious by the impact of the golfball, and collapsed to the deck of the ship, sustaining serious and permanent injuries.

5. On the occasion in question, the Defendant, _____ Inc., was guilty of the following negligent acts or omissions, among others: _____ [*describe negligent acts*]

6. As a direct and proximate result of the aforesaid negligent acts and omissions of the Defendant _____, Inc., the invitee Plaintiff _____ was rendered unconscious and collapsed to the deck of the ship due to the impact of the astray golfball.

7. As a further direct and proximate result of the negligence of the Defendant _____, Inc., the remainder of the Plaintiff's " _____," after the above-described incident, was in fact a disaster and no vacation at all. In effect, he lost the benefit of his bargain with Defendant.

8. As a further direct and proximate result of the negligence of the Defendant _____, Inc., the invitee Plaintiff _____ sustained severe, painful and permanent injuries to his body as well as severe and protracted shock to his nervous system, including but not limited to [*describe injuries*], all of which have caused him and will continue to cause him great pain and mental anguish.

9. As a further and direct proximate result of the Defendant's aforesaid negligence, the Plaintiff _____ has been forced to and will continue to expend in the future large sums of money for hospitalization, x-rays, doctors, nurses, medical and psychiatric treatment and medicines in the treatment of the aforesaid injuries.

10. As a further result of the negligence of the Defendant _____, Inc., the Plaintiff _____ has been forced to lose time from his employment, has suffered a loss of wages, and has sustained a disability rating relative to his employment of _____.

11. Wherefore, Plaintiff prays that he be awarded:

1. Compensatory damages in the amount of _____ Dollars (\$ _____).

2. The costs of this action.

II. LOSS OF CONSORTIUM

12. The allegations of fact hereinabove set forth are adopted herein and made a part hereof.

13. As a further and direct proximate result of the aforesaid negligence of the Defendant _____, the Plaintiff, _____ and _____, who were then and are now husband and wife, were caused to sustain and suffer a loss of consortium to the detriment of their marital relation ship, which loss is permanent in nature.

14. The sole and proximate cause of the injuries sustained by the Plaintiffs, _____ and _____, as aforesaid was the negligence of the Defendant, _____, Inc., without any

negligence on the part of the Plaintiffs in any way contributing thereto.

15. Wherefore, Plaintiffs pray that they be awarded:

1. Compensatory damages in the amount of _____ Dollars (\$ _____).

2. The costs of this action.

Attorneys for Plaintiffs

FOOTNOTES:

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

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-425

RESERVED

FORM No. 1-425RESERVED



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INSURANCE *

4-I Benedict on Admiralty FORM No. 1-426

FORM No. 1-426 Complaint In Personam by Vessel Owner--Insurance

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

4. On or about _____, 20 _____, defendants, in consideration of an agreed premium, issued their policy of marine insurance, _____, under which defendants agreed to and did insure certain barges against marine risks.

5. On or about _____, 20 _____, for an additional premium an endorsement to said policy of insurance was issued by defendants under which they undertook to and did insure the vessel _____ under the terms and conditions of said policy, effective _____, 20 _____, and in said endorsement defendants insured the ownership interests of plaintiffs in the barge _____, which interests defendants value at \$ _____.

6. On _____, 20 _____, the vessel _____ stranded at _____, _____ during a severe storm, and was extensively damaged as a result of those insured perils.

7. By reason of the foregoing defendants each are liable to plaintiffs in the amount of _____, or a sum in the aggregate of \$ _____, with interest from 20 _____ at the rate of _____ per annum, no part of which has been paid although duly demanded.

Wherefore plaintiffs demand judgment against each defendant in the amount of \$ _____, or in the aggregate amount of \$ _____ against all defendants with interest at the rate of _____ % per annum computed from _____, 20 _____ together with the costs and disbursements of this action.

Attorney for Plaintiff

FOOTNOTES:

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

* *See* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-427

FORM No. 1-427 Complaint In Personam by Vessel Owner For Explosion--Insuranc

[Caption and Jurisdictional Statement] n2

2. Plaintiff, _____, is and was at all times herein mentioned a corporation organized under the laws of the State of _____ with its principal place of business in the City of _____, State of _____.

3. The plaintiff, _____, is and was at all times herein mentioned a corporation organized under the laws of _____, with its principal place of business in _____.

4. The defendant is and at all times herein mentioned was a corporation organized and existing under the laws of a state other than the State of _____, with its principal place of business in the _____.

5. Plaintiff, _____, was the owner of the _____ at the time of its insurance and loss as hereinafter mentioned, and the plaintiff, _____, had an interest at said times in said vessel. In addition, plaintiff, _____, has assigned to _____ its rights and interest in and to all proceeds of insurance in connection with the loss hereinafter described. A copy of said Assignment is attached hereto and incorporated herein as Exhibit "A."

6. In consideration of the premium paid to it, the defendant did on or about _____ execute a certain policy of insurance insuring against loss or damage to said _____ directly caused by explosion aboard ship or elsewhere. A copy of said policy of insurance, together with endorsement thereon, are attached hereto and incorporated herein as Exhibit "B." As shown thereby, the insuring was from _____, to _____. By endorsement effective _____, the named insureds on the face of said

policy were amended to include the plaintiffs and _____. In addition, there was also a loss payable clause including _____ Bank. All parties above named were insured as their interest may appear. At the time of the loss hereinafter set forth and thereafter _____ had no interest in said vessel, and _____ Bank, whose interest was a mortgage on said vessel, has been paid and satisfied in full and, therefore, has no further interest therein or in the proceeds of the insurance.

7. On or about _____ said vessel sustained damage directly as a consequence of an explosion in the _____ of said vessel while _____ [state location]. The damage resulting therefrom and sustained to said vessel was approximately \$ _____.

8. Following said loss above described, plaintiffs notified the defendant thereof and made claim to the defendant to pay plaintiffs' damages, but defendant has failed and refused to pay the same or any part thereof.

9. As a result of said refusal on the part of defendant, plaintiffs have been compelled to employ its counsel undersigned and to bring this action agreeing to pay said counsel a reasonable attorney's fee for which defendant is liable.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Gulf Florida Terminal Co. v. Interstate Fire & Casualty Co., 423 F.2d 269, 2070 A.M.C. 28 (5th Cir. 1970), courtesy of Allen, Dell, Frank & Trinkle, Tampa, Florida.

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

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

* See 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-428

FORM No. 1-428 Complaint In Personam by Vessel Owner--Insurance

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

4. At all times herein the plaintiff was the owner of the vessel _____, which was engaged in commerce between the United States and foreign countries.

5. In and about the month of _____, 20 _____, the defendant issued its valued policy of marine insurance bearing No. _____, wherein and whereby it insured the vessel _____, in consideration of the premium of \$ _____, for account of whom it may concern, loss if any payable to _____, mortgagee, and/or _____ as interest may appear in the sums of \$ _____ and \$ _____, respectively from the _____ day of _____, 20 _____, midnight to the _____ day of _____, 20 _____, midnight, from loss from perils of the sea, and did agree to pay the sums of \$ _____ and \$ _____ upon the loss of the vessel by peril of the sea.

6. _____ was the previous owner of the vessel and after the issuance of the policy and pursuant to the agreement of sale thereof the defendant did agree to modify the policy and did modify the policy by making the loss payable to _____ as mortgagee or _____ as their respective interests might appear.

7. Prior to the loss hereinafter mentioned the mortgage to _____ had been paid and its insurable interest ceased and the interest of _____ was that of second mortgagee in the sum of \$ _____ and the interest of the plaintiff was that of owner.

8. Upon information and belief, the premiums on the insurance were paid to the defendant.

4-I Benedict on Admiralty FORM No. 1-428

9. Upon information and belief, on or about the _____ day of _____, 20 _____, and while the insurance was in full force and effect the vessel _____ was lost at sea off the _____ in the _____, a peril insured against, and the plaintiff and _____ thereupon became entitled to the payment of the sum of \$ _____ and the sum of \$ _____ making a total of \$ _____.

10. Upon information and belief, on or about the _____ day of _____, 20 _____, _____ wrongfully and without right delivered the insurance policies to _____ which represented the insurers for the collection of premiums and requested their cancellation, all against the protest of the plaintiff and the defendant on or about the _____ day of _____, 20 _____, marked the policies cancelled whereby the interest of the _____ in the policies ceased.

11. The plaintiff demanded payment of the sum of \$ _____ and the sum of \$ _____ but the defendant has refused to pay.

[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 § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-429

FORM No. 1-429 Complaint In Personam by Container Leasing Company as Beneficiary of Lessee's Policy/Insurance

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

7. Plaintiffs are each engaged in the business of leasing ocean cargo containers, chassis, and related equipment for the international carriage of cargo by sea. In 20 _____ or earlier plaintiffs each entered into lease agreements with _____ and various of _____ subsidiary and associated companies for the lease to _____ Line of containers, chassis, and related equipment. _____ was an international common carrier by water. Pursuant to the terms of each of these leases, _____ accepted the responsibility to procure insurance covering the leased equipment for the benefit of the plaintiff lessors. _____ did, in fact, obtain from defendant _____ [insurance company] a policy or policies of all-risk insurance insuring the leased equipment (including, but not limited to, policy No. _____ and _____, and insuring the interest of each plaintiff in the equipment leased by it to _____ against all risks of loss or damage. Each lease either contains a stipulation of the value of each type of equipment leased thereunder or specifies the manner by which the value may be determined, which value governs any claim for loss of damage to the equipment under the insurance policy.

8. Each plaintiff is either an additional insured, and/or a loss payee, and/or is a beneficiary entitled to make claim and receive payment from _____ pursuant to said policy or policies for containers leased to _____ but not returned to plaintiffs, for damage to said containers and related equipment recovered by plaintiffs, and for related sue and labor claims arising from plaintiffs' efforts to recover said containers and related equipment. Each such policy of insurance issued by _____ is a maritime insurance contract.

9. In the latter part of 20_____, _____ became insolvent and in _____, 20 _____,

abruptly ceased operations. Plaintiff lessors, and each of them, duly demanded immediate return of the equipment leased to _____, but _____ failed to return the equipment. During and after the cessation of operations by _____, plaintiffs are informed and believe that said equipment was lost, destroyed, or damaged by external causes, including natural forces, the acts (wrongful or under a claim of right) of third parties, and fortuitous or mysterious causes.

10. Plaintiff lessors, and each of them, went to great effort and expended significant sums to find, recover, and save leased equipment from loss. Many of the units leased to _____ by plaintiffs disappeared with no reasonable hope of being found. Many were located and/or recovered through the efforts of the plaintiff lessors. Such lost equipment is covered by the policy or policies issued by _____, as are the sue and labor expenses sustained by plaintiffs. Some of plaintiffs' equipment was recovered in such condition as to constitute a total or constructive total loss, which are covered losses under the policy or policies issued by _____ Insurance Co. Some of plaintiffs' equipment, when found and recovered, had sustained external damage. Such damage is covered by the policy or policies issued by _____ Insurance Co.

11. Plaintiffs are each an additional insured or a loss payee or are otherwise entitled to make claim directly upon said policy and receive direct payment thereon.

12. Plaintiffs have suffered the total or constructive total loss of equipment leased to _____, which is valued in accordance with the provisions of the leases between plaintiffs and _____ at \$ _____, and this loss is a covered loss within the provisions of the _____ Insurance Co. policy or policies referred to above.

13. In addition, containers and related equipment on lease to _____ have been recovered damaged by external cause to the extent of \$ _____ and additional repair charges are being incurred and expended. Such repair charges are a covered loss under the _____ Insurance Co. policy directly and as sue and labor charges which save property from covered losses and reduce the claim for total and constructive total loss.

14. In making reasonable efforts to recover the aforementioned equipment, to save leased equipment from loss, and to minimize the amount of any claim against _____ Insurance Co. pursuant to the policy or policies referred to above, plaintiffs have incurred sue and labor expenses in the amount of \$ _____. In addition to the amounts for sue and labor expenses listed above, plaintiffs are continuing to make reasonable efforts to locate and recover units of leased equipment and are therefore continuing to incur additional sue and labor expenses.

15. Plaintiffs have demanded, and do hereby demand, payment by _____ Insurance Co. of the amounts due for lost equipment, repair, and the sue and labor expenses incurred as set forth above _____ Insurance Co. has failed to pay any portion of the amounts so claimed.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Interpool, Ltd. v. U.S. Fire Insurance Co.*, 553 F. Supp. 385 (S.D.N.Y. 1983), furnished through the courtesy of Gerard A. Dupuis, Esq., Ober, Kaler, Grimes & Shriver, 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*.

* *See* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-430

FORM No. 1-430 Complaint In Personam by Cargo Owner--Insurance

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

4. On or about _____, 20 _____, by a marine certificate No. _____, dated the same date, in consideration of the agreed premium which has been duly paid by the plaintiff, the defendant insured the plaintiff herein, on _____ of general merchandise in the sum of \$ _____ which sum was agreed value of the merchandise to be shipped on board the vessel _____ at and from to _____. The insurance attached from the time the goods insured left the factory, store or warehouse of the shipper and covered thereafter while at risk of the assured, in due course of shipment, until delivered at store or warehouse of the consignee at destination. It also covered the risks of theft and pilferage, irrespective of percentage. A copy of the marine certificate No. _____ is attached hereto and incorporated herein as Schedule A.

5. On or about _____, 20 _____, the _____ of general merchandise were duly laden on board the vessel _____ and that ship proceeded on her voyage from the port of _____ to the port of _____. When the _____ were discharged from the vessel _____, it was found that the cases and crates were not in the same good order and condition as when delivered to the vessel but were in a broken and pilfered condition, and a great part of their contents was missing.

6. The plaintiff duly filed a claim with defendant for the value of the merchandise lost during the voyage but the defendant declined the claim and has since refused to pay the same or any part thereof.

7. At the time of the commencement of this risk and thereafter until the loss, the plaintiff as the owner of the insured cargo has suffered damages in the sum of \$ _____ as nearly as can be ascertained at this time.

8. The plaintiff has complied with and duly performed all the conditions of the marine certificate on its part to be performed, and duly advised the duly authorized agents of the insurers of the loss promptly, and gave the duly authorized agents of the insurers due proof of the loss.

9. No part of the sum \$ _____ has been paid, although duly demanded by the plaintiff, and by reason of the premises such sum is now due and owing from the defendant to the plaintiff with interest thereon from _____, 20 ____.

[*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 § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-431

FORM No. 1-431 Complaint In Personam by Cargo Owner--Wreck--Insurance

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

4. On or about the _____ day of _____, 20 _____, in consideration of the premium of \$ _____ paid to defendant by plaintiff, the defendant made, executed and delivered to plaintiff its policy of marine insurance bearing No. _____ wherein and whereby it insured plaintiff in the sum of \$ _____ against all loss of or damage to certain goods, wares and merchandise then laden [*or* about to be laden) in the vessel _____, then lying in the harbor of _____, to be transported from the port of _____ to _____ during its voyage whether by perils of the sea or of fire or of other perils in the policy mentioned.

5. At all the times herein the goods, wares and merchandise were the property of plaintiff and plaintiff had an insurable interest therein.

6. On or about the _____ day of _____, 20 _____, the vessel sailed from the port of _____ on the voyage described in the policy, and during the period therein set forth and during the voyage by perils of the sea [*or* fire or otherwise), was wrecked and totally lost, and plaintiff thereupon suffered loss in the sum of \$ _____ by reason of the total destruction and loss of the goods, wares and merchandise.

7. More than _____ days prior to the commencement of this action and on or about the _____ day of 20 _____, plaintiff gave to the defendant notice and proof of the loss as required by the policy.

8. No part of the sum of _____ has been paid to plaintiff by defendant 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*.

* *See* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-432

FORM No. 1-432 Complaint for Declaratory Relief by Insurance Company Against Insured To Void Insurance Policy For Lack of Due Diligence to Make Vessel Seaworthy¹

[Caption and Jurisdictional Statement] n2

2. At all times hereinafter mentioned, the plaintiff, _____ [*insurance company*], was and still is a corporation duly organized and existing under and by virtue of the laws of _____ and doing business in _____.

3. On information and belief, the defendant, _____ is now, or as within this district residing at _____.

4. At all material times the defendant, _____, was and still is a national banking corporation organized and existing under and by virtue of the laws of the United States, with an office and principal place of business at _____.

5. By Marine Insurance Policy No. _____, a copy of which is attached hereto and incorporated herein as Exhibit A, the plaintiff issued a policy of insurance to the defendant, _____, the assured, with loss payable to the First National Bank of _____. Said policy was for the coverage of the hull and machinery of the vessel.

6. On or about the _____ day of _____, 20 _____, the vessel _____ sank in the Gulf of Mexico in the vicinity of _____, _____, and a claim has been made against the plaintiff by defendants, under the aforesaid marine insurance policy, for total loss of the vessel _____. In furtherance of that claim, the defendant, _____, has filed a lawsuit in the _____ Court of in which he claims compensation

under the aforesaid policy for total loss of the vessel _____.

7. At the date for inception of the aforesaid marine insurance policy, _____, 20 _____, the vessel _____ was not in a seaworthy condition and the assured failed to exercise due diligence to keep the vessel in a seaworthy condition thereafter. When the vessel _____ embarked upon the voyage which ended in its sinking on or about _____, 20 _____, it was not in a seaworthy condition and the assured had not exercised due diligence to put the said vessel or to maintain that vessel in a seaworthy condition.

8. At the time for inception of the said marine insurance policy, the assured knew or should have known of the unseaworthy condition of the said vessel and misrepresented the condition of the vessel to the plaintiff herein and concealed facts as to the seaworthiness of the vessel from the knowledge of the plaintiff.

9. The vessel _____ sank as aforesaid as a result of its unseaworthy condition, the lack of due diligence by the assured or the intentional scuttling of the vessel by the assured. The said marine insurance policy did not cover loss resulting from want of due diligence by the assured, unseaworthiness, or intentional scuttling.

10. The plaintiff is ready, willing and able to return all premiums to the assured upon declaration by this Court that the aforesaid policy was void at the date of inception, or a pro rata portion of premiums upon declaration by this Court that said policy became void at some date after inception.

Wherefore, plaintiff prays for declaratory judgment by this Court as follows: that said marine insurance policy was null and void as a result of the concealments, misrepresentations and breaches of warranty at the date for inception of the policy; that it was void as a result of the subsequent breaches of warranty by the assured in failing to maintain the vessel in seaworthy condition and in failing to exercise due diligence that the vessel be maintained in a seaworthy condition; that the loss of the vessel was occasioned by the unseaworthiness of the vessel, the failure of the assured to exercise due diligence toward the maintenance and operation of the vessel and/or the intentional scuttling of the vessel; that the plaintiff has no liability to the defendants under the aforesaid policy of insurance.

The Plaintiff further prays this court to enjoin the defendant, _____, from pursuing his claim in the Court of _____ County in Civil Action Number referred to hereinabove, and further prays for such other and different relief as this Court deems proper.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Stonewall Insurance Co. v. Sessions*, 404 F. Supp. 858 (S.D. Ala. 1974), courtesy of Vickers, Riis, Murray & Curran, Mobile, Alabama. Defendants' motion to dismiss the action was granted because of a pending suit in state court for breach of the identical contract of insurance. For Lack of Due Diligence to Make Vessel Seaworthy">

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

* *See* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-433

FORM No. 1-433 Complaint In Personam With Maritime Attachment by Insurance Carrier To Recover Unpaid Premiumsn1

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

4 This is a claim for the balance of Protection and Indemnity insurance premiums that remain due and owing and for failure to make payment against various Supplemental Call Debit Notes rendered to defendant in the normal course of plaintiff's business.

5. As a result of the foregoing, plaintiff has been damaged, as nearly as can be calculated, in the sum of \$ _____, no part of which has been paid although duly demanded.

6. Defendant has no office or place of business within this District and cannot be found within the District within the meaning of Supplemental Rule B of the Federal Rules of Civil Procedure. However, defendants have property within the district, to wit, the vessel, _____.

[Prayer for Process, Affidavit and Verification] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Oceanus Mutual Underwriting Association (Bermuda) Ltd. v. Shell Compania Argentina de Petroleo S.A.*, Civ. No. 84-466 (E.D.N.Y. 1984).

(n2)Footnote 2. *See* Form Nos. 1-1 and 1-7 *supra*.

(n3)Footnote 3. *See* Form Nos. 1-8, 1-9, and 1-10 through 1-13 *supra*.

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* *See* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-434

FORM No. 1-434 Complaint In Personam by Seaman for Injuries--Insurance

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

4. On or about the _____ day of _____, 20____, the defendant issued and delivered to _____ its certain policy of insurance bearing No. _____. A copy of the policy is hereto annexed, marked Exhibit A.

5. The policy of insurance was intended to and did cover subject to the "protection and indemnity clauses" thereof annexed to the policy of insurance the liability of members of _____ for which application for insurance is made through _____ to, and is accepted by, defendant in respect to the vessel or vessels stated in the application or applications to an amount not exceeding the sum shown therein as the amount of insurance.

6. On or about the _____ day of _____, 20____, _____ effected insurance under and subject to the condition of defendant's policy No. _____ hereinbefore referred to issued in the name of the _____, covering liability of _____ in respect to the vessel _____ to an amount not exceeding \$ _____ in any one casualty, which insurance was to continue for a period of one year from the _____ day of _____, 20____, at noon to the _____ day of _____, 20____, at noon Eastern Standard Time in consideration of the payment to the defendant of the sum of \$ _____ as more fully appears by the defendant's certificate of insurance issued by it on the _____ day of _____, 20____, to _____. A copy of the policy is attached hereto and incorporated herein as Exhibit B.

7. The policy of insurance aforesaid under its protection and indemnity clauses protected and indemnified the insurer as

4-I Benedict on Admiralty FORM No. 1-434

ship owner as follows: _____ [*state provisions*]

8. Upon information and belief, the policy of insurance hereinbefore referred to was on the _____ day of _____, 20 _____, in full force and effect.

9. Upon information and belief, _____ was on the _____ day of _____, 20 _____, the owner of the vessel _____, which ownership was entered in the books of the _____ Association, Inc.

10. On or about the _____ day of _____, 20 _____, plaintiff while in the vessel _____ sustained certain bodily injuries on account of an explosion which occurred upon the vessel.

11. Upon information and belief, the vessel _____ and its owner _____ were on the _____ day of _____, 20 _____, covered and insured by the policy of insurance hereinbefore set forth.

12. Thereafter and on or about the _____ day of _____, 20 _____, in an action in the United States District Court for the _____ District of _____ wherein _____, the plaintiff herein, was plaintiff and _____ was defendant, a judgment was given in favor of plaintiff and against _____ in the sum of \$ _____, which judgment was entered in the office of the United States District Court for the _____ District of _____.

13. On or about the _____ day of _____, 20 _____, an execution upon the judgment was issued out of the United States District Court for the _____ District of _____ in the territorial jurisdiction of which court _____ then resided and still resides directed to the marshal of the court against the property of _____, which execution was thereafter returned wholly unsatisfied by reason of the insolvency of _____. The judgment now remains wholly unpaid.

14. Pursuant to _____ [*state statute*], and provided the insolvency or bankruptcy of the assured does not release the insurance carrier, the defendant herein, from the payment of damages for injuries sustained or loss occasioned during the life of the policy, in case execution on a judgment obtained against the assured in an action brought by the injured person is returned unsatisfied because of the insolvency or bankruptcy of the assured, then an action may be maintained by the injured person against the insurance carrier, the defendant herein, under the terms and conditions of the policy for the amount of the judgment in the action not exceeding the amount of the policy.

15. Defendant has failed and refused to pay plaintiff the sum of \$ _____ or any part thereof although 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* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-435

FORM No. 1-435 Complaint--Claims for Breach of Duties Under a Maritime Insurance Contractn1

[Caption] n2

Plaintiffs _____, and _____, by and through their undersigned attorneys,
_____ for their complaint herein allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1333 in that it arises from breach of duties under a maritime insurance contract.
2. Venue lies in this district pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

3. Plaintiff _____, (hereafter "_____") is a _____ corporation with its principal place of business located at _____, and was at all relevant times engaged in the business of manufacturing, importing and selling _____.
4. Plaintiff, _____ (hereafter "_____") is a banking institution organized under the laws of the State of _____, and was at all relevant times engaged in the business of, among other things, extending credit to finance the business operations of importers and wholesalers, with its principal place of business at _____.
5. Upon information and belief, defendant _____ is a corporation organized under the laws of the

4-I Benedict on Admiralty FORM No. 1-435

State of _____, with its principal place of business at _____, and was at all relevant times engaged in the insurance brokerage business.

FACTS

6. At all relevant times, defendant was the insurance broker for plaintiff _____. In this capacity, defendant was obliged to exercise skill, care and diligence in performing its duties on behalf of plaintiffs. Defendant obtained an all risk marine insurance policy, No. _____ (hereafter "the policy") for _____ with the _____ Insurance Co. (hereafter "the Company") effective _____, 20 _____. The insurance contract was an ocean marine open cargo policy under which _____ periodically paid premiums based on the value of the goods shipped and insured. The policy included various additional insurance coverages, including insurance on inventory stored in certain domestic warehouses. Effective _____, 20 _____, the policy was specifically endorsed to cover goods stored by _____ at _____ located at _____ (hereafter "the warehouse") up to a limit of _____ Dollars (\$ _____).

7. The policy specifically named defendant as the broker and intermediary between _____ and the _____, and obliged defendant to receive from _____ and forward to the _____ reports of shipments and premium payments as required by the policy. It also specifically authorized defendant to receive on behalf of _____ any notice of cancellation issued by the Company.

8. Plaintiff _____ was specifically named, by endorsement executed by the _____, as a loss payee under the policy.

9. In and about mid-January 20 _____, the Company's underwriter, _____, advised _____, then an employee of defendant, that there were certain alleged overdue premiums under X's policy with the Company. The underwriter told the employee that unless the outstanding premiums were received by the Company by _____, 20 _____, the policy would be cancelled.

10. On _____, 20 _____, _____ paid and received and deposited, the amount of the alleged overdue premiums on the insurance policy. However, defendant failed to transmit the funds to the Company prior to the deadline.

11. Upon information and belief, on _____, 20 _____, the underwriter sent to defendant, and defendant received, a notice of cancellation of _____ policy to be effective _____, 20 _____. At no time, however, did defendant inform _____ of said notice of cancellation, nor did defendant take any steps to secure alternative coverage.

12. On or about _____, 20 _____, the warehouse was destroyed by fire. Over _____ Dollars (\$ _____) of _____'s goods were destroyed in the fire. _____ had perfected security interests in said goods and/or the proceeds of same.

13. On _____, 20 _____, the Company denied coverage under the policy for the warehouse fire by filing a declaratory judgment action in the United States District for the of _____, claiming that _____'s policy had been effectively cancelled prior to the warehouse fire. That action remains pending before Judge _____ and is directly related to the instant complaint.

CLAIM FOR BREACH OF CONTRACT AND NEGLIGENCE

14. Paragraphs 1 through 13, above, are incorporated by reference as though fully set forth herein.

15. Defendant, as broker and the named intermediary in the marine insurance policy was obliged under the policy to forward premium payments from _____ to the Company with reasonable promptness and to notify the insureds with reasonable promptness of any change in or cancellation of coverage of which defendant received notice.

16. Defendant breached its duties under the contract by failing to forward _____'s premium payments to with reasonable promptness. This resulted in _____'s sending the notice of cancellation to defendant. Defendant then failed to notify the insureds as to the cancellation with reasonable promptness. Thus, no alternative coverage was secured in time.

17. As a direct and proximate result of defendant's breach of its duties, plaintiffs suffered substantial damages in that they were effectively without insurance coverage at the warehouse at the time of the fire loss, which could have been easily secured in ample time prior to the fire had defendant informed plaintiffs of the Company's cancellation.

18. As an additional direct and proximate result of defendant's breach of its duties, plaintiffs were required to expend substantial time and money in litigating the coverage issues against the Company, and therefore suffered additional actual damages in an amount to be determined at trial, but in a minimum amount of _____ Dollars (\$ _____).

Wherefore plaintiffs demand judgment against defendant _____ Corporation as follows:

a. Such actual damages as shall be proved at trial but in a minimum amount of _____ Dollars (\$ _____).

b. Prejudgment interest.

c. Costs and attorneys' fees.

d. Such other relief as may be just.

Respectively submitted,

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Continental Cameras Co. v. FOA & Son Corporation*, 658 F. Supp. 287 (S.D.N.Y. 1987). Papers furnished through the courtesy of Rivkin, Radler, Dunne & Bayh, Uniondale, New York.

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

* *See* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-436

FORM No. 1-436 Complaint--Declaratory Judgment Lack of Timely Notice of Voyage

[Caption] n1

VERIFIED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, _____ [insurance company] ("Plaintiff"), by its undersigned attorneys, for its complaint against the Defendant, _____, for its Verified Complaint for Declaratory Relief, alleges as follows:

JURISDICTION AND VENUE

1. This action is filed under and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.
2. This matter involves a declaration of rights regarding the extent of insurance coverage under an admiralty or maritime contract of insurance and, thereby, comes within the Admiralty and Maritime Jurisdiction of the United States District Court pursuant to 28 U.S.C. § 1333. This is an admiralty and maritime claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*.
3. An actual controversy of justiciable nature exists between the Plaintiff and the Defendant involving the rights and obligations under a marina contract of insurance, and, depending upon the construction of said contract, this controversy may be determined by a judgment of this Court.
4. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

PARTIES

5. Plaintiff is a corporation in the business of, among other things, the sale and issuance of marine insurance policies

and is licensed to conduct the business of insurance in the State of Illinois.

6. Upon information and belief, Defendant is a corporation incorporated under the laws of the State of _____ with its principal place of business in the State of _____.

FACTS

7. On or before _____, 20 _____, Defendant, by its broker, _____ ("Broker"), made an application to Plaintiff for a marine policy of charterer's legal liability insurance.

8. On or about _____, 20 _____, Plaintiff issued to Defendant a charterer's legal liability policy of insurance under Policy No. _____ (the "Policy") to be effective from _____ from _____ a.m. through _____ at _____ a.m. A true and correct copy of the Policy is attached hereto as Exhibit 1 and is fully incorporated herein.

9. The Policy is an insurance policy for marine insurance.

10. The Policy includes claims for Protection and Indemnity as defined in the SP 23 Form of Protection and Indemnity Policy, which was incorporated in and as part of the Policy (with certain exclusions).

11. Defendant, through their broker, renewed the Policy for the policy years _____, 20 _____ through _____, 20 _____ and _____, 20 _____ through _____, 20 _____.

12. Upon information and belief, on or about _____, Defendant chartered the vessel, _____, for the purpose of transporting a load of _____ from _____ to _____.

13. Defendant did not, as required by the Policy, advise Plaintiff as soon as practicable of the name, tonnage, on hire and off hire date of the voyage of the vessel, _____.

14. Upon information and belief, on or about _____, the vessel _____ arrived at _____.

15. Upon information and belief, on or about _____, the vessel _____ and her cargo suffered certain damage due to a fire in the cargo holds in which were stored the _____ loaded on behalf of the Defendant.

16. Defendant did not, as required by the Policy, give notice of this occurrence to Plaintiff as soon as practicable.

17. Defendant did not, as required by the Policy, exercise due diligence in giving Plaintiff prompt notice of this occurrence.

18. The voyage of the vessel _____ and its attendant cargo was neither declared nor was notice of the voyage or claim relating to it given to Plaintiff within the Policy year.

19. On _____, 20 _____, at approximately _____ p.m., Defendant's broker, acting on behalf of Defendant, in a handwritten letter to Plaintiff, purported to declare the voyage of the vessel _____ to the Policy and to give Plaintiff notice of a possible claim relating to this vessel, all after the expiration of the _____ Policy year, and advised Plaintiff that the charter of the vessel

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_____ was the only charter known to it.

20. In a letter to the broker dated _____, Plaintiff declined to cover the voyage of the vessel _____ because it was not properly declared on the Policy for coverage and because it was prejudiced by the late reporting.

21. Defendant has been named as third-party defendant in a lawsuit for damages arising out of the voyage of the vessel _____ and pending in the United States District Court for the _____ District of _____ entitled _____, under Case No. _____ (the "Litigation").

22. Defendant retained counsel to defend the Defendant in the Litigation without the written consent of or to the satisfaction of Plaintiff.

23. On _____, 20 _____, upon request of the broker, Plaintiff agreed to defend the Defendant in the Litigation without prejudice and with full reservation of all rights.

24. On _____, 20 _____, the broker sent Plaintiff a copy of a letter from the Defendant to the broker purporting to enclose declarations for _____ charters under the Policy year _____, _____ through _____, 20 _____ including an undated declaration for the voyage of the vessel, _____.

25. Before this date, Plaintiff had not received any formal declarations for the Policy year _____, 20 _____ through _____, 20 _____.

26. Paragraph _____ of the Policy provides as follows:

The Assured agrees to advise the Assurer as soon as practicable the Name, Tonnage, and On Hire and Off Hire date of all vessels chartered during the currency of the policy.

27. Paragraph _____ of the Policy provides as follows:

It is understood and agreed by Assured that in the event of any occurrence which may result in a loss, damage and/or expense, for which these Assurers are or may become liable under this insurance, notice thereof shall be given to these Assurers as soon as practicable and further that any and every process, pleading and paper of any kind relating to such occurrence shall be forwarded promptly to these Assurers.

28. The SP 23 Form incorporated in the Policy provides in relevant part:

Prompt Notice of Claim. Warranted that in the event of any occurrence which may result in loss, damage and/or expense for which this Assurer is or may become liable, the Assured will use due diligence to give prompt notice thereof and forward to the Assurer as soon as practicable after receipt thereof, all communications, processes, pleadings and other legal papers or documents relating to such occurrences.

*

Law costs. The Assurer shall not be liable for the cost or expense of prosecuting or defending any claim or suit unless the same shall be incurred with the written consent of the Assurer, or the Assurer shall be satisfied that such approval could not have been obtained under the circumstances without unreasonable delay, or that such cost and charges were reasonably and properly incurred, such cost or expense being subject to the deductible.

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29. The Defendant has breached the foregoing Policy language in the following respects:

- a. They failed to advise Plaintiff as soon as practicable of the name, tonnage, and on hire and off hire date of all vessels chartered during the currency of the Policy, including the vessel _____;
- b. They failed to give Plaintiff notice of loss as soon as practicable as required by Paragraph _____ of the Policy;
- c. They failed to use due diligence to give Plaintiff prompt notice of any occurrence which may result in loss, damage and/or expense for which Plaintiff is or may become liable, as required by the SP 23 Form incorporated in the Policy; and
- d. They retained counsel and sustained costs or expenses in defending the Litigation without the written consent of Plaintiff or satisfying Plaintiff that such approval could not have been obtained under the circumstances without unreasonable delay, as required by the SP 23 Form incorporated in the Policy.

30. Plaintiff contends that, under the facts as set forth herein, the Policy does not cover Defendants for losses, claims or expenses relating to the voyage of the vessel _____ and the Litigation described in Paragraph _____.

31. Based on this dispute, pursuant to 28 U.S.C. § 2201, it is necessary and proper for the Court at this time to declare the respective rights and liabilities of the parties under the Policy.

Wherefore, Plaintiff, _____ [*insurance company*], requests that this Court enter judgment in its favor and against the Defendant and enter an Order providing the following relief:

- A. A declaration of rights that the Policy does not cover the voyage of the vessel _____;
- B. A declaration of rights that Plaintiff is not obligated to indemnify the Defendant for any of the costs, expenses, attorneys' fees or damages relating to the Litigation or the voyage of the vessel _____; and
- C. Award Plaintiff its costs and all other relief that the Court deems fair and appropriate.

[*Insurance Company*]

By: _____

One of Its Attorneys

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

VERIFICATION

I, _____, being first duly sworn on oath, hereby attest that I am the Ocean Marine Claims Supervisor for Plaintiff _____ [*insurance company*], that I have read the foregoing Verified Complaint for Declaratory Relief, that I have personal knowledge of the facts alleged therein and believe them to be true and correct to the best of my information and belief.

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

Notary Public

FOOTNOTES:

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

* *See* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-437

FORM No. 1-437 Complaint--Intermodal Shipment--Subrogated Insurance Company

[Caption] n1

COMPLAINT

Now comes the plaintiff, _____ [insurance company] (referred to as "Plaintiff"), by their attorneys _____, and complain against Defendants _____ [trucker A] ("A"), _____ [trucker B] ("B"), _____ [rail carrier] and _____ [intermodal carrier] (collectively referred to as "Defendants"), as follows:

JURISDICTION AND PARTIES

1. The jurisdiction of this Court is founded upon 28 U.S.C. § 1332, diversity of citizenship, and 28 U.S.C. §§ 1331 and 1337, federal questions. The matter in controversy exceeds the sum or value of \$50,000.00, exclusive of interest and costs.

2. Venue is proper in this District, pursuant to 28 U.S.C. § 1391, because the actions out of which this claim arose took place in this District.

3. Plaintiff _____ is a _____ corporation with its principal place of business in _____.

4. At all times hereinafter mentioned, _____ was and is in the business of insuring various cargo, and issued a policy of insurance whereby it had a contractual obligation to insure a shipment of _____ from _____ to _____, and then to _____ for the account of Subrogor _____ ("Insured") and is subrogated to the rights of recovery of Insured for those goods as

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a result of its payment to Insured for the losses sustained by Insured.

5. Subrogor Insured is a _____ corporation with its principal place of business in _____.

6. Defendant _____ [*intermodal carrier*] is a _____ corporation with its principal place of business in _____.

7. At all relevant times, _____ [*intermodal carrier*] operated as a common carrier for hire providing intermodal transportation services to shippers such as Insured. _____ contracted with Insured to transport several containers containing _____ from _____ to _____ and to deliver said containers to _____ (A) using Defendant _____ [*rail carrier*] as its delivering agent.

8. Defendant _____ [*rail carrier*] is a _____ corporation with its principal place of business in _____.

9. At all relevant times, _____ [*rail carrier*] was and is a rail common carrier for hire which, in conjunction with the intermodal transportation services provided by _____ [*intermodal carrier*] had agreed and did transport said containers containing _____ along its rail line to its railhead in _____.

10. Defendant _____ (A) is a _____ corporation with its principal place of business in _____.

11. At all relevant times, _____ (A) was and is a motor common carrier for hire which contracted with Insured to pick up and deliver several containers containing _____ from the _____ railhead in _____ to a _____ Warehouse (the "Warehouse") in _____, to complete the interstate shipment.

12. Defendant _____ (B) is a _____ corporation with its principal place of business in _____.

13. At all relevant times _____ (B) was and is a motor common carrier for hire which sub-contracted with _____ (A) to pick up and transport the containers from the _____ railhead to the Warehouse.

BACKGROUND

14. In early _____, Insured, through its shipping agent, _____ ("Agent"), contracted with _____ [*intermodal carrier*] and _____ (A) for the interstate carriage of certain _____ from _____ to _____. The Bill of Lading is attached as Exhibit 1.

15. On information and belief, _____ [*intermodal carrier*], acting as an intermodal common carrier for hire, arranged with the _____ [*railroad company*] and the _____ [*rail carrier*] to rent or lease the use of the _____ [*railroad company*] and the _____ [*rail carrier*] tracks, engines, employees and other facilities for the carriage of the shipment. In addition, the _____ [*rail carrier*] was to receive, handle and interchange the _____ and deliver them to _____ (A) when said containers arrived at the _____ railhead in _____.

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_____.

16. Under the contract with Insured, _____ [*intermodal carrier*] was to transport several containers from _____ to the _____ railhead in _____ and to release said containers to _____ (A) from the _____ railhead. The _____ Shipping Order is attached as Exhibit 2.

17. After receiving said containers from _____ [*intermodal carrier*], _____ (A) was to provide carriage services from the _____ railhead to the Warehouse to complete the interstate shipment.

18. The containers left _____ on or about _____, 20 _____ and arrived at the _____ railhead on the morning of _____, 20 _____.

19. After the shipment had departed from _____, _____, a facsimile transmission was sent by _____ [*agent*] to the _____ [*rail carrier*] and _____ (A), notifying both parties of the container numbers and approximate time of delivery to the _____ railhead. In addition, _____ [*agent*] notified the Warehouse that delivery of the containers could be made to the Warehouse on the morning of _____, 20 _____.

20. On _____, 20 _____ the _____ [*rail carrier*] notified _____ (A) via facsimile that the trailers would be available to _____ (A) on _____, 20 _____, for delivery to the Warehouse.

21. On information and belief, _____ (A) was unable to deliver the containers to the Warehouse and subcontracted with _____ (B) on _____, 20 _____, to deliver the containers to the Warehouse, without the knowledge or consent of Insured or _____ [*agent*].

22. On information and belief, _____ (A) communicated to _____ (B) the container numbers, the address of the Warehouse and the special pick-up number in order for _____ (B) to obtain the release of the containers at the _____ railhead.

23. At approximately _____ a.m. on _____, 20 _____ a driver in _____ (B) Tractor No. _____ arrived at the _____ railhead and the _____ [*rail carrier*] released Container No. _____ to the driver.

24. At approximately _____ a.m. later that morning, four tractors and drivers from _____ (B) arrived at the _____ railhead to pick up the containers to be delivered to the Warehouse. However, Container No. _____, which had previously been released by _____, was missing from the _____ railhead. After inquiry by the _____ driver, the _____ informed _____ (B) that Container No. _____ had been picked up one-half hour earlier by a _____ (B) driver, giving the name of _____ and driving _____ (B) Tractor No. _____.

25. On information and belief, one of the _____ (B) drivers contacted his supervisor and was notified that _____ did not employ a driver named _____. Upon investigation, _____ (B) determined that Tractor No. _____ was missing from its yard.

26. The goods contained in Container No. _____ were never delivered to the Warehouse.

27. As a result of the Defendants' failure to deliver the goods, Insured was damaged in the amount of _____.

28. Plaintiff paid to Insured _____ for the loss of the goods and Plaintiff is thereby subrogated to the rights of recovery of Insured for the respective amounts, under the bill of lading issued by _____ [agent] (Exhibit 1) for the interstate shipment of the goods.

COUNT I Interstate Commerce Act

Plaintiff realleges and incorporates paragraphs 1 through 30 as paragraphs 1 through 30 of Count I.

29. The contract for the carriage of goods that Insured entered into with _____ [intermodal carrier] and _____ (A) concerned the interstate shipment of goods under the jurisdiction of the Interstate Commerce Commission (the "ICC") and, therefore, the Defendants as common carriers are each subject to the jurisdiction of the ICC.

30. Pursuant to 49 U.S.C. § 10505 and 46 Fed. Reg. 14348 [see 49 C.F.R. P 1090.2), the Defendants had statutory obligations to offer full liability terms to or on behalf of Insured consistent with 49 U.S.C. § 11707 (the "Carmack Amendment") for this shipment, unless there is a written agreement for released value rates or other limitation of liability entered into between the parties.

31. Because Insured at no time agreed, in writing or otherwise, to any limitation of liability, the Defendants are subject to full liability pursuant to the Carmack Amendment or, in the alternative, to liability pursuant to 46 U.S.C. § 10505 and 46 Fed. Reg. 14348, which incorporate the full liability terms of the Carmack Amendment.

32. Container No. _____ was delivered to _____ [intermodal carrier] in a good and complete condition, however, said container was never delivered to the Warehouse.

33. Pursuant to its contract with Insured, _____ [intermodal carrier] owed a duty to Insured, as the initial receiving carrier and as the delivering carrier in _____, to insure that the goods would be delivered to _____ (A) in _____.

34. _____ (A) breached its duty to Insured individually, and through its delivering agent, _____ [rail carrier], when Container No. _____ was mis-delivered to the custody of an unknown individual while said Container was inside the _____ railhead.

35. As a direct and proximate result of _____'s [intermodal carrier] failure to properly deliver Container No. _____ to _____ (A), Insured was damaged in the amount of _____.

36. Pursuant to its contract with Insured, _____ (A) owed a duty to Insured, as a common carrier, to pick up and deliver the containers from the _____ railhead to the Warehouse to complete the interstate shipment.

37. _____ (A) breached its duty by failing to deliver Container No. _____ to the Warehouse.

38. As a direct and proximate result of _____'s (A) failure to deliver Container No. _____, Insured was damaged in the amount of _____.

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39. The _____ [*rail carrier*] owed a duty to Insured, as a common carrier, to properly deliver Container No. _____ only to the party authorized by Insured as the notify party.

40. The _____ [*rail carrier*] breached its duty to Insured by carelessly and negligently delivering Container No. _____ to an unauthorized person.

41. As a direct and proximate result of the careless and negligent acts of the _____ [*rail carrier*], Container No. _____ was never delivered to the Warehouse and Insured was damaged in the amount of _____.

42. Pursuant to its agreement with _____ (A), _____ (B) owed a duty to Insured, as a common carrier, to pick up and deliver the containers from the _____ railhead to the Warehouse to complete the interstate shipment.

43. _____ (B) breached its duty to Insured by carelessly and negligently failing to pick up and deliver Container No. _____ to the Warehouse.

44. As a direct and proximate result of _____'s (B) careless and negligent acts, Container No. _____ was never delivered to the Warehouse and Insured was damaged in the amount of _____.

Wherefore, Plaintiff _____ requests this Court to enter judgments against the Defendants in the amount of _____.

COUNT II Federal Common Law

Plaintiff realleges and incorporates paragraphs 1 through 30 as paragraphs 1 through 30 of Count II.

31. Under federal common law, the Defendants, as common carriers subject to the jurisdiction of the ICC, jointly and severally owed a duty to Insured to transport and deliver the containers to the Warehouse.

32. Pursuant to federal common law, Defendants are subject to the full liability terms of the Carmack Amendment for the loss during this interstate shipment.

33. Container No. _____ was delivered to _____ [*intermodal carrier*] in a good and complete condition, however, Container No. _____ was never delivered to the Warehouse.

34. Pursuant to its contract with Insured, _____ [*intermodal carrier*] owed a duty to Insured, as the initial receiving carrier and as the delivering carrier in _____, to insure that the goods would be delivered to _____ (A) in _____.

35. _____ [*intermodal carrier*] breached its duty to Insured individually, and through its delivering agent, the _____ [*rail carrier*], when Container No. _____ was mis-delivered to the custody of an unknown individual while said container was inside the _____ railhead.

36. As a direct and proximate result of _____'s [*intermodal carrier*] failure to properly deliver Container No. _____ to _____ (A), Insured was damaged in the amount of _____.

37. Pursuant to its contract with Insured, _____ (A) owed a duty to Insured, as a common carrier, to

pick up and deliver the containers from the _____ railhead to the Warehouse to complete the interstate shipment.

38. _____ (A) breached its duty by failing to deliver Container No. _____ to the Warehouse.

39. As a direct and proximate result of _____'s (A's) failure to deliver Container No. _____, Insured was damaged in the amount of _____.

40. The _____ [*rail carrier*] owed a duty to Insured, as a common carrier, to properly deliver Container No. _____ only to the party authorized by Insured as the notify party.

41. The _____ [*rail carrier*] breached its duty to Insured by carelessly and negligently delivering Container No. _____ to an unauthorized person.

42. As a direct and proximate result of the careless and negligent acts of the _____ [*rail carrier*], Container No. _____ was never delivered to the Warehouse and Insured was damaged in the amount of _____.

43. Pursuant to its agreement with _____ (A), _____ (B) owed a duty to Insured, as a common carrier, to pick up and deliver the containers from the _____ railhead to the Warehouse to complete the interstate shipment.

44. _____ (B) breached its duty to Insured by carelessly and negligently failing to pick up and deliver Container No. _____ to the Warehouse.

45. As a direct and proximate result of _____'s (B) careless and negligent acts, Container No. _____ was never delivered to the Warehouse and Insured was damaged in the amount of _____.

Wherefore, Plaintiff _____ requests this Court to enter judgments against the Defendants in the amount of _____.

By: _____
One of Their Attorneys

FOOTNOTES:

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

* *See* 1 Benedict on Admiralty § 242 (Matthew Bender 7th ed.).



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CHAPTER I COMPLAINTS

INSURANCE *

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FORM No. 1-459 Complaint--Exoneration or Limit of Liability--Oil Pollutionn1

[Caption] n2

COMPLAINT

Now come the plaintiffs, _____ [vessel owner] and _____ [vessel operator],
_____ [parent company] and _____ [corporate officer], in a cause of exoneration
from or limitation of liability, allege as follows:

1. Plaintiffs file this complaint as a defensive measure made necessary by the fact that certain _____
citizens and corporations have filed actions in the _____ Court of _____ County,
_____ [state], which actions have been removed to this Court, as is more fully described in paragraph

10. Plaintiffs herein have moved for dismissal on the grounds of forum non conveniens and for dismissal or judgment
on the pleadings in those actions under *Rule 12, Federal Rules of Civil Procedure*, as is more fully described in
paragraphs 17 and 18; this Court has not yet ruled on those motions nor on pending motions to remand those cases to
state court. Under *46 U.S.C. § 183 et seq.*, a complaint for limitation of liability must be filed within six months of
receiving a written notice of claim. Plaintiffs therefore are now filing this complaint to meet the statutory time
requirements, to preserve their right to seek limitation of liability, particularly in the event that the motions in the
abovementioned class actions should not result in the dismissal of those suits.

2. This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(h) and Supplemental Rule F of the
Federal Rules of Civil Procedure.

3. At all material times, plaintiff _____ [vessel owner] was and is a _____
corporation with its principal place of business in _____. Plaintiff _____ [vessel
operator] was and is a _____ corporation having its principal place of business at _____

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_____. Plaintiff _____ [parent] was and is a _____ corporation having its principal place of business at _____. Plaintiff _____ [corporate officer] was and is a resident of the State of _____ and was and is an employee of plaintiff _____ [parent].

4. The motor tanker _____ was a _____ screw, steel tank vessel of about _____ gross tons and _____ net tons, _____ meters in overall length, _____ meters in breadth and _____ meters in depth, built at _____ in _____. The vessel _____ was of _____ registry, official number _____, having its home port at _____. At all material times the ship was used to transport crude oil.

5. Before and at the beginning of the voyage and at all times material to the casualty, due diligence was exercised to make the vessel seaworthy and to properly man, equip and supply the vessel and to make all compartments in which the cargo was carried fit and safe for the carriage of crude oil.

6. The voyage commenced at _____ GMT on _____, _____. On that day, the vessel _____ loaded a part cargo of crude oil at _____ and on _____, _____, completed loading at _____. The total cargo, about _____ long tons of crude oil, was destined to be discharged at _____ and at _____. The cargo was loaded and carried pursuant to the terms and conditions of the time charter with _____. After completing loading on _____, the _____ [vessel] proceeded around _____ en route to its destinations. The voyage of the _____ terminated upon its stranding and loss on the _____ off the coast of _____, in _____, on _____.

7. At approximately _____ GMT on _____, the _____ [vessel] was proceeding in heavy seas off the coast of _____ within a traffic separation scheme specified pursuant to the International Convention for the Prevention of Collisions at Sea. The ship then suffered a failure of its steering system, which had been designed and installed by the builder of the ship _____. The _____ [vessel] was not at that time in any immediate danger of grounding, being more than _____ miles from _____, the nearest land, and over _____ miles from the rocks off _____ on the coast of _____, where it ultimately was stranded. Following the failure of the ship's steering gear, the ship's licensed and experienced engineers and other crew members attempted to restore the steering system to operation. Despite their best efforts, repair was impossible due to the heavy seas and adverse weather conditions. Thereupon, Captain _____, master of the _____, took steps to ascertain the location of salvage tugs and requested the assistance of salvage tugs. The _____, under the command of _____, owned by the firm of _____, arrived at the _____ [vessel] at about _____ GMT. Without delay, the tow line from the tug was prepared and put aboard the _____ [vessel] and the tug commenced maneuvering and attempted to tow the _____ [vessel]. At approximately _____ GMT, the tow line from the tug to the _____ [vessel] suddenly and unexpectedly broke. After the tug's tow line parted, approximately _____ hours elapsed while the tug recovered its broken tow line, prepared a new tow line, and secured that line to the stern of the _____ [vessel] for towing. During the time that the tug was recovering its broken tow line and preparing its new tow line, the master of the _____ [vessel] took appropriate steps to prevent the drift of the ship towards the _____, including using the ship's engine astern and using the ship's anchors as appropriate under the existing circumstances, in view of the depth of the seas, the condition of the seas, and the danger to his crew. After securing its second tow line to the _____ [vessel] at about _____ GMT, the tug _____ commenced attempting to tow the ship and was towing the ship when the

_____ [vessel] grounded in territorial waters on the rocks off _____ shortly after _____ GMT. The force of the grounding caused breaches in the ship's hull, its cargo of crude oil began to escape, its engine room was flooded and it lost all power. By approximately _____ GMT _____, some _____ hours after stranding, most of the crew of the _____ [vessel] was lifted off the ship by _____. Captain _____ remained on board the _____ [vessel] until the ship broke in two later that morning. At approximately _____ GMT, he was lifted off the ship by _____. Subsequently, the _____ [vessel] broke up further and its remaining cargo escaped into _____ territorial waters off the coast of _____.

8. The said casualty and all losses and damages caused thereby or otherwise incurred on that voyage were not due to any fault, negligence or lack of due care on the part of plaintiffs, those in charge of the _____ [vessel], or any persons for whom plaintiffs were or are responsible, nor were the casualty, losses and damages occasioned by any unseaworthiness of the _____ [vessel]. Rather, the stranding of the _____ [vessel] and all losses and damages caused thereby were due solely to and caused wholly by perils of the sea and of navigation and/or by the fault of negligence of others for whom plaintiffs are not responsible, or else were due to other causes for which plaintiffs are not liable.

9. The casualty happened, and the losses, damages, injury or destruction resulting therefrom or occurring on that voyage, were done, occasioned, and incurred without the privity or knowledge of the plaintiffs within the meaning of 46 U.S.C. § 183(a), and without the privity or knowledge of the master or of plaintiffs' superintendents or managing agents at or prior to the commencement of the aforesaid voyage within the meaning of 46 U.S.C. § 183(e).

10. Following the casualty, three suits were brought in the _____ Court of _____ County, _____ against plaintiffs in this suit and were removed to this Court. Those suits, which purport to be class actions, seek damages totalling more than _____. Attorneys for the claimants in those suits are _____. Those actions are styled as follows: _____ [list suits].

Notices or threats of claim have also been received from the following: _____ [list claimants].

Plaintiffs assert that the demands made in such actions and claims exceed the value of plaintiffs' interest in the _____ [vessel] and its pending freight; further, plaintiffs fear the filing of additional claims.

11. There are no demands, unsatisfied liens or claims of lien against the _____ [vessel] or plaintiffs arising out of the aforesaid voyage, or any suits pending, so far as is known to plaintiffs, other than as above set forth.

12. This complaint is filed prior to the expiration of six months from the date plaintiffs received the first written notice of claim from any claimant following the aforesaid voyage and stranding.

13. No part of the hull, engine, boilers, machinery and tackles, etc., nor of the cargo of the _____ [vessel] can be salvaged, and all are deemed to be a total loss. Thus, following the stranding and loss of the ship on _____, the _____ [vessel] had no value, and the entire aggregate amount of plaintiffs' interest in the _____ [vessel] was for pending freight (time charter hire) for that voyage, earned by plaintiff _____ [owner]. The value of the pending freight did not exceed the sum of _____, as set forth in the affidavit of _____, filed herein.

14. Subject to an appraisal of their interest, plaintiffs herewith deposit with the Court, as security for the benefit of claimants, a stipulation for security in the sum of _____ plus interest at _____ per annum from the date of said stipulation. Plaintiffs file this stipulation without prejudice to their right to urge applicability of foreign law as specified hereinbelow.

15. Plaintiffs contest their liability and the liability of the _____ [vessel] for the injuries, losses and damages occasioned or incurred upon said voyage. Plaintiffs have valid defenses thereto on the facts and on the law. Although filing stipulation for security herein, plaintiffs do not admit but expressly deny that they are liable for any loss or damage. Plaintiffs here claim and reserve the right to contest in this or any other Court any claim of liability, whether against any of them or against the _____ [vessel].

16. Plaintiff _____ [vessel owner] claims exoneration from or limitation of liability as owner of the _____ [vessel]. The complaints in the three class actions described in paragraph 10 allege that plaintiffs _____, as corporate parents of _____ [vessel owner and operator] and _____, as an officer and agent of those corporations, by reason of alleged negligent acts and omissions "in the ownership, navigation, operation, maintenance, chartering and control of the _____ [vessel] were responsible for the stranding of the _____ [vessel] and the damages caused thereby, all of which plaintiffs deny. If those and other allegations of ownership, navigation, operation, maintenance, chartering and control of the _____ [vessel] are sustained, those plaintiffs are also entitled to limitation of liability under 46 U.S.C. § 183 *et seq.*, as owners or owners *pro hac vice* of the _____ [vessel].

17. The oil pollution damage claims asserted in the three class actions described in paragraph 10 and all other such claims which may be asserted against plaintiffs are governed by the law of _____. _____ law incorporates the terms of the 2069 International Convention on Civil Liability for Oil Pollution Damage ("CLC"), a copy of which is attached hereto as Exhibit "A". Under _____ law, the _____ courts are exclusively competent to decide all claims of oil pollution damage asserted against plaintiffs herein. Plaintiffs' right to exoneration from or limitation of liability is governed by the law of _____ because the plaintiffs allegedly caused injury in _____, because _____ has the most significant relationship to the case, and because principles of international comity require that United States courts respect _____'s claim to exclusive jurisdiction under the CLC. Under the CLC, upon filing of a claim for damages, the owner of the ship must constitute a fund in the appropriate court in the country where oil pollution damage occurred or where steps were taken to minimize oil pollution damage. Art. V. Pursuant to a decree rendered on April 25, 1978 by the _____, the court with jurisdiction under the CLC, plaintiff _____ [vessel owner] constituted such a fund, in the amount of _____. Under the terms of the CLC, the _____ is therefore the only court competent to hear and determine all pollution claims arising out of the stranding of the _____ [vessel]. Arts. III(4) and IX. Plaintiffs therefore claim and are entitled to exoneration from or limitation of liability from the above casualty, if any, in accordance with the law of _____ and are subject to any claims for oil pollution damages only in the courts of _____. Alternatively, and solely for defensive purposes in response to the class action suits which plaintiffs believe were improperly filed in this country and other claims, plaintiffs claim immunities and the benefit of exoneration from or the limitation of liability provided by 46 U.S.C. § 183 *et seq.*, and the various statutes supplemental thereto and amendatory thereof.

18. By reason of the improper institution of the aforesaid actions in the _____ Court of _____ County, _____, which actions have been removed to this Court, and by virtue of the possibility that others may file actions in the United States against these plaintiffs, plaintiffs have been compelled to file this Complaint within the statutory period of limitation set forth in the above-cited statutes of the United States in order to preserve their rights. Accordingly, plaintiffs assert herein, as they asserted in the aforesaid pending actions in this Court by their Motions to Dismiss Complaint for Forum Non Conveniens and their Motions to Dismiss Complaint or for Judgment on the Pleadings Pursuant to Rule 12 (all of which were filed on _____ but have not yet been ruled upon), that the proper forum for the determination of the claims asserted in those pending actions, and for any other claim resulting from oil pollution caused by the stranding of the _____ [vessel], is the _____. Plaintiffs reserve all rights asserted in those motions. Upon the filing of any claim for oil pollution damage in this proceeding, plaintiffs intend and reserve the right to move

for the dismissal of such claims on the ground that under the law of _____, such claims are enforceable only in the courts of _____. Plaintiffs also reserve the right to move for the dismissal of all other claims that may be filed in this proceeding which should be adjudicated in a foreign jurisdiction. Plaintiffs also reserve the right to move for such other and further relief as may be appropriate.

Wherefore, plaintiffs pray:

1. That this Court make an order approving the above-described stipulation for security, in the amount of _____, deposited with the Court by plaintiffs as security for the value of plaintiff's interest in the _____ [vessel] and its pending freight.
2. That this Court issue a notice to the named plaintiffs in the three class actions described in paragraph 10 and to all persons asserting claims with respect to which the Complaint seeks exoneration from or limitation of liability, admonishing them to file their claims with the Clerk of this Court and to serve on the attorneys for plaintiffs a copy thereof on or before a date to be named in the notice, and also to appear and answer the allegations of this Complaint.
3. That the Court enjoin the prosecution of any and all proceedings already begun arising out of the voyage or the casualty of the _____ [vessel] and enjoin the commencement hereafter of any suits or proceedings of any nature, except in the present proceeding, against plaintiffs, their agents, representatives or insurers, or against the _____ [vessel], in respect of any claim arising out of the aforesaid voyage and casualty; provided, however, that the injunction shall permit final resolution of the pending Motions to Remand, Motions to Dismiss Complaint for Forum Non Conveniens and Motions to Dismiss Complaint or for Judgment on the Pleadings Pursuant to Rule 12, previously filed in the three abovementioned class actions.
4. That the Court in this proceeding dismiss any claim instituted herein for oil pollution damage on the ground that the proper forum for the determination of such claims is the _____, directing said claimants that they file claims in that court, and that this Court dismiss any other claim which should be adjudicated in a foreign jurisdiction.
5. With respect to claims filed in this proceeding and not dismissed, that this Court adjudge that plaintiffs are not liable to any extent for any loss, damage, injury or destruction or for any claim therefor in any way arising out of the aforesaid stranding, or done, occasioned or incurred on the said voyage of the _____ [vessel]; or, if plaintiffs shall be adjudged liable, that such liability be limited to the amount or interest specified by the abovementioned statutes of the United States, and that plaintiffs be discharged therefrom upon the surrender of such interest, and that the money paid or secured to be paid be divided pro rata according to law among such claimants who prove their claims in accordance with the provisions of the order prayed for, saving to all parties any priority to which they may be legally entitled, and that a judgment may be entered discharging plaintiffs from all further liability.
6. That plaintiffs may have such other and further relief that the justice of the cause may require.

Respectfully submitted,

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in the *AMOCO CADIZ* litigation courtesy of Warren J. Marwedel, Esq., Chicago, Illinois.

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



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4-I Benedict on Admiralty FORM No. 1-471

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4-I Benedict on Admiralty FORM No. 1-472

FORM No. 1-472 Complaint--Mortgage Foreclosure¹

[Caption and Jurisdictional Statement] n2

2. Plaintiff, _____, is a _____ corporation with its place of business at _____ City, _____.

3. The Towboat _____ is and was at all times mentioned herein a vessel of the United States and is now at or near _____, within the _____ District of _____ and within the jurisdiction of this Court.

4. On _____, 20 _____, _____, Inc., executed and delivered to plaintiff a promissory note in the principal sum of \$ _____, payable to the order of _____ Bank. A true copy of the note is attached hereto as Exhibit A. Plaintiff is and at all times mentioned herein was the one and holder of said note.

5. On _____, 20 _____ and at all times mentioned herein, _____, Inc., was the sole owner of the Towboat _____, formerly called the _____, registered at the Port of _____, Official Number _____. To secure the payment of said note, _____, Inc., duly executed and delivered to plaintiff a preferred mortgage upon said vessel dated _____ 20 _____. A true copy of said mortgage is attached hereto as Exhibit B.

6. Said mortgage was duly recorded at the home port of said vessel, in the Office of the Documentation Officer, U.S. Coast Guard, at the Port of _____ on _____, 20 _____, in accordance with *46 U.S.C. § 31321 et seq.* All of the acts and things required to be done by said Act in order to give said mortgage the status of a preferred mortgage were duly done or caused to be done by plaintiff or by the Documentation Officer at the

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Port of _____, including the endorsement of said mortgage upon the outstanding document of said vessel.

7. _____, Inc., failed to make the interest and principal payment due on _____, 20____, has made further default in the payment of each and every installment due and payable thereafter, and continues in default under the terms of said note and mortgage. By reason of said defaults plaintiff has under the terms of said note elected to declare due and payable immediately the entire indebtedness secured by said mortgage. There is now due and unpaid on said Note and Mortgage the principal sum of \$ _____, together with interest thereon at the rate of _____% per annum from _____, 20____, until paid.

Wherefore, plaintiff demands:

1. That the said preferred mortgage may be foreclosed, and that the Towboat _____ her engines, boilers, machinery, tackle, apparel, furniture and equipment may be condemned and sold to pay the demands and the claims of the plaintiff herein under the preferred ship mortgage hereinbefore described.
2. That the court enter an order herein directing that said defendant vessel, her engines, boilers, machinery, tackle, apparel, furniture and equipment be sold in the manner provided by law to answer the judgment for the amount adjudged due to plaintiff herein.

Attorney for Plaintiff

[*Verification*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in First State Bank v. Towboat Chippewa, 402 F. Supp. 27, 2075 A.M.C. 2079 (N.D. Ill. 1975), courtesy of Elmer M. Walsh, Jr., Esq., Chicago, Illinois.

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

(n3)Footnote 3. *See* Form No. 1-11 *supra*.



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4-I Benedict on Admiralty FORM No. 1-473

FORM No. 1-473 Complaint In Rem and In Personam--Mortgage Foreclosure¹

[Caption] n2

The complaint of _____ [*credit association*] against the vessel _____, Official No. _____, her rigging, tackle, apparel, furniture, engines, nets and fishing gear and all other necessities thereunto appertaining and belonging, and against _____, a corporation, in a cause, civil and maritime, for foreclosure of a preferred ship mortgage, respectfully shows:

1. Plaintiff is a corporation organized and existing under the _____ Act of the Congress of the United States as amended, with its principal place of business in the City of _____, _____.

2. Defendant _____, is a corporation organized and existing under the laws of the State of _____, with its principal place of business and offices at _____.

3. The vessel _____, Official No. _____, with her rigging, tackle, apparel, furniture, engines, nets and fishing gear and all other necessities thereunto appertaining and belonging, is now afloat in _____, and within this district.

4. On _____, 20 _____, Defendant _____, executed and delivered to Plaintiff, for valuable consideration, a promissory note dated _____, 20 _____, in the amount of _____ Dollars (\$ _____), bearing interest at _____ percent (_____) per annum. The principal amount of that note was advanced to Defendant _____, Inc., on _____, 20_____.

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5. On _____, 20 _____, in order to secure the payment of the promissory note described in paragraph 4 above, Defendant _____, in accordance with and pursuant to the 46 U.S.C. §§ 31321, *et seq.* executed and delivered to Plaintiff a preferred mortgage covering the vessel _____, and by the terms of that mortgage granted, bargained, and sold mortgagor's vessel, the vessel _____, to Plaintiff, to secure the payment of the note described in paragraph 4 above and all other obligations of the preferred mortgage described in this paragraph. A copy of that preferred mortgage is annexed hereto as Exhibit "A".

6. At the time the preferred mortgage described in paragraph 5 above was executed and delivered to Plaintiff, and at all times since, the vessel _____ was, and has been, duly enrolled under the laws of the United States with her home port at _____.

7. The preferred mortgage described in paragraph 5 above was duly filed with the United States Coast Guard Marine Documentation Officer at _____, the home port of the vessel, and the record of the Coast Guard Marine Documentation Officer at _____, shows the name of the respondent vessel, the name of the respective parties to the preferred mortgage, the interest in the respondent vessel mortgaged, and the amount and date of maturity of the note described in paragraph 4 above. The preferred mortgage was duly endorsed on the documents of the respondent vessel, and affidavits were filed with the record of the preferred mortgage, to the effect that the mortgage was made in good faith and without any design to hinder, delay or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessel.

8. At the time Defendant _____, executed and delivered to Plaintiff the note described in paragraph 4 above and the mortgage described in paragraph 5 above, Defendant's vessel, _____, was encumbered by a valid and subsisting first preferred mortgage in favor of _____, executed by Defendant _____, on _____, 20 _____, and delivered the same date to _____. The lien of Plaintiff's mortgage is superior to the lien of the mortgage in favor of _____, by virtue of a Subordination Agreement dated _____, 20 _____, which expressly subordinated the lien of the _____ mortgage to the lien of Plaintiff's mortgage of _____, 20 _____. A copy of that Subordination Agreement is attached hereto as Exhibit "B". The Subordination Agreement was duly filed with the United States Coast Guard Marine Documentation Officer at _____, on _____, 20 _____, and affidavits were filed with the record of the Subordination Agreement, to the effect that the Subordination Agreement was entered into in good faith and without any design to hinder, delay or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessel.

9. The Defendant _____, has refused and neglected to pay the indebtedness secured by the mortgage described in paragraph 5 above in accordance with the terms thereof. Defendant _____, has defaulted in failing to pay installments of principal and interest when due. There is presently due and unpaid the principal sum of \$ _____ plus interest at the rate of _____ per annum from _____, 20 _____, to date, and all recoverable expenses incurred by Plaintiff herein including, but not limited to, the cost of port risk insurance. Plaintiff has further advanced the sum of \$ _____ for insurance premiums and repairs to the vessel. In accordance with the terms of the preferred mortgage, Plaintiff has elected to declare, and did declare, the whole of the outstanding indebtedness evidenced by its promissory note dated _____, 20 _____, to be immediately due and payable. Although demand therefor has been duly made, neither the whole nor any part of the outstanding indebtedness has been paid.

10. Plaintiff has incurred and will incur reasonable attorney's fees and expenses and may make advances and sustain damages from or by reason of the default of the mortgagor, all in amounts not presently known to Plaintiff.

11. All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States of America and of his Honorable court.

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 issue against the vessel _____, her rigging, tackle, apparel, furniture, engines, nets and fishing-gear and all other necessities thereunto appertaining and belonging, and that all persons claiming any interest in the vessel be cited to appear and answer on oath, all and singular, the matters aforesaid; that Defendant _____, Inc. be cited to appear and answer on oath, all and singular, the matters aforesaid.
2. That this Honorable Court direct the manner in which the actual notice of the commencement of this suit shall be given to the Master or other ranking officer or caretaker of the vessel _____, and to any person, firm or corporation which has recorded a notice of claim of any undischarged lien upon the vessel.
3. That the preferred mortgage be declared to be a valid and subsisting lien in the sum of _____ Dollars (\$ _____) principal, plus interest at _____ percent (_____ %) from _____, 20 _____, together with the _____ Dollars and _____ Cents (\$ _____) and all other amounts required to be disbursed by Plaintiff for the care and preservation and insurance and the cost of any additional insurance on Defendant vessel, and all other advances, expenses, attorneys' fees, costs and disbursements on Plaintiff herein, with interest at _____ percent (_____ %) per annum thereon, such lien to be prior and superior to the interest, liens, or claims of any and all persons, firms or corporations whatsoever, except such persons, firms or corporations as may hold preferred maritime liens on the vessel.
4. That the vessel _____, her rigging, tackle, apparel, furniture, engines, nets and fishing-gear and all other necessities thereunto appertaining and belonging be condemned and sold to pay the demands and claims aforesaid, with interest and costs, and that Plaintiff may become a purchaser at any sale of the mortgaged property.
5. That it be decreed that any and all persons, firms or corporations claiming any interest in the vessel _____ are forever barred and foreclosed of and from all right or equity of redemption or claim of, in or to the mortgaged vessel and every part thereof.
6. That Plaintiff recover from Defendant _____, Inc. the amount of any deficiency that may be due the Plaintiff after applying the proceeds of sale of the mortgaged vessel to the amount of the decree herein.
7. That Plaintiff have such other and further relief as in justice it may be entitled to receive.

Dated: _____

Attorney for Plaintiff

[Verification] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Southern Oregon Production Credit Association v. Oil Screw Sweet Pea, 435 F. Supp. 454 (D. Or. 1977), courtesy of Souther, Spaulding, Kinsey, Williamson & Schwabe, Portland, Oregon.

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

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



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4-I Benedict on Admiralty FORM No. 1-474

FORM No. 1-474 Complaint In Rem and In Personam In Intervention--Enforcement of Preferred Ship Mortgage¹

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

_____ Shipping Company,)
Plaintiff,)
vs. The _____, her engines, boil-)
ers, tackle, etc., In Rem,)
and _____ Shipping Agency,)
In Personam, Complaint In)
Defendants. Intervention)
The _____ Bank,)
Plaintiff in Intervention, Civil Action)
No. _____)
vs. The _____, her engines,)
tackle, furniture, etc., In Rem,)
and)
_____ Marine Corporation,)
In Personam,)
Defendant in Intervention.)

The Complaint of The _____ Bank against the _____, her engines, tackle, furniture, apparel, appurtenances, etc., *in rem*, and against _____ Marine Corporation, *in personam*, in a cause of enforcement of a preferred ship mortgage and of contract civil and maritime, alleges upon information and belief:

1. This Court has jurisdiction of this matter under 28 U.S.C. § 1333 and 46 U.S.C. § 31321 *et seq.* 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 hereinafter mentioned, The _____ Bank (hereinafter "Bank") was and now is a national banking association organized and existing under the laws of the United States of America with an office and place of business at _____.

3. At all times hereinafter mentioned defendant _____ is and was a vessel documented under the laws and flag of the _____ in the name of defendant _____ Marine Corporation ("_____"), a corporation organized and existing under the laws of _____, as owner thereof, and having official number _____, being of approximately _____ gross tons, and approximately _____ net tons and built in 20 _____ at _____. Said vessel is now within the navigable waters of this District. A true copy of the Certificate of Ownership and Encumbrance for the _____ is attached and incorporated herein as Exhibit 1.

4. On or about _____, 20 _____, defendant _____ executed a First Preferred Ship Mortgage (the "Mortgage") covering the _____ in favor of Bank as Mortgagee as security for a Guaranty dated _____, 20 _____, which was executed and delivered by _____. The principal amount of said mortgage is _____ and the maturity date is _____, 20 _____. True copies of the Mortgage and Guaranty are attached hereto as Exhibits 2 and 3 respectively.

5. The Mortgage was duly filed for record on _____, 20 _____, at _____ P.M. in the Office of the Deputy Commissioner of Maritime Affairs, Republic of _____, the proper place for the recording of a mortgage covering the vessel _____ and was duly recorded in Book _____, Page _____ at said office. The Mortgage was endorsed on the vessel's Certificate of Registry on _____, 20 _____, at _____ P.M. at the Port of _____.

6. On or about _____, 20 _____, defendant _____ executed a Supplement to the Mortgage covering the _____ in favor of Bank as Mortgagee as additional security for the Guaranty Confirmation executed and delivered by _____ on _____, 20 _____, as well as the Guaranty dated _____, 20 _____. The Supplement increased the principal amount of the Mortgage to _____ and the maturity date was extended to _____, 20 _____. True copies of the Supplement and Guaranty Confirmation are attached hereto as Exhibit 4 and 5 respectively.

7. The Supplement was duly filed for record on _____, 20 _____, at _____ A.M. in the Office of the Deputy Commissioner of Maritime Affairs, Republic of _____, and was duly recorded in Book _____, Page _____ at said office. The Supplement was endorsed on the vessel's certificate of Registry on _____, 20 _____, at _____ at the Port of _____.

8. The first part of the indebtedness secured by the Mortgage is evidenced by the Guaranty dated _____, 20 _____, in the principal amount of _____ given by defendant _____ to Bank to secure money lent pursuant to and obligations arising out of a Loan Agreement ("First Agreement") dated _____, 20 _____, with Amendments dated _____,

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20____, _____, 20____, and _____, 20____, and a Loan Agreement ("Second Agreement") dated _____, 20____, with an Amendment dated _____, 20____, True copies of the First Agreement with Amendments and Second Agreement with Amendment are attached hereto as Exhibits 6 and 7 respectively.

9. The rest of the indebtedness secured by the Supplement to the Mortgage is evidenced by a Guaranty Confirmation dated _____, 20____, given by defendant _____ to Bank to secure additional money lent pursuant to a Loan Agreement ("Third Agreement") dated _____, 20____, and as further security for the First Agreement with an additional Amendment dated _____, 20____, and the Second Agreement with an additional Amendment dated _____, 20____. True copies of the Third Agreement, the _____, 20____, Amendment to the First Agreement, and the _____, 20____. Amendment to the Second Agreement are attached hereto as Exhibits 8, 9 and 10.

10. Long prior to the commencement of this action all acts and things required to be done in order to constitute the Mortgage and the Supplement collectively as a First Preferred Mortgage constituting a first preferred mortgage lien upon the mortgaged vessel _____, in accordance with the provisions of [*the law of the country in which the vessel is requested*]

11. At the time of the filing of this action, defendant _____ is in default under the Mortgage and the Supplement. Among other defaults, defendant failed to make any payment in accordance with the terms of the Mortgage as and when due.

12. Pursuant to the terms of the Mortgage, Bank has notified defendant _____ that an event of default has occurred. Bank has further notified defendant _____ that the whole amount due and payable on the indebtedness under the Mortgage has been demanded by Bank. A true copy of notice of default and acceleration is attached and incorporated herein as Exhibit 11.

13. Pursuant to the foregoing, _____ owes in principal the sum of \$ _____, plus interest accrued thereon in the amount of \$ _____ through _____, 20____, and accrued thereafter pursuant to the Mortgage.

14. In addition to the debt of defendant _____ to Bank as evidenced by the Guaranty and Guaranty Confirmation secured by the Mortgage and Supplement, Bank, in order to protect its interest in the _____, may be compelled to advance monies to maintain the condition of the collateral. Under the terms and provisions of the Mortgage and Supplement, these additional sums plus interest are secured by the Mortgage and Supplement.

Wherefore, in consideration of the premises, plaintiff prays as follows:

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 may issue against the _____, her engines, tackle, furniture, apparel, appurtenances, etc., and that all persons claiming any title or right to said vessel may be cited to appear and answer under oath the allegations of this Complaint;

2. That process issue in the manner provided by law, upon the defendant _____ Marine Corporation, citing it to appear and answer under oath the allegations of this Complaint;

3. That the First Preferred Mortgage as evidenced by the Mortgage and Supplement be declared a valid and subsisting mortgage on the whole of the _____, her engines, tackle, furniture, apparel, appurtenances on board and on shore, etc., prior and superior in right and interest to any claim therein or thereon by any other person, firm, or

corporation whomsoever or whatsoever;

4. That plaintiff have a decree against the _____, her engines, tackle, furniture, apparel, appurtenances on board and on shore, etc., for the full amount of its aforesaid claims, attorneys' fees and costs, as provided in the attached documents;

5. That the _____, her engines, tackle, furniture, apparel, appurtenances on board and on shore, etc., be condemned and sold free and clear of all liens and encumbrances to satisfy the decree of the plaintiff, and that this Honorable Court award to the plaintiff out of the proceeds of said sale the full amount of its claims as aforesaid with preference and priority over all other persons, firms, and corporations whomsoever and whatsoever;

6. That this Court decree the manner in which notice of the commencement of this action be given by plaintiff to the Owner, Master, or caretaker of the _____, to the defendant _____ Marine Corporation, and to any person, firm, or corporation having or claiming to have recorded a notice of claim of an undischarged lien as provided for by the applicable statutes and rules;

7. That should the proceeds of the sale of the _____ be insufficient to satisfy the claims of the plaintiff against defendant _____ Marine Corporation *in personam*, that the Court enter a judgment for such deficiency against the defendant _____ Marine corporation *in personam*; and

8. That the court grant such other and further relief to which the plaintiff may show itself justly entitled.

Attorney for Plaintiff In Intervention

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).



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FORM No. 1-475 Complaint In Rem and In Personam--Foreclosure of Preferred Ship Mortgage

[Caption] n1

Plaintiff sues the defendant, vessel "_____", and defendant _____, a
_____ corporation, and alleges:

1. Plaintiff herein is a corporation, organized and existing under the laws of the State of _____, with its principal place of business in _____; that at all times relevant herein, plaintiff was Mortgagee under a certain Mortgage secured by the vessel "_____".

2. The vessel "_____", Official No. _____, is an American enrolled yacht, with home port of _____, and is now and will be during the pendency of this action, afloat upon the waters of the _____ District of _____ in _____ and within the admiralty and maritime jurisdiction of this Honorable Court.

(a) On information and belief the name has been wrongfully and illegally changed from "_____" to "_____" in violation of the federal laws of the United States.

3. Upon information and belief, the defendant, _____, is a corporation organized and existing under the laws of the State of _____ and is the sole owner of the Yacht "_____".

4. This is an admiralty and maritime claim *in rem* and *in personam* with a prayer for process of maritime attachment within the meaning of *Rule 9(h), Federal Rules of Civil Procedure* and the Admiralty Rules of this Honorable Court.

COUNT I

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5. Upon information and belief, on _____, 20 _____, _____, as maker, executed a promissory note, a copy of which is attached hereto as Exhibit "A" [omitted] and made a part hereof as though fully set forth herein. This note was delivered to the Mortgagee, the payee thereof, and the plaintiff herein, on _____, _____.

6. Upon information and belief, in order to secure the payment of the principal of the note with interest and amount, both principal and interest, evidenced thereby, according to the true tenor and effect of said note, _____, Inc., as maker, duly executed and delivered to the plaintiff, as mortgagee, a preferred mortgage dated _____, 20 _____, a copy of which is attached hereto as Exhibit "B" [omitted].

7. Upon information and belief, by the terms and provisions of the note and preferred mortgage, _____, as maker, admitted that it was justly indebted to the mortgagee in the sum of _____ Dollars (\$ _____) and granted, bargained, sold, conveyed, transferred, assigned remised, released, mortgaged, set over and confirmed unto the mortgagee, his successors and assigns, the whole of the Yacht "_____", together with her engines, boilers, machinery, masts, bowsprits, boats, anchors, cables, rigging, tackle, apparel, furniture, and all other appurtenances thereunto appertaining and belonging, and any and all additions, improvements and replacements thereafter made in or to the vessel or any part or appurtenance or equipment thereof, provided that if _____, its successors or assigns, should pay or cause to be paid to the mortgagee, his successors or assigns, the principal sum of _____ Dollars (\$ _____) with interest thereon as required by Exhibit "A," by payment of the above mentioned note and by paying interest on the note, and if _____, should keep, perform and observe all and singular the covenants and promises in the note and in the mortgage, then the mortgage and the estate and rights thereby granted should cease, determine and be void, otherwise to remain in full force and effect. A copy of the preferred mortgage for all the terms, conditions and provisions therein contained, as though the same were herein fully and at length set forth is attached as Exhibit "B."

8. Upon information and belief, the preferred mortgage was duly filed for record in the office of the Documentation Officer of the Port of _____, the home port of the vessel, and was duly recorded in the office of the Documentation Officer in Book _____, Page Number _____, at _____ P.M. _____, 20 _____, which record shows the name of the vessel, the names of the parties to the mortgage, the time and date of the reception of the mortgage, the interest in the vessel mortgaged and the amount and date of maturity of the mortgage.

9. Upon information and belief, the Documentation Officer of the Port of _____, upon the recording of the preferred mortgage, delivered two certified copies thereof to the mortgagor, _____, Inc., who placed and used due diligence to retain one copy on board the Yacht "_____" and caused the copy and documents of the vessel to be exhibited by the master to any person having business with the vessel, which might give rise to a maritime lien upon the vessel, or the sale, conveyance or mortgage thereof, and at all times since then the master of the vessel, upon the request of any person, has exhibited to him the documents of the vessel and the copy of the preferred mortgage placed on board thereof.

10. Upon information and belief, the preferred mortgage stated the interest of the mortgagor in the Yacht "_____" and the interest conveyed or mortgaged, and before the same was recorded, the mortgage had been acknowledged within the _____, State of _____, before a notary public authorized by the laws of the State of _____ and of the United States to take acknowledgments of deeds with the County of _____ and State of _____.

11. Upon information and belief, the defendants failed to apply the monthly installments owed to the plaintiff pursuant to Exhibit "A" and Exhibit "B," and on _____, 20 _____, the plaintiff herein then and there fully

demanded payment of the note with interest at the lawful rate of eighteen percent (18%) per annum and payment of the principal and interest of the sum represented by the note, all as provided therein. But _____, refused and neglected and ever since has refused and neglected to pay the amount of the balance of the principal of the note or any part thereof, or the interest thereon, or any part thereof.

12. The mortgagor was, by the terms of the mortgage, particularly Section _____ thereof, to keep the vessel insured at all times.

13. Upon information and belief, the mortgagor has allowed the policy of insurance, in effect at the time the mortgage was given, to lapse and the vessel is now uninsured.

14. Inter alia, the preferred mortgage provides in part as follows:

But if default be made in such payments, or in any one of such payments, or if default be made in the prompt and faithful performance of any of the covenants herein contained, _____ [mortgagee] is hereby authorized to take possession of the _____ property, at any time, wherever found _____ and sell and convey the same _____ to satisfy said debt.

15. Pursuant to the provisions of the note and preferred mortgage and particularly the provisions of its _____ page, the plaintiff, as mortgagee under the preferred mortgage, has declared all of the principal balance, and the note herein above referred to, to be immediately due and payable.

16. That the plaintiff has retained _____ [attorneys], to represent its interests in this cause and has promised to pay their reasonable attorney's fees.

Wherefore, plaintiff prays:

1. That a warrant for the arrest of the Yacht "_____" her engines, tackle, rigging, etc., may issue, and that all persons claiming any interest therein may be cited to appear and answer the matters aforesaid, and that the Yacht "_____" her engines, tackle, rigging, etc., may be condemned and sold to pay the demands and claims aforesaid in the amount of _____ Dollars (\$ _____) from _____, 20 _____, until paid and for costs and actual attorneys fees and pay any and all other amounts required to be paid by the Mortgagor to the Mortgagee under the note and preferred mortgage with interest and costs, and that the plaintiff may have such other and further relief as the justice of the cause may require.

2. That the preferred mortgage, dated _____, 20 _____, executed and delivered by _____, may be declared to be a valid and subsisting lien upon the Yacht "_____" her engines, tackle, rigging etc., in the preferred mortgage described and thereby conveyed and transferee prior and superior to the interests, liens or claims of any and all persons, firms, or corporations whatsoever, except such persons, firms or corporations as may hold preferred maritime liens on the vessel.

3. That in default of the payment of the sums found to be due and payable to plaintiff under the note and preferred mortgage, within the time to be limited by a decree of this Honorable Court, together with a sum sufficient to pay the costs of this suit, it may be decreed that any and all persons, firms and corporations claiming any interest in the Yacht "_____" are forever barred and foreclosed of and from all right or equity of redemption or claim of, in or to the mortgaged Yacht "_____" her engines, tackle, rigging, etc., and every part thereof.

4. That this court may direct the manner in which actual notice of the commencement of this suit shall be given by the plaintiff to the master, other ranking officer or caretaker of the Yacht "_____" and to any person, firm or corporation who has recorded a notice of claim of an undischarged lien upon the Yacht "_____".

5. That judgment may issue against Defendant, _____, to pay any and all amounts required to be paid by the Mortgagor to the Mortgagee under the note and preferred mortgage with interest as aforesaid until paid and for costs and actual attorneys fees and, in the event of condemnation and sale hereunder that said defendants be required to pay to plaintiff any deficiency sums and for such other and further relief as the justice of the cause may require.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

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



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4-I Benedict on Admiralty FORM No. 1-476

FORM No. 1-476 Complaint-Foreclosure of First Preferred Ship Mortgage--United States Plaintiff

[Caption] n1

The United States of America, plaintiff herein, alleges upon information and belief as follows:

1. This is a preferred ship mortgage foreclosure case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and plaintiff's claim is an Admiralty and Maritime Claim within the meaning of *Rule 9(h), Federal Rules of Civil Procedure*.
2. Plaintiff is the United States of America, a sovereign nation authorized to bring this action under *28 U.S.C. § 1345*, and as authorized by the Merchant Marine Act, 2036, as amended, *46 U.S.C. § 1275(e)*.
3. Defendant _____ (Official Number _____) (hereinafter referred to as the "Vessel" or _____) was at all material times and still is a vessel of the United States, and is now and during the pendency of the proceedings herein will be within this District and within the jurisdiction of this Honorable Court.
4. Defendant _____ Trust Company, a corporation organized and existing under and by virtue of the laws of the State of _____, not in its individual capacity, but solely as owner trustee under a trust agreement between it and _____, settlor, dated _____, 20 ____ (hereinafter referred to as the "Shipowner") is the owner of the Vessel and is doing business and has offices within this District and within the jurisdiction of this Honorable Court.
5. The _____ was originally owned by _____ ("_____") formerly _____, and is currently chartered by _____ from the Shipowner.

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6. On _____, 20 _____, in order to finance the construction of the _____, _____ duly created and issued United States Government Insured Merchant Marine Bonds, Series _____ (the "Bonds") in the principal amount of \$ _____. Said Bonds bear interest at the rate of six percent per annum and are redeemed on _____ and _____ of each year until _____, 20 _____, with semi-annual payments in the principal amount of \$ _____ plus interest on the outstanding principal amount of Bonds.

7. On or about _____, 20 _____, _____ for a valuable consideration sold and delivered the said Bonds to _____, a national banking association (the "Indenture Trustee") as trustee for the Bondholder under terms of Trust Indenture No. _____ dated as of _____, 20 _____, as amended as of _____, 20 _____, by Second Supplemental Indenture, and amended as of _____, 20 _____, by Third Supplemental Indenture.

8. On _____, 20 _____, as security for the payment of the principal and interest (and premiums if any) on the Bonds, XLI delivered a first preferred ship mortgage (together with all the amendments and supplements thereto hereinafter referred to as the "First Mortgage," a true copy of which will be submitted to the Court at the time of trial, the terms and conditions of which are incorporated herein by reference) on the _____ in the amount of \$ _____ to the Indenture Trustee.

9. The First Mortgage was duly filed and recorded, together with the Affidavit of Good Faith of Mortgagor, on _____, 20 _____ at _____ P.M., in _____ and was endorsed on the Vessel's documents on _____, 20 _____ at P.M.

10. The Indenture Trustee performed or caused to be performed all steps required to create a preferred ship mortgage and the preferred status of the mortgage has not been waived.

11. Concurrently with the execution of the First Mortgage, the United States, acting by and through the Secretary of Commerce, as represented by the Assistant Secretary of Commerce for Maritime Affairs (the "Secretary") under the provisions of Title XI of the Merchant Marine Act, 2036, as amended ("Title I") entered into Contract of Insurance of Mortgage, a true copy of which will be submitted to the court at the time of trial, with _____ under the terms of which the United States insured the payment to the Bondholders of all of the unpaid interest on and the unpaid balance of the principal of the First Mortgage, as such debt is evidenced by the outstanding Bonds. Upon payment by the Secretary to the Indenture Trustee on the behalf of the Bondholders of the amounts due under the Contract of Insurance, the Bonds together with the First Mortgage and any other security held by the Indenture Trustee were to be assigned to the Secretary.

12. As part of a plan to leverage the financing of the _____, _____ sold the Vessel to the Shipowner and, subsequently, chartered the Vessel from the Shipowner.

13. By Assumption Agreement and Supplement No. 1 to the First Mortgage dated _____, 20 _____, the terms of the First Mortgage were amended to reflect the assumption by the Shipowner of the First Mortgage and the Shipowner's assumption of liability for the Bonds.

14. The Assumption Agreement and Supplement No. 1 to the First Mortgage was duly filed and recorded, together with the Affidavit of Good Faith of Mortgagor, on _____, 20 _____, at _____ P.M. in the Office of the Collector of Customs [or Coast Guard], _____ and was endorsed on the Vessel's documents on _____, 20 _____, at _____ P.M.

15. On _____, 20 _____, the Shipowner executed Supplement No. 2 of the First Mortgage pursuant

to which the First Mortgagee consented to the execution and delivery of a second preferred ship mortgage (the "Second Mortgage") on the _____ and certain technical changes in the First Mortgage.

16. On _____, 20 _____, in order to secure the repayment of a loan in the amount of \$ _____, the shipowner second mortgaged the _____ and another vessel to the _____ Bank, N.A. (_____ %) and _____ Bank-New York (_____ %) as co-mortgagees.

17. On _____, 20 _____, by Assignment and Supplement No. 3 to the First Mortgage, _____ Trust Company became Indenture Trustee for the Bondholders in place of _____ and the discharge amount of the First Mortgage was reduced to \$ _____.

18. On _____, 20 _____, _____ Bank-N.A. assigned its interest in the Second Mortgage to the _____ Bank and the discharge amount was reduced to \$ _____.

19. A payment on the Bonds was due on _____, 20 _____. The Shipowner failed to make the payment due on the Bonds and this failure constituted a "Default" under the terms of the First Mortgage (Article _____, Section _____), and a default under the Bonds.

20. By virtue of the Shipowner's failure to pay on the Bonds and the continuation of such failure for thirty days, the Indenture Trustee was entitled to make a demand for payment on all the Bonds, and on _____, 20 _____, after due demand for payment under the Contract of Insurance was made by the Indenture Trustee, under the terms of its Contract of Insurance, the entire principal amount and all of the accrued interest due on the Bonds as of _____, 20 _____ in the total amount of \$ _____ was paid by the plaintiff. (A true copy of the demand of the Indenture Trustee is attached hereto as Exhibit 1 and incorporated by reference herein.)
[Exhibit omitted]

21. On _____, 20 _____, the Indenture Trustee assigned all of its rights under the First Mortgage and any other security to the Secretary and issued a Bond to the Secretary (the "Secretary's Bond") in the principal amount of the outstanding Bonds. (A true copy of the assignment of the First Mortgage is attached as Exhibit 2 and a true copy of the Secretary's bond is attached as Exhibit 3.) [Exhibits omitted]

22. On _____, 20 _____, the Secretary, in accordance with the terms of the First Mortgage and by a demand letter to the Shipowner, accelerated the maturity of all sums due with respect to the First Mortgage. As of _____, 20 _____, the total sum due and owing and unpaid to the Secretary under the First Mortgage and on the Secretary's Bond was \$ _____, with interest accruing thereon at the daily rate of _____. (A true copy of the Secretary's demand letter is annexed hereto as Exhibit 4.) [Exhibit omitted]

23. Defendant Shipowner has failed to make the payment duly demanded on the Secretary's Bond and thus a "Default" continues to exist under the terms of the First Mortgage. The aforesaid unpaid balance constitutes a maritime lien upon the _____ under the terms of the First Mortgage, upon Default and assignment of the First Mortgage, and the Secretary has the right as against defendants to exercise all of the rights and remedies provided in the First Mortgage and exercise all rights and remedies given to mortgagees under 46 U.S.C. § 31321 et seq. , including the right to foreclosure and sale of the defendant vessel.

24. There have been no other proceedings to recover the principal and interest on the Secretary's Bond and the First Mortgage, and the amounts set forth above remain due and owing.

25. No part of the amounts due to the United States of America has been paid.

26. Plaintiff also alleges that after _____, 20 _____, and during the pendency of this action, plaintiff, in addition to the administrative expenses of arrest, may pay insurance premiums and other vessel care and preservation costs, for which defendants will also be liable, together with interest thereon from the date of payment at the default rate of 67 per annum.

27. Attorneys' fees, costs, expenses, and disbursements will be incurred in the prosecution of this action and will be due and owing from defendants in accordance with the First Mortgage.

Wherefore, plaintiff, United States of America prays:

1. The actual notice of the commencement of this suit in manner approved by the Court be given to the master or other ranking officer or caretaker of the Vessel, and to any person, firm or corporation which has recorded a Notice of Claim of any undischarged lien upon the Vessel.

2. That, pursuant to Rule (3) of the Supplemental Rules for Certain Admiralty and Maritime Claims (as amended and effective _____, 20 _____), this Honorable Court enter an order authorizing a warrant for the arrest of the Vessel, her engines, boilers, tackle, apparel, appurtenances, etc. now or at any time on board.

3. That a warrant be issued for the arrest of the Vessel, her engines, boilers, tackle, apparel, appurtenances, etc., now or at any time on board.

4. The plaintiff be declared the holder of a valid first preferred ship mortgage maritime lien on the Vessel to the extent of its claim herein.

5. That judgment of condemnation and sale be entered against said vessel, its engines, boilers, tackle, apparel, appurtenances, etc.

6. The Vessel be sold and the proceeds of the sale of the Vessel be applied first to costs and expenses associated with this action and then applied to payments of the First Mortgage, together with interest thereon.

7. The Court order judgment in favor of the plaintiff against the Vessel, *in rem*, and the Shipowner, *in personam*, for all the sums due and owing to the Secretary's Bond, for insurance premiums and other vessel care, preservation costs paid by the plaintiff after the date of the commencement of this action, for reasonable attorney's fees, and for the costs of this suit incurred herein.

8. The Court decree that any person, firm or corporation claiming any interest as to or in the Vessel, be forever barred and foreclosed as to any right, equity of redemption, claim or lien in or to said Vessel, and every part thereof.

9. Plaintiff have such other and further relief as may be just and proper.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

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



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LIMITATION

4-I Benedict on Admiralty FORM No. 1-477

FORM No. 1-477 Complaint--Mortgage Foreclosure for Failure to Maintain Insurance Policy

[Caption and Jurisdictional Statement] n2

2. Plaintiff is an individual residing at _____

3. The vessel _____, official number _____ is now, or during the pendency of this action will be, within this district.

4. Plaintiff _____, is a corporation organized under the laws of the State of _____, with principal place of business at _____.

5. The defendant _____ is an individual residing at _____.

6. On _____, 20____, _____, a corporation organized under the laws of the State of _____, as true, lawful and sole owner of the vessel _____, sold the vessel to _____ for a total purchase price of \$ _____ to be paid \$ _____ in cash and the balance by a promissory note executed in favor of the plaintiff, in the face amount of \$ _____ with interest thereon at _____ % per annum payable as follows: \$ _____ per month, commencing 20____, with payment to be applied first to interest and then to principal, with the balance of principal and interest payable four years from the date of the note, a true copy of said note is annexed hereto as Exhibit A [omitted] and incorporated herein by reference; the remaining \$ _____ to be paid on or before _____, 20____. The above note was executed by _____, the defendant, who, upon information and belief, is the sole stockholder of the defendant _____. At that time, _____ also executed and delivered to plaintiff a mortgage as security for the payment of the promissory note. Under the terms and conditions of the mortgage, _____ granted, bargained and sold

to plaintiff, its successors and assigns, the whole of the vessel _____, together with all the appurtenances thereto, conditioned that on payment by _____ of the promissory note, with interest, in accordance with the conditions specified therein, then the mortgage was to be null and void, otherwise to remain in full force and effect. A copy of the mortgage is attached hereto and incorporated herein as Exhibit B and incorporated herein by reference.

7. At the time plaintiff sold the vessel to _____ and the promissory note and mortgage were executed, and at all times thereafter, the vessel was and is a vessel of the United States, duly documented under the laws of the United States. The mortgage and the above mentioned record thereof in all respects comply with the requirements of 46 U.S.C. § 31321 *et seq.* and the mortgage is entitled to the status of a preferred mortgage.

8. Under the terms and conditions of the promissory note and mortgage, any failure by _____ to make any payment either of the principal indebtedness or the interest thereon when due constitutes a default, which default, if continued for ten (10) days, entitled the plaintiff to declare all of the principal indebtedness and all accrued interest thereon immediately due and payable.

9. On _____, 20____, _____ failed to make the payment of \$ _____ then due and payable on the indebtedness, and since that time has failed to make that payment or any other of the subsequent monthly payments required to be made, and has not been able to be located.

10. The promissory note contained a clause under which the maker agreed to pay all insurance premiums and, in the event of a default, all costs, disbursements and attorneys' fees incurred in any action to collect the note or to establish right in accord with the security interest agreement.

11. The mortgage contains a clause specifically including within the lien of the mortgage advances for insurance premiums and costs, disbursements, and attorneys' fees.

12. Plaintiff was informed that the maritime insurance policy then in force on the vessel _____ was about to lapse for non-payment of premium. In order to avoid a gap in coverage, plaintiff advanced the sum of \$ _____ for the payment of the maritime insurance renewal premium.

13. As a result of the defaults by the defendant above mentioned, plaintiff will be obligated to pay costs, disbursements and attorneys' fees in an amount estimated to be \$ _____.

14. Plaintiff hereby declares the full remaining balance due under the mortgage of \$ _____ to be due and payable.

15. _____ has paid a total of \$ _____ of the principal indebtedness secured by the mortgage, leaving the sum of \$ _____ due and owing on the indebtedness together with interest thereon at _____ % per annum since _____, 20____.

Wherefore, plaintiff prays that:

1. Process in due form of law according to the practice of this Court in causes of Admiralty and Maritime jurisdiction may issue against the vessel _____:

2. All persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid;

3. The Court enter judgment in favor of plaintiff in the amount of its claim, together with interest and costs thereon;

4. The vessel _____ be condemned and be sold to satisfy the claim in the amount of \$ _____, with the proceeds thereof distributed according to law and with the above described mortgage being given the status of a preferred mortgage entitled to the priority of a preferred mortgage lien.

Attorney for Plaintiff

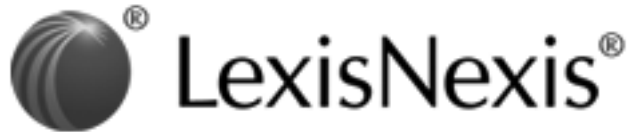
[*Verification*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Myerow v. The Vessel Top of the Morning*, Civ. No. 80-2208 (E.D.N.Y. 1980)

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

(n3)Footnote 3. *See* Form No. 1-11 *supra*.



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4-I Benedict on Admiralty FORM No. 1-478

FORM No. 1-478 Complaint In Personam by United States--Foreclosure of First Preferred Ship Mortgage and Recovery on Personal Guarantees¹

[Caption] n2

The complaint of plaintiff, the United States of America, against defendants _____ and _____ for money owed on promissory note and personal guarantees, shows, upon information and belief, as follows:

1. Plaintiff United States of America is a corporate sovereign authorized to sue under *28 U.S.C. § 1345*.
2. Defendants _____ and _____, husband and wife, reside within this District at _____ and have property, real and personal, within this District.
3. At all pertinent times, defendant _____ was and still is a general partner in the _____ Partnership.
4. At all pertinent times, the _____ Partnership was and still is a partnership of the State of _____ and owner of the _____, Official No. _____ [*a vessel of United registry*].
5. On _____, 20____, the A _____ C _____ Partnership by _____, a general partner, duly made, executed, and delivered to _____, Inc. (the Lender) a guaranteed Promissory Note for \$ _____, bearing interest at a variable rate as set forth therein (the Guaranteed Promissory Note). Plaintiff contemporaneously executed and delivered to the Lender a guarantee of payment of the said note together with a guarantee agreement (Guarantee Agreement).

6. On _____, 20____, the Guaranteed Promissory Note was amended by plaintiff, the _____ Partnership, and the Lender in order to fix the interest rate at _____ percent per annum. True and correct copies of the Guarantee Agreement and Guaranteed Promissory Note, both as amended, are attached hereto as Exhibit "A" and incorporated herein as though fully set forth.

7. On _____, 20____, the _____ a Partnership by _____, a general partner, also duly made, executed, and delivered to plaintiff, United States of America, a Promissory Note (the Promissory Note) for \$ _____, bearing interest at a variable rate as set forth therein, and duly executed, acknowledged, and delivered to plaintiff a First Preferred Ship Mortgage (the "Mortgage") on the _____ as security for payment of the said Promissory Note to the United States of America, and any other sum paid by plaintiff to or for the account of the _____ Partnership.

8. On _____, 20____, the Promissory Note and the Mortgage were amended by plaintiff and the _____ Partnership in order to fix the interest rate at _____ percent per annum. True and correct copies of the Promissory Note and the Mortgage, both as amended, are attached hereto as Exhibit B and incorporated as though fully set forth.

9. On _____, 20____, defendants _____ and _____, husband and wife, each executed and delivered to plaintiff a personal, unconditional, joint, and several guaranty of payment (the Guaranty Agreement) of one-hundred percent of the obligation of the _____ Partnership, with respect to the financing of the _____ with the Lender.

10. On _____, 20____, the Guaranty Agreements were amended by the parties thereto to acknowledge the changed interest rate and reaffirm the guarantees in light of said change. A true and correct copy of each Guaranty Agreement, as amended, is attached hereto as Exhibit A and incorporated herein as though fully set forth.

11. Effective _____, 20____, _____ Inc., for valuable consideration, duly assigned to _____ Insurance Company (the Holder) all of its rights, title, and interest in and to the Guaranteed Promissory Note, as amended. A true and correct copy of the assignment is attached hereto as Exhibit "D" and incorporated herein as though fully set forth.

12. The _____ Partnership failed to comply with the provisions of the Guaranteed Promissory Note, the Promissory Note to the United States of America, and the Mortgage, all as amended, by failing to make agreed upon payments of principal and interest, each such failure being an event of default under Article II, Section 1 of the Mortgage as amended.

13. On _____, 20____, the Holder, in accordance with the provisions of the Guarantee Agreement, made demand upon plaintiff for full payment of the obligation of the _____ Partnership and plaintiff paid the obligation. A true and correct copy of the holder's demand for payment and plaintiff's record of disbursement, Schedule H, are attached hereto as Exhibit "E" and incorporated herein as though fully set forth.

14. Plaintiff has performed all of its obligations under the various agreements set forth herein.

15. Attorneys' fees, costs, expenses, and disbursements will be incurred in the prosecution of this action and will be due and owing from defendants in accordance with the Promissory Note to the United States of America, the Mortgage, and the Guaranty Agreements, all as amended.

A FIRST CAUSE OF ACTION AGAINST _____

16. Plaintiff repeats and realleges paragraphs 1 through 15 of this Complaint with the same force and effect as if hereinafter set forth at length.

17. By reason of the default of the _____ Partnership, plaintiff, in accordance with the provisions of the Guaranteed Promissory Note, the Promissory Note to the United States of America, and the Mortgage, all as amended, elected to declare the entire balance of the _____ Partnership's obligation thereunder accelerated and immediately due and payable. A true and correct copy of plaintiff's _____, 20 _____, notice of acceleration to the _____ Partnership is attached hereto as Exhibit "F" and is incorporated herein as though fully set forth.

18. The _____ Partnership did not pay the aforesaid obligation although duly demanded.

19. Defendant _____ has failed to pay the amounts due and owing under the Mortgage and the Promissory Note to the United States of America, although said amounts were duly demanded.

20. There is currently due, owing, and unpaid, over and above all just credits and offsets, the sum of \$ _____ plus interest accruing from _____, 20 _____, at the per diem rate of _____, being interest on \$ _____ at the default rate of _____ percent per annum as set forth in _____ [*state mortgage provisions*] of the Mortgage as amended. A true and correct copy of the accounting is attached hereto as Exhibit "G" and incorporated herein as though fully set forth.

21. Plaintiff also alleges that after _____, 20 _____, and during the pendency of this action, plaintiff may pay insurance premiums and other vessel care and preservation costs for which defendants will be liable under _____ [*state mortgage provisions*] of the Mortgage, as amended, together with interest thereon from the date of payment at the default rate of 18% per annum.

A SECOND CAUSE OF ACTION AGAINST BOTH DEFENDANTS

22. Plaintiff repeats and realleges paragraphs 1 through 21 of this complaint with the same force and effect as if hereinafter set forth at length.

23. On _____ 20 _____, both defendants herein were mailed a demand for the amount he or she personally and unconditionally guaranteed to pay in the event of a default, but each defendant failed to pay this or any other sum and is thereby in breach of the Guaranty Agreement, as amended. A true and correct copy of each said demand, with enclosure, is attached hereto as Exhibit "H" and incorporated herein as though fully set forth.

Wherefore, plaintiff, United States of America prays:

A. That defendants _____ and _____, husband and wife, and each of them, jointly and severally, be adjudged liable to plaintiff for \$ _____ with interest from _____, 20 _____ at the per diem rate of \$ _____, being interest on \$ _____ at the default rate of _____ percent per annum, and, additionally, for any and all sums expended by plaintiff for insurance premiums and other vessel care and preservation costs after _____, 20 _____, with interest thereon at the agreed upon default rate of _____ percent per annum from the date of payment by said plaintiff; and

B. That if the defendants, or any of them, cannot be found within this district, then that all of said absent defendants'

property of any description whatsoever, including other vessels, located within this district be attached to the amount sued for herein, and condemned and sold to pay plaintiff's claim; and

C. That plaintiff receive reasonable attorneys' fees, costs, expenses, and disbursements incurred in prosecuting this action, according to proof; and

D. That plaintiff receive such other and further relief as this.

United States Attorney

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in United States v. Ronick, Civ. No. 84-2704 (E.D.N.Y. 1984).

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



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FORM No. 1-499RESERVED



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4-I Benedict on Admiralty FORM No. 1-500

FORM No. 1-500 Complaint In Rem and In Personam by Passenger--Breach of Contract

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

4. The plaintiff, being desirous to go to _____ applied to _____, agent of defendant, for information in regard to the terms and accommodations of the ship _____ and also as to the time of her sailing from this port, whereupon said agent then and there represented and stated to the plaintiff that the ship _____ was of the very best class and condition and would take fifty passengers on said voyage. The agent marked out and represented to plaintiff where the plaintiff's room should be, and represented that such room was at least six feet square, well lighted and ventilated, and represented that in consequence of the pressure of passengers, it was necessary for the plaintiff to engage his passage without delay.

5. Relying upon such representations and other like deceptive and unfair representations, the plaintiff paid to defendant's agent the sum of \$ _____ as and for plaintiff's passage money in advance, and sent his baggage to said ship, and himself proceeded on board of said ship, ready to sail.

6. Plaintiff thereupon ascertained, and alleges to be the fact, that the representations aforesaid were false and deceptive, that the owners of the said vessel have made and fitted up in the ship aforesaid, between decks (calling it a cabin), a number of berths and pretended staterooms, which are close, confined, and unhealthful, and have engaged to take and transport in and on board of the said vessel as cabin passengers, one hundred and seventy-two persons, rendering it uncomfortable and unsafe for the plaintiff to proceed in such vessel upon the said voyage.

7. Plaintiff, on discovery of the matter, refused to proceed on the said voyage and demanded a return of the said passage money paid by him, but the same has been refused, and the plaintiff, by reason of the premises, has sustained and will sustain damages, as he believes, beyond the amount of said passage money, to the amount of \$ _____

[*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 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.). For passenger injury or death see Form Nos. 1-400-1-425 *supra*.



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4-I Benedict on Admiralty FORM No. 1-501

FORM No. 1-501 Complaint In Rem by Passenger--Damage to Baggage

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

4. On or about the _____ day of _____, 20____, plaintiff, in consideration of an agreed price, then and there paid, purchased a first class passenger ticket for a passage from _____ to _____ on the vessel _____. Thereafter, plaintiff took passage on the said vessel _____ at _____ for _____ and delivered to those in charge of the vessel _____ a wardrobe trunk in good order and condition to be carried by the vessel _____ from _____ to _____.

5. Thereafter, the said vessel _____ sailed from the port of _____ and on or about the _____ day of _____, 20____, arrived at the port of _____ and there made delivery of plaintiff's wardrobe trunk, not, however, in like good order and condition as when received but itself and contents seriously injured and damaged.

[Prayer for Process and Verification] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.). For passenger injury or death see Form Nos. 1-400-1-425 *supra*.



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PASSENGERS *

4-I Benedict on Admiralty FORM No. 1-502

FORM No. 1-502 Complaint In Rem and In Personam by Passenger Against Master--Misconduct

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

4. On or about the _____ day of _____, 20____, at the port of _____, plaintiff duly engaged cabin passage for herself and her child on the vessel _____ to the port of _____, and paid therefor the sum of \$ _____ and embarked on said ship, which thereafter set sail for _____ on _____, 20_____.

5. During said voyage, on or about the _____ day of _____ 20____, while plaintiff was asleep in the state room allotted to her, defendant entered said room, awoke plaintiff, and made indecent and insulting proposals to her, and upon plaintiff's ordering said defendant out of her said room, defendant used indecent and vulgar expressions to her, and for several days in succession after the last-mentioned occurrence, defendant came into plaintiff's room, awakened her out of her sleep, attempted violence to her person, and used indecent and vulgar expressions; upon plaintiff's threatening to inform the other cabin passengers of his conduct toward her, defendant shortly afterwards, and in the hearing of the other cabin passengers, ordered plaintiff to remain in her room, and not to leave the same, and said that if the plaintiff attempted so to do he would send her amongst the steerage passengers, and closely confined plaintiff to her said state room for the space of two weeks; defendant also falsely and maliciously slandered plaintiff to other of the said passengers on board such ship during such voyage.

6. Plaintiff was injured in health, fretted and annoyed in body and mind in consequence of such conduct of defendant and was sick for some time after her arrival in said city of _____, and by reason of the premises is damnified in the sum of \$_____.

[*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 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.). For passenger injury or death see Form Nos. 1-400-1-425 *supra*.



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4-I Benedict on Admiralty FORM No. 1-503

FORM No. 1-503 Complaint In Personam by Passenger for Breach of Bailment--Personal Effect Lost in Fire

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. At and during the times herein mentioned and prior thereto defendant _____ owned, managed, operated, maintained and controlled the vessel, _____.
5. At and during the times herein mentioned and for some time prior thereto, defendant represented to the general public that the _____ was a secure, fire proof vessel and offered fly/cruise passage aboard said vessel for a consideration to _____.
6. At and during the times herein mentioned, the plaintiffs herein desirous of a honeymoon cruise did purchase for dollar consideration fly/cruise passage aboard the _____ to _____ and were assigned cabin # _____ on the _____.
7. That on the _____ day of _____, 20 _____, the _____ was berthed at _____.
8. That at and during the times herein mentioned and prior thereto, defendant herein offered to passengers aboard the _____, the security of free safety deposit boxes for the storage and safe keeping of valuables, representing to plaintiffs and other passengers aboard, and its vessel _____ that said safety deposit boxes were each safe and secure.
9. That on said _____ day of _____, 20 _____, the plaintiffs herein, relying on defendant's representations, individually and jointly accepted defendant's offer of free use of a safe deposit box and deposited certain items of jewelry therein of a declared value for safekeeping while on shore excursion and received

4-I Benedict on Admiralty FORM No. 1-503

from the purser aboard the _____ a certain receipt, which receipt plaintiff secreted within cabin # _____ wherein their individual other worldly goods remained.

10. That on said _____ day of _____, 20 _____, while the plaintiffs herein were jointly on shore excursion and while the master and all officers of the _____, save one, were ashore, fire broke out in the _____'s galley, which fire the sole officer and crewmen remaining aboard did not extinguish or contain, said officer having, without reasonable cause, refused U.S. Coast Guards' assistance, thereby suffering, allowing and permitting said fire to spread and consume the _____ so that she thereafter sank at her berth.

11. That said fire aboard the _____ was caused solely by the negligence of the defendant, the master, officers and crew aboard the _____, with the knowledge and privity of defendant in that he suffered and allowed and permitted the development and onset of fire hazards within the galley of said vessel, which ignited and consumed the vessel together with plaintiffs' joint and individual valuables in the vessel's safety deposit boxes and their individual and joint other worldly goods in cabin # _____.

12. That by reason of defendant's negligence and by reason of said defendant's individual failure to properly train the officers and crew aboard the _____ in the use of fire-fighting equipment, and by reason of defendant's failure to accept assistance offered, defendant herein breached its warranty to plaintiffs, upon which both plaintiffs relied, of safekeeping and proper and prudent bailment of plaintiffs individual valuables in the vessel's safe deposit box and their individual worldly goods in their assigned cabin to their individual and joint damage in the sum of \$ _____.

[Demand for Judgment] n3

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Mirak v. Costa Armatori S.p.A. Genova, et al.*, Civ. No. 80-652 (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* 1 Benedict on Admiralty § 226 (Matthew Bender 7th ed.). For passenger injury or death see Form Nos. 1-400-1-425 *supra*.



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PILOTAGE *

4-I Benedict on Admiralty FORM No. 1-526

FORM No. 1-526 Complaint In Rem--Pilotage Fees

[Caption and Jurisdictional Statement] n1

2. The plaintiff is a pilot duly licensed under the laws of the State of _____.

3. The vessel _____ is a _____ vessel, the name of whose owner is unknown to plaintiff.

4. On _____, 20 _____, the _____ then being in the port of _____, and bound on a foreign voyage from that port, the master of the _____ employed the plaintiff as pilot to take the vessel to sea from the port of _____. Accordingly the plaintiff went on the _____, safely piloted her to sea, and she arrived safely at the _____, at which place the plaintiff left her and she proceeded on her voyage.

5. The plaintiff is a regular licensed pilot under the laws of the State of _____ and performed his duty as pilot on the vessel to the best of his ability and thereby became entitled to be paid by the vessel and her owners the regular and lawful fees for such pilotage services so rendered by him in accordance with the laws of the State of _____, to wit the sum of _____ dollars, which sum or any part thereof the vessel and her owners and master have refused and still do refuse to pay the plaintiff, although requested so to do.

6. Under the laws of the State of _____, as well as under the general maritime law, the plaintiff is entitled to a maritime lien against the _____, her tackle, apparel, furniture, engines, boilers and machinery for the amount of his claim.

7. The _____ is now in the port of _____, and within this district.

[*Prayer for Process and Verification*] n2

FOOTNOTES:

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

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

* *See* 2 Benedict on Admiralty §§ 8, 9, 44 (Matthew Bender 7th ed.).



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POLLUTION *

4-I Benedict on Admiralty FORM No. 1-538

FORM No. 1-538 Complaint In Rem and In Personam by Marina--Oil Pollution Damage

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. On or about the _____ day of _____, 20____, the plaintiff owned and operated a marina at _____, where it was and still is engaged in the business of _____ [describe business].

5. During the early morning hours of _____, 20____, the vessel _____, was tied up starboard side to her berth at the oil receiving terminal of _____ on navigable waters in the port of _____, discharging a cargo of _____ to the _____ terminal entirely with her own equipment, gear, and with the full reach of the vessel in the sole possession and control of her crew or other agents and servants of defendant _____.

6. At about _____ hours, on _____, 20____, an officer or crew member aboard the vessel _____ on plaintiff's information and belief, shut off or opened a valve causing the discharging of _____ barrels, more or less, of _____ to flow into the waters of _____ through an offshore overboard discharge above the waterline, and the officers and crew of the vessel _____ and other agents of defendant _____ did not discover the dereliction until informed by personnel in the employ of _____ who observed that the _____'s terminal facility was not receiving oil in the quantity it should some _____ minutes after the misdirection of the pumping effort occurred.

7. The _____ floated southwestward, influenced by winds from the northeast and the tide which was ebbing; and by _____ hours a substantial amount of the _____ had worked its way towards plaintiff's marina, the officers and crew of the vessel _____ and defendant

_____ 's other servants and agents taking no steps whatsoever to alert plaintiff and others in plaintiff's position of the approaching danger and also not taking any effective action to inhibit the flow of the pollutant toward and into plaintiff's marina, where it came into contact with various pleasure craft tied up at the marina, the pier and dock facilities owned by the plaintiff, as well as plaintiff's shore and beach facilities.

8. The pollution incident was caused, without any contributing fault or neglect on the part of the plaintiff, and is solely due to the fault and negligence of the master and crew of the vessel _____ and her owner defendant _____, in the following particulars, among others which will be presented at the trial of this action:

- (a) Failure to take adequate steps to instruct the crew on proper and safe oil transfer procedures.
- (b) Failure to have responsible officers standing by and supervising the oil transfer operation.
- (c) Failure to maintain the vessel _____ in adequate repair and condition to alleviate any mechanical breakdown which would permit her cargo to pollute navigable waters.
- (d) Failure to warn plaintiff so it could take action to prevent its damage.
- (e) Failure to contain the oil once the spill was brought to their attention.

9. Plaintiff has sustained severe damage and loss in the sum of _____ dollars (\$ _____) and upwards consisting of:

- (a) Expenses associated with booming off and containing the oil when it was first discovered at daylight.
- (b) Expenses associated with skimming and otherwise cleaning up the oil.
- (c) Labor costs and other expenses associated with restraining oil, not contained or boomed off, from pleasure craft tied up at plaintiff's facility.
- (d) Consequential damages in the form of loss of profits to plaintiff's business while clean-up operations proceeded.

[*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* 3 Benedict on Admiralty, ch. IX (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-539

FORM No. 1-539 Complaint In Rem and In Personam by United States Oil Pollution Damage

[Caption and Jurisdictional Statement] n1

2. Plaintiff, United States of America, was, and still is, a corporate sovereign and authorized to sue under the provisions of 28 U.S.C. § 1345 ad 33 U.S.C. § 1321.

3. _____ [state allegations concerning defendant(s)]

4. _____]state allegations concerning vessel(s)]

5. On or about _____, 20 _____, while the vessel _____ was moored at the _____ Marina, she sank at the pier due to the negligent acts and fault of the defendants.

6. As a result of the aforementioned sinking, oil was discharged into or upon the navigable waters of the United States in harmful quantities.

7. Due to the aforementioned discharge of oil, plaintiff incurred costs and expenses in the amount of \$ _____ as nearly as can be ascertained at the present time, to remove such oil.

8. No part of the aforementioned sum has been paid to plaintiff, United States of America, to date, although duly demanded.

9. The aforementioned costs and expenses were caused, solely or contributed to, by the negligent acts and fault of the defendants and were not caused or contributed to by any action of the plaintiff, its agents, servants, employees, or any others for whom it was responsible.

10. All and singular, the premise of this complaint are true and within the admiralty and maritime jurisdiction of this Honorable Court.

[*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 1-12 *supra*.

* *See* 3 Benedict on Admiralty, ch. IX (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-540

FORM No. 1-540 Complaint In Rem (Refuse Act)--Pollution

[Caption and Jurisdictional Statement] n1

2. The vessel _____ is a vessel of American registry and uses oil as fuel for the generation of propulsion power.

3. The _____ was on the _____ day of _____, 20 ____ within the District of _____, to wit, at _____, being coastal navigable waters of the United States.

4. On the _____ day of _____, 20 ____, garbage was thrown overboard from the vessel in violation of *Title 33, Section 407, United States Code*.

5. By reason of the foregoing, the vessel became and is liable for the payment to the United States of a fine not more than _____.

6. The _____ is now located at _____, within this district.

[Prayer for Process and Verification] n2

FOOTNOTES:

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

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

* *See* 3 Benedict on Admiralty, ch. IX (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-541

FORM No. 1-541 Complaint (Criminal)--Failure To Report Oil Spill

)	
)	Criminal No
United States of America)	Failure To Notify U.S. Agency
v.)	of Discharge of Oil, 33 U.S.C.
John Doe)	§ 1321(b)(5)
)	

The United States Attorney for the District of _____ charges:

On or about the _____ day of _____, 20 _____, in the State and District of _____.

JOHN DOE

Being a person in charge of the vessel _____ did fail, as soon as he had knowledge thereof, to notify immediately the United States Coast Guard, the appropriate agency of the United States, of a discharge of oil from such vessel into and upon the navigable waters of the United States and their adjoining shorelines.

33 U.S.C. § 1321(b)(5).

United States Attorney

* See 3 Benedict on Admiralty, ch. IX (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-542

FORM No. 1-542 Claim by State Against Barge Owner for Damage Caused by Oil Spill With Exhibitn1

[Caption] n2

Now Comes the Commonwealth of _____, at the relation of the _____ Board, by counsel, and files this Claim against the plaintiff, _____, and in support of said Claim says upon information and belief as follows:

FIRST CLAIM

1. The _____ Board (hereinafter "claimant" is an agency of the Commonwealth of _____ and is charged with the authority and duty to exercise general supervision and control over the quality of all State waters.
2. Plaintiff, _____ (hereinafter "_____"), was, at all times pertinent to this Claim, the owner of a vessel known as the tank barge _____, official number _____ (hereinafter "_____ 's vessel").
3. On or about the _____ and _____ days of _____, 20 _____, _____ 's vessel was on a voyage from _____ under the tow of the tug "_____", owned by the _____ of _____ (hereinafter "_____"), with _____ 's vessel carrying, as cargo, a large amount of oil, a petroleum product.
4. On or about the _____ and/or _____ days of 20 _____, _____ 's vessel partially sank in _____ approximately _____

4-I Benedict on Admiralty FORM No. 1-542

miles from _____, within the navigable waters of the Commonwealth of _____, and _____ thereby permitted, caused and suffered the discharge of oil into said waters in an amount sufficient to cause damage to aquatic life therein and to the lands and beaches adjacent thereto.

5. The said discharge of oil resulted in and caused extensive damage to the waters of the Commonwealth, to the aquatic life therein, and to oyster beds, lands and beaches, both public and private, adjacent thereto, and caused the death of numerous wildfowl, a natural resource held in trust by the Commonwealth for the benefit of its citizens.

6. The said discharge required the expenditure by the Commonwealth of large sums of money to abate and remove said oil from the waters, aquatic life, lands and beaches of the State.

7. Section _____ of the Code of _____, as amended provides, in pertinent part, as follows: _____ [*set forth provisions prohibiting discharge of petroleum products and authority of state body to sue for violations*].

8. Section _____ of the Code provides, in pertinent part, as follows: _____ [*set forth provisions concerning civil penalties*].

9. The aforementioned discharge was in violation of § _____ of the Code.

10. By virtue of the foregoing, _____ is liable to the claimant for civil penalties in the amount of \$ _____, pursuant to § _____ of the Code, for two violations of § _____ said claim for civil penalties being more fully set forth in Exhibit A, a copy of which is attached hereto and incorporated herein by reference.

SECOND CLAIM

11. The claimant realleges and incorporates herein the allegations contained in paragraphs 1 through 6 of this Claim though fully set forth.

12. At the time of the discharge alleged herein, _____ of the above provided, in pertinent part, as follows: _____ [*set forth provisions relating to the state's right to recover cleanup costs*].

13. By virtue of the foregoing, _____ is liable to the claimant for all associated cleanup costs, the value of destroyed wildfowl and for damage to State owned oyster beds, pursuant to _____ of the Code, said claim for cleanup costs and damages being more fully set forth in Exhibit A, a copy of which is attached hereto and incorporated herein by reference.

THIRD CLAIM

14. The claimant realleges and incorporates herein the allegations contained in paragraphs 1 through 6 of this Claim as though fully set forth.

15. The foregoing discharge of oil was caused in whole or in part by the negligence of _____, its crew, agents, servants and employees, within the privity or knowledge of _____.

16. By virtue of the foregoing, _____ is liable to the claimant in its capacity as trustee and/or parens patriae for the value of destroyed wildfowl, a natural resource held in trust by the State for the benefit of its citizens, and for damage to State owned oyster beds, as more fully set forth in Exhibit B, a copy of which is attached hereto and incorporated herein by reference.

17. By virtue of the foregoing, _____ is further liable to the claimant for all costs incurred by the Commonwealth associated with the cleanup and removal of said oil, as more fully set forth in Exhibit A, a copy of which is attached hereto and incorporated herein by reference.

FOURTH CLAIM

18. The claimant realleges and incorporates herein the allegations contained in paragraphs 1 through 6 of this Claim as though fully set forth.

19. The said discharge into the waters of the Commonwealth created a public nuisance, interfering with the free use and enjoyment of said waters by the citizens of the Commonwealth.

20. By virtue of the foregoing, _____ is liable to the claimant in its capacity as trustee and/or parens patriae for the value of destroyed wildfowl, a natural resource held in trust by the State for the benefit of its citizens, and for damage to State owned oyster beds, as more fully set forth in Exhibit B, a copy of which is attached hereto and incorporated herein by reference.

21. By virtue of the foregoing, _____ is further liable to the claimant for all costs incurred by the Commonwealth necessary to abate and remove said nuisance. Said costs are more fully set forth in Exhibit A, a copy of which is attached hereto and incorporated herein by reference.

22. This claim is being made without prejudice to the claimant's right to contest the right of _____ to limitation of liability, pursuant to *46 U.S.C. § 183 et seq.*

Wherefore, your claimant presents this Claim in the amount of \$ _____, together with lawful interest thereon.

Commonwealth of _____

By _____

Of Counsel

[*Verification and Certificate of Service*]

Exhibit A

Claim of the Commonwealth of _____.

ITEM 1

Claim of the Commonwealth for civil penalty for illegal discharge of petroleum product, pursuant to _____ of the Code of _____, as amended, on _____, 20____: \$ _____.

ITEM 2

Claim of the Commonwealth for civil penalty for illegal discharge of petroleum product, pursuant to _____ of the Code of _____, as amended, on _____, 20____: \$ _____.

ITEM 3

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(a) Total wage expense for State personnel engaged in cleanup operation
 _____ \$ _____

(b) Total travel expenses incurred in cleanup operation by State personnel
 _____ \$ _____

(c) Total expenditure for equipment utilized in cleanup operation by State personnel
 _____ \$ _____

(d) Total expenditures for supplies utilized in cleanup operation by State personnel
 _____ \$ _____

(e) Total for all other expenditures by State personnel in cleanup operations
 _____ \$ _____

Total costs of the Commonwealth incurred associated with the cleanup of the discharged oil by personnel of the Commonwealth

_____ \$ _____

(a) Total damage to state-owned oyster beds

_____ \$ _____

(b) Total damage by loss of waterfowl owned by the Commonwealth of _____ dead waterfowl \$ _____

Total damage incurred by the Commonwealth as a result of the oil discharge of the Tank Barge

_____: \$ _____

Total claim of the Commonwealth of _____ for civil penalties, associated cleanup costs, and damage incurred as a result of the illegal discharge of oil from the Tank Barge _____ (Items 1, 2, 3 and 4): \$ _____

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Complaint of Steuart Transportation Co., 435 F. Supp. 798, 2078 A.M.C. 2006 (E.D. Va. 1977), courtesy of Vandeventer, Black, Meredith & Martin, Norfolk, Virginia.

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

* See 3 Benedict on Admiralty, ch. IX (Matthew Bender 7th ed.).



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RESERVED

FORM No. 1-563RESERVED



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4-I Benedict on Admiralty FORM No. 1-564

FORM No. 1-564 Complaint In Rem to Recover Vessel Withheld on Claim of Title--Possessory Action

[Caption and Jurisdictional Statement] n1

2. Plaintiff is a resident of _____, _____, and is and was at the time hereafter mentioned the true and lawful owner, absolutely, of the vessel _____, of _____ tons, now lying in the port of _____, and within the jurisdiction of this court, and had possession and employment thereof as such owner until deprived of her as herein set forth.

3. The said vessel is wrongfully withheld from plaintiff by _____, resident of _____, _____, on an alleged ground of title, depending upon a pretended sale of _____, as master of said vessel _____, which sale was unauthorized, was without any necessity and without any legal survey or condemnation of said vessel, was in violation of the duty of _____ as master, was in fraud of plaintiff, and is utterly void, all as hereafter set forth.

4. On or about the early part of the month of _____ 20 _____, plaintiff purchased the said vessel, then lying in the port of _____, for the sum of \$ _____; upon such purchase being made, a bill of sale was duly executed and delivered by the then owners of said vessel to plaintiff whereby plaintiff became the legal owner of said vessel, and said vessel was duly registered according to the Act of Congress in such case made and provided, as belonging to plaintiff.

5. Thereafter plaintiff purchased and supplied, from his own means, a cargo and appointed vessel _____ as master of said vessel, and with said cargo, the said vessel sailed from the port of _____, on or about the _____ day of _____, 20 _____, with the said _____ as captain, bound to _____, and arrived at and came to anchor near a place called _____.

6. Plaintiff further alleges upon information and belief that on or about the _____ day of _____, 20____, _____ left the said vessel anchored at or near _____ with only the mate on board, _____ [*state facts leading to sale of vessel*]. Thereafter, and on the _____ of _____ [*master*], having returned to the vessel, called a survey on said vessel and on the following day exposed her for sale at auction, and _____ bid her in at such sale, at the sum of \$ _____, and now asserts that he thereby became the legal owner of said vessel. And plaintiff alleges that no necessity existed for said sale, and that the same was fraudulent, collusive, illegal, and void, and conferred no title whatever on _____. On or about the third day after the alleged purchase at said sale, _____ hove off the said vessel, with anchors and chains, at a very trifling expense, not to exceed, as plaintiff believes, the sum of \$ _____ or \$ _____, and when so hove off, the said vessel had sustained no damage in her hull, spars, rigging or otherwise except the loss of _____ [*describe damage*] _____ [*describe repairs*] she proceeded in a few days thereafter, without any other repairs, to _____, a distance of about _____ or _____ miles, and there took in a full cargo of _____ and proceeded to _____, where she arrived in safety after a quick passage of _____ days in a good and sound condition, on or about the _____ of 20 _____, without receiving any repairs except as aforesaid.

7. After the said sale _____ Master retained the entire proceeds of said auction sale, no part which has ever been received by plaintiff, or by any person for his account.

Wherefore plaintiff prays:

A. That process in due form of law, according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the vessel _____, her tackle, apparel, and furniture;

B. That _____, and any other person claiming to have any interest in said vessel, may be cited to appear before this Honorable Court, and show cause why possession of the said vessel should not be delivered to plaintiff as having full title to the possession thereof;

C. That this Honorable Court would be pleased to decree the said vessel to be delivered to plaintiff, and that _____ may be decreed to pay unto plaintiff, all freight and freights earned by said vessel while in his possession, with damages and costs; and

D. That plaintiff may have such other and further relief in the premises as in law and justice he may be entitled to receive.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

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

(n2)Footnote 2. *See* Form Nos. 1-10 through 1-13 *supra*.

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-565

**FORM No. 1-565 Complaint In Rem and In Personam to Recover Possession of Yacht Wrongfully
Taken--Possessory Actionn1**

[Caption] n2

1. This is a claim within the admiralty and maritime jurisdiction of this Honorable Court, as hereinafter more fully appears, is of an admiralty and maritime nature within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*, and proceeds under the Rules of Civil Procedure for the United States District Courts and particularly Supplemental Rules D and E.

2. At all times hereinafter mentioned, plaintiff was and now is a citizen of the United States with a residence at _____ and was and now is the owner of the yacht _____.

3. On information and belief the _____ is now, or during the pendency of this action will be, located within this District at the _____ Marina, _____ Road, _____.

4. On information and belief defendants are citizens of the United States and now reside or can be found on board the yacht _____, which residence or occupation is in derogation of plaintiff's right to sole possession.

5. On _____, 20 _____, in the port of _____, plaintiff purchased the yacht _____ from her owners at the time, _____ and _____, by paying over and delivering to them the sum of \$ _____.

6. After taking possession of the yacht _____ and causing her to be duly registered, plaintiff used and maintained her as a pleasure craft, paying for all of her insurance, maintenance, and other expenses.

7. During the month of _____, 20 _____, defendants boarded the yacht _____ and broke ground on a voyage to ports unknown to the plaintiff without the authorization or consent of the plaintiff, thereby wrongfully dispossessing plaintiff of the yacht _____.

8. Plaintiff's attempts to repossess the yacht _____ and to communicate with the defendants to demand her restitution have been unavailing and defendants refuse to return possession of the yacht _____ to the plaintiff, despite plaintiff's demands for the same.

Wherefore, plaintiff prays:

A. That a warrant for the arrest of the yacht _____, her spars, sails, tackle, apparel, and furniture may issue, placing the yacht _____ under the custody and control of the Marshal of this District pending repossession by plaintiff;

B. That defendants and any other persons wrongfully aboard and in possession of the yacht _____ be personally cited to appear and answer the complaint aforesaid;

C. That the yacht _____, her spars, sails, tackle, apparel, furniture, and any and all equipment of whatsoever nature be preserved by the Marshal of this District and delivered to the plaintiff and that defendants be condemned to pay to the plaintiff his damages and the costs of this action; and

D. That plaintiff may have such other and further relief as may to this Honorable Court appear just in the cause.

Attorney for Plaintiff

[Verification] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Devereux v. The Cyrene*, Civ. No. 74-260-S (S.D. Cal. 1974), furnished through the courtesy of DeOrchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form Nos. 1-10 through 1-13 *supra*.

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-566

FORM No. 1-566 Complaint In Rem and In Personam Against Crew--Possessory Action

[Caption and Jurisdictional Statement] n1

2. The plaintiff is a corporation organized and existing under the laws of _____, and at all times hereinafter mentioned was and still is the true and only owner of the vessel _____, now lying in the port of _____, within this district.

3. The individual defendants are and were at all times hereinafter mentioned officers and members of the crew of the vessel _____, having signed on as such at various ports in _____ between the month of _____ and _____, 20 ____.

4. In the month of _____, 20 ____, before the filing of this complaint, and while the master, officers and crew employed by the plaintiff were on board the vessel, the members of the crew of the vessel wrongfully, unlawfully and forcibly deprived the plaintiff of possession of her and have since continuously withheld her from the plaintiff, by unlawfully and forcibly seizing, asserting and exercising exclusive control over her, contrary to the plaintiff's interests and instructions, and by forcibly depriving the master of all opportunity to continue in command on behalf of the plaintiff; and the wrongful possession and seizure of the vessel by the defendants has since been further enforced by the defendants while the master was temporarily ashore by threatening to detain and unlawfully confine the master, if he should board the vessel _____ and attempt to exercise any authority on behalf of the plaintiff; and the defendants as a committee representing the crew have since further enforced the unlawful seizure and control by unlawfully refusing to permit the master to resume command of the vessel on behalf of the plaintiff on proper demand made by him; and the defendants have since further wrongfully and unlawfully continued to exercise control by continuously, day and night, maintaining a guard on board the vessel to prevent the plaintiff from resuming possession of her; and the defendants as a committee representing the crew have informed the master that they intend to continue permanently in possession and ownership of the vessel _____. The seizure and withholding of the

vessel from the plaintiff was not done in accordance with any authority conferred on the crew or defendants by law, or by the plaintiff, but was done by them wrongfully and without authority of law, and wholly without title, right or interest of the crew or defendants.

5. The plaintiff is entitled to possession 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, 1-11 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-567

FORM No. 1-567 Complaint In Personam Against Trucking Company--Recovery of Possession of Leased Cargo Containersn1

[Caption, Jurisdictional Statement and Allegation Concerning Parties] n2

7. As part of plaintiff's business as a carrier of merchandise by water for hire in international commerce, plaintiff also engages in the business of providing shipping containers to the truckers who receive shipments of cargo from plaintiff's vessels for hire at scheduled daily charges.

8. On or after the _____ day of _____, 20 _____, plaintiff provided to defendant at its request certain shipping containers and chassis owned by plaintiff, containing cargo for delivery, at a daily rental rate, such containers to be returned upon demand.

9. Since that time, and after the agreed rental period had run, plaintiff demanded of the defendant that the abovementioned containers identified as _____ and chassis identified as _____ be returned, but the latter neglected and refused to do so and has failed to pay any rental charges thereon.

10. Defendant still wrongfully and without plaintiff's consent detains and retains the possession of the said containers from the plaintiff. Such containers and chassis are of the reasonable value of \$ _____, equal to, _____ containers at a depreciated value of \$ _____ and _____ chassis at a depreciated value of \$ _____.

11. Said containers have been wrongfully withheld from the plaintiff, their agents, and employees, notwithstanding that plaintiff has not sold such containers or parted with title thereto, and plaintiff further alleges that neither the above-named defendant nor any one else except plaintiff has any legal title to such containers nor any right to possession thereof.

12. The said containers are now within the jurisdiction of this Court and are located at _____.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Orient Overseas Container Line, Inc. v. Harreen Truck Leasing Co.*, Civ. No. 83-412 (E.D.N.Y. 1983).

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

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-568

FORM No. 1-568 Complaint In Rem Against Master--Possessory Action

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. Plaintiffs are the true and only owners of the vessel _____, her engines, tackle, apparel, and furnishings, and being such owners, on or about the _____ day of _____, 20 _____ they appointed _____, as master of said vessel, to navigate and sail her for them, at wages agreed upon between them, and _____ took possession of said vessel as master only, and continued to act as such master till the _____ day of _____, 20 _____, when the plaintiff removed him as master and appointed _____ as master in his place.

5. When _____, so appointed master by the plaintiffs, went on board said vessel, by their orders, to enter upon his duties as such master, _____ refused to give up the possession or the papers of said vessel to _____, or to plaintiffs, and still refuses to do so, although plaintiffs have duly demanded the same.

Wherefore plaintiffs pray that process in due form of law, according to the rules and practice of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, and that the master _____ may be personally cited to appear and answer all the matters aforesaid, and that the said vessel, her tackle, apparel, and furniture, may be delivered to plaintiffs, and that the vessel _____ may be condemned to pay to plaintiffs their damages and costs in the premises, and that they may have such other and further relief in the premises as in law and justice they may be entitled to receive.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-569

FORM No. 1-569 Complaint In Rem Against Merchandise and In Personam Against Master--Possessory Action

[Caption and Jurisdictional Statement] n1

2. The plaintiff is a resident of the City of _____, and is engaged in the business of importing foreign merchandise, and has his place of business at _____.

3. On _____, 20 _____, while the vessel _____ was lying in the port of _____, _____ and about to sail for the port of _____, _____, of _____ shipped on board the vessel, consigned to the plaintiff, _____ [cargo], marked _____ to _____, and _____, the master of the vessel, signed the usual bill of lading for the same, whereby he agreed to deliver the same to the plaintiff, in _____, on payment of the freight for the same at the rate of _____.

4. The vessel, having arrived in the port of _____, the plaintiff paid to the master his freight on the merchandise, and demanded the delivery thereof, but the master refused to deliver the same to him unless the plaintiff would pay _____ dollars as an average contribution, which the plaintiff was not bound to pay, not being liable therefor, and the master still refused to deliver to him the _____, to the great damage of the plaintiff.

5. The merchandise is now within this district.

[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 *supra*.

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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 POSSESSORY, PETITORY, AND PARTITION ACTIONS *

4-I Benedict on Admiralty FORM No. 1-570

FORM No. 1-570 Complaint In Rem Against Unshipped Merchandise Possessory Action

[Caption and Jurisdictional Statement] n1

2. Plaintiff at all times herein mentioned was and still is a corporation duly organized under and pursuant to the laws of the State of _____, and was and still is the owner of _____ *[describe cargo]* marked now on the pier of the _____, or on lighters alongside said pier in the port of _____ and within the jurisdiction of this Honorable Court.

3. On or about _____, 20 _____, a contract in writing was entered into between the plaintiff and _____ *[steamship company]* whereby the plaintiff agreed to ship and the _____ *[steamship company]* agreed to carry _____ at a freight rate of \$ _____ per ton on the vessel _____ which vessel agreed to sail from _____ to _____ in late _____.

4. Thereafter the _____ *[steamship company]* issued permits for _____ tons of _____ covered by contract above mentioned and requested plaintiff to deliver same to its dock. In pursuance of the said request and permit the plaintiff duly delivered on or about _____, 20 _____, the said _____ *[cargo]* of _____ to the pier designated by the _____ *[steamship company]*, and received from it dock receipts covering the shipment in question.

5. The said _____ *[steamship company]* has wholly failed and neglected to carry the said cargo forward and the said vessel _____, on which it contracted to carry the said cargo, has not been in _____, and so far as plaintiff knows will not be there for a long time to come, if ever, notwithstanding the fact that the said _____ *[steamship company]* by the terms of the contract above mentioned agreed to carry forward the said cargo in question to _____ in the latter part of

4-I Benedict on Admiralty FORM No. 1-570

_____.

6. Plaintiff has duly demanded the return of the said cargo to it and offered to surrender the dock receipts given for said cargo, but the _____ [*steamship company*] has wrongfully refused to deliver it.

7. By reason of the premises the plaintiff has become entitled to immediate possession in _____ of the said pounds of _____.

Wherefore, the plaintiff claiming the right to immediate possession of said _____ pounds of _____, prays:

1. That process in due form of law, according to the course of this Honorable Court in causes of possession within the admiralty and maritime jurisdiction, may issue against the said _____ [*cargo*], and that all persons having or claiming to have any interest therein may be cited to appear and answer on oath all and singular the matters aforesaid.

2. That this Honorable Court order that the said _____ [*cargo*] of _____ be delivered to the plaintiff forthwith.

3. That this Honorable Court will grant to the plaintiff 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* Form Nos. 1-1 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-571

FORM No. 1-571 Complaint In Rem by Carrier Against Cargo Held by a Strike--Possessory Action

[Caption and Jurisdictional Statement] n1

2. Plaintiff, _____, is and at all of the times hereinafter mentioned was a corporation organized under the laws of the State of _____, with an office for the transaction of business at _____, _____, and was at all of the times hereinafter mentioned and still is the bailee of the merchandise described herein and laden in the vessel _____.

3. Heretofore, on or about the _____ day of 20 _____, plaintiff chartered the vessel _____ for one round trip from _____ to _____ on time charter government form approved by the New York Produce Exchange. A copy of said time charter is attached hereto and incorporated herein as Exhibit 1.

4. Said vessel in due course entered upon the performance of said charter party, and plaintiff loaded certain cargoes into said vessel, which were duly transported to the port of _____, where said vessel now is. Said cargo consists of about _____, and general cargo consisting of _____.

5. The cargoes referred to as being aboard the vessel _____ are owned by various shippers, the _____ [steamship company] being as to all of said cargo a common carrier for hire and being bailee of all of said cargoes. The master and owners of the said vessel _____ are, and since have been, either unable or unwilling to discharge said cargoes at _____, as directed by the said charterer and in accordance with the terms of said charter party. The consignees of said cargo are demanding delivery thereof, and it is urgent that the same be discharged and duly delivered to the owners thereof immediately.

6. In view of the urgency of the situation plaintiffs show that upon such terms as the Court may require an order should

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be entered immediately directing that process issue against said cargo laden on the vessel _____ and directing the United States Marshal to deliver said cargo to plaintiff and to take any steps necessary to carry out said order, including the right to take temporary possession of the said vessel, move the said vessel to a wharf, and discharge the said cargo, and to employ such men or means as may be necessary to carry out said order.

Wherefore, plaintiffs pray:

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 may issue against all of the cargo now laden on the vessel _____;
2. That an order may be entered as above described, requiring the United States Marshal to take possession of said cargo and deliver same to plaintiff; and
3. For all general and equitable relief.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-572

FORM No. 1-572 Complaint In Rem Against Vessel--Recovery of Possession of Leased Cargo Containers and Unpaid Rent¹

[Caption, Jurisdictional Statement and Allegations Concerning Parties] ⁿ²

A FIRST CAUSE OF ACTION

5. Upon information and belief, at all relevant times defendant was the owner and operator of the vessel _____ and operated it in the common carriage of goods by water for hire between various ports.
6. During the months of _____, _____, and _____, 20 _____, plaintiff furnished dry van containers, chassis, and similar equipment for use on the vessel _____ pursuant to written leases entered into upon the order and at the request of defendant. The leases and equipment covered thereby are as follows: _____ [set forth details of leases and equipment and identify all equipment].
7. Plaintiff delivered the equipment to defendant and, upon information and belief, some or all of the equipment has been and is being used for and on the vessel _____.
8. Plaintiff has rendered invoices to defendant and its agents on account of the agreed upon price for the leased equipment.
9. Neither the owners of the vessel _____, nor its Master, nor the agents of the owner, have paid the amounts due on the leases, although proper demand has been made. As of the date of the filing of this complaint, the amounts due are as follows: _____ [set forth amounts due for each piece of equipment].
10. Under the terms of each of the leases referred to herein, plaintiff is further entitled to \$ _____ per unit per day until all of the equipment has been returned, together with interest on the unpaid rental charges at the rate

of _____ percent per month.

A SECOND CAUSE OF ACTION

11. Plaintiff repeats and realleges each of the allegations of Paragraphs 1 through 10 above as if fully set forth herein.

12. The failure of the owners, its agents, or the Master of the vessel _____ to pay the agreed upon rental charges for the equipment is a material breach of the lease and the lease is thereby terminated.

13. Plaintiff is entitled to the return of the equipment to a location designated by it.

[*Prayer for Process and Verification*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Strick Lease, Inc. v. M/V Majapahit*, Civ. No. 84-159 (E.D.N.Y. 1984).

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

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-573

FORM No. 1-573 Complaint In Rem and In Personam by Minority Owner to Obtain Security for the Safe Return of Vessel or for Possessory or Partition Action

[Caption and Jurisdictional Statement] n1

2. Plaintiff is the true and lawful owner of one-quarter of the vessel _____, _____, her tackle, apparel, and furniture, and boats, and defendant is owner of the remaining three-quarters of said vessel, and no other person is owner of said vessel or any portion thereof, and the said vessel is now lying in the port of _____, in the _____ District of _____.

3. Defendant has hitherto acted as ship's husband of said vessel, and has now the possession thereof, and declares his intention of dispatching said vessel on a _____ voyage to the _____. Plaintiff has expressed to defendant his dissent from said voyage, and has remonstrated with him on the subject, and still dissents from the same, but defendant persists in his determination to send her on said voyage, and is now procuring her outfit and crew.

Wherefore plaintiff prays:

A. That process in due form of law, according to the course and practice of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, furniture, and boats;

B. That all persons claiming any right in said vessel, and especially defendant, three-quarters owner as aforesaid, may be cited to appear and answer the matters aforesaid, and to show cause why defendant should not be restrained from sending the said vessel on the said voyage until good and sufficient security shall be given in this court to the full value of the plaintiff's interest in said vessel, her tackle, apparel, furniture, and boats, for the safe return of said vessel to the said port of _____, where she belongs;

C. That this Honorable Court will be pleased to decree that such security be given or the possession of said vessel, her tackle, etc., be delivered to plaintiff, with costs, or that the said vessel, her tackle, etc., may be sold under the direction of this Honorable Court, and the proceeds of such sale brought into this court, to be divided according to law; and

D. That plaintiff may have such other and further relief in the premises as in law and justice he may be entitled to receive.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-574

FORM No. 1-574 Complaint In Rem and In Personam by Part Owner-- Partition Action

[Caption] n1

Plaintiff _____ by its attorneys, _____, complaining of the defendants, upon information and belief, states 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 the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure* and Rule "D" of the Supplemental Rules for Certain Admiralty and Maritime Claims.

2. At all times hereinafter mentioned, plaintiff owns an undivided one-half interest in the vessel _____, Official No. _____, and resides at _____.

3. At or during all the times hereinafter mentioned, defendant, _____, owns an undivided one-half interest in said vessel, _____ and resides at _____.

4. The said defendant vessel is now or during the pendency of process hereunder will be within this district and within the jurisdiction of this Honorable Court.

5. That plaintiff, _____, owns an undivided one-half interest in the vessel _____, her engines, tackle, apparel, furniture, etc.; that defendant, _____, also owns an undivided one-half interest, and is also Master of said vessel.

6. In consequence of diversity of opinion and interest in relation to the employment of said vessel, which is irreconcilable, the said owners are unable to agree upon any voyage or business for said vessel. Plaintiff has named a

reasonable price for said vessel at which he is willing to sell his share or buy the share of his co-owner, but said defendant refuses either to buy or sell at a fair and reasonable price, and in consequence of his impracticability and obstinacy, plaintiff is unable to sell to any other person.

Wherefore the plaintiff prays:

A. That process in due form of law, according to the practice of this Court in causes of Admiralty and Maritime Jurisdiction, may issue against the said defendant, _____, citing him to appear and answer on oath all and singular the matters aforesaid.

B. That process in due form of law according to the practice of the Court in causes of Admiralty and Maritime Jurisdiction may issue against the vessel, _____ her engines, boilers, tackle, etc., and that all persons claiming right, title or interest in the said vessel may be cited to appear and answer on oath all and singular the matters aforesaid with costs.

C. And that said vessel, her engines, tackle etc., may be sold under the direction of this Honorable Court and the proceeds thereof brought into Court to be provided and distributed according to law.

D. And that the plaintiff may have such other and further relief in the premises as in law and justice he may be entitled to receive.

Attorney for Plaintiff

[*Verification*] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.).



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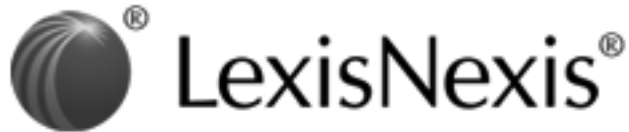
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4-I Benedict on Admiralty FORM No. 1-595

RESERVED

FORM No. 1-595RESERVED



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4-I Benedict on Admiralty FORM No. 1-596

FORM No. 1-596 Complaint--Negligent Design and Installation of Helmsman's Chair

[Caption] n1

Plaintiffs, _____ and _____, by their attorney, _____ allege the following as and for their Complaint against the defendants, _____, and _____, upon information and belief:

A FIRST CAUSE OF ACTION:

1. Plaintiffs reside at _____ Street, _____ County, City and State of _____; as such, they are citizens of the State of _____.

2. Defendant, _____ (hereinafter referred to as "_____"), is a corporation, duly organized and existing under and by-virtue of the laws of the State of _____, with principal offices located in _____, as such, _____ is a citizen of the State of _____.

3. Defendant, _____ (hereinafter referred to as "_____"), is a corporation, duly organized and existing under and by virtue of the laws of the State of _____, with principal offices located at _____, as such, _____ is a citizen of the State of _____.

4. By reason of the foregoing, there exists complete diversity of citizenship among the parties, in accordance with 28 U.S.C. § 1332.

4-I Benedict on Admiralty FORM No. 1-596

5. The amount in controversy exceeds Fifty Thousand Dollars (\$50,000.00), exclusive of interest and costs.

6. At all times hereinafter mentioned, _____ owned and operated a boatyard, where its agents, servants or employees manufactured and assembled boats, including a certain model known as the _____.

7. At all times relevant hereto, plaintiff, _____, owned one such model, assembled by _____ in or about 20 _____, known as _____, and bearing United States Coast Guard Registry Number _____.

8. At the time of its manufacture, assembly and sale at retail by _____, the _____ was equipped with a certain helmsman's chair and support assembly.

9. Upon information and belief, no modifications or changes were made upon the _____'s helmsman's chair or support assembly, from the time of its sale by _____ through and including _____, 20 _____.

10. Upon information and belief, the helmsman's chair and support assembly were furnished to _____ for installation on the _____, by _____ [*second plaintiff*].

11. Upon information and belief, _____, by its agents, servants and employees, installed the helmsman's chair and support assembly upon the _____.

12. On _____, 20 _____, while the plaintiff, was seated in the helmsman's chair aboard the _____, in the navigable waters of _____ [*describe failure of chair*].

13. The occurrence as aforesaid was a proximate result of the negligence of each of the defendants in the design, manufacture, assembly, and installation of the helmsman's chair and support mechanism, extant upon the _____.

14. By reason of the foregoing, plaintiff suffered serious, disabling and permanent personal injuries, all to his damage in the sum of _____ Dollars (\$ _____).

A SECOND CAUSE OF ACTION:

15. Neither the helmsman's chair and support assembly, nor the vessel to which it was attached, were of merchantable quality or fit for their intended use.

16. As such, defendant breached its warranties of merchantability and fitness for use, all to plaintiff's damage in the sum of _____ Dollars (\$ _____).

A THIRD CAUSE OF ACTION:

17. The design, manufacture and assembly of the helmsman's chair and support assembly were defective, and such defects were a substantial factor in causing the occurrence giving rise to suit.

18. At all times relevant hereto, plaintiffs operated the _____ as intended, without misusing the vessel, the helmsman's chair or its support assembly.

20. By reason of the foregoing, defendants are liable to plaintiffs in accordance with the doctrine of strict liability in

tort, in the sum of _____ Dollars (\$ _____).

A FOURTH CAUSE OF ACTION:

20. At all times relevant hereto, the plaintiff, _____ was and continues to be the lawful wife of _____, and as such, entitled to his services, support, companionship and consortium.

21. By reason of the foregoing, _____ was deprived of the benefits of her marriage to _____, all to here damage in the sum of _____ (\$ _____) Dollars.

Wherefore, plaintiffs pray for judgment in their favor with respect to the First Cause of Action in the sum of _____ Dollars (\$ _____); with respect to the Second Cause of Action in the sum of _____ Dollars (\$ _____); with respect to the Third Cause of Action in the sum of _____ Dollars (\$ _____); and, with respect to the Fourth Cause of Action in the sum of _____ Dollars (\$ _____), together with the costs of this action and interest as taxed.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

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



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4-I Benedict on Admiralty FORM No. 1-597

FORM No. 1-597 Cross-Claim--Negligent Design and Installation of Helmsman's Chair

[Caption] n1

Now comes defendant/cross claimant _____ and for its cross complaint against defendant/cross defendant _____ states as follows:

FIRST CAUSE OF ACTION

Upon information and belief, prior to and at all times mentioned in the complaint, there was in effect an indemnity and hold harmless agreement between this defendant/cross plaintiff and defendant/cross defendant, whereby the cross defendant, agreed to indemnify, defend and hold this answering cross claims harmless from and against all claims (whether deemed bodily injury or personal injury), costs, damages and expenses, including reasonable attorneys' fees incurred by this answering defendant arising out of the performance or default in performance by an officer, employee or agent of the codefendant(s), of any of the service which shall have contracted to perform for plaintiff, and this answering defendant is therefore entitled to indemnify from and to judgment over and against the defendant(s), in the event of any discovery hereby by the plaintiff against this answering defendant, together with any and all attorneys' fees incurring by this answering defendant in the defense of this action.

SECOND CAUSE OF ACTION

That if the plaintiff(s) were caused to sustain damages at the time and place set forth in the plaintiff(s) complaint through any carelessness, recklessness, negligence and/or breach of warranty or because of strict liability in tort or other than the plaintiff(s) own negligence, carelessness and recklessness, said damages were sustained by reason of the sole action and primary carelessness, recklessness and negligence and/or affirmative acts of omission or commission and/or breach of warranty by the defendant cross defendant _____, its agents, servants and/or employees,

without any active or affirmative negligence on the part of the answering defendant(s) contributing thereto.

That by reason of the foregoing, the defendant/cross defendant will be liable to the answering defendant/cross plaintiff in the event and in the amount of recovery herein by the plaintiff.

Dated: _____

_____ Attorney for Plaintiff

FOOTNOTES:

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



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4-I Benedict on Admiralty FORM No. 1-598

FORM No. 1-598 Complaint--Products Liability Negligence Warranties for Property Loss Against a Vessel Manufacturer and Appliance Manufacturer

[Caption]

COUNT I PRODUCTS LIABILITY

Now comes the plaintiff, _____ [*insurance carrier*] as subrogee of _____, by its attorneys, _____, and for Count I of its complaint against defendant _____ [*vessel manufacturer*], states as follows:

1. Jurisdiction is founded in the admiralty and maritime powers of this court pursuant to 28 U.S.C. § 1333 and F.R.C.P. Rule 9(h) in that the event which gives rise to this action occurred at a marina on _____, a navigable waterway, and involved docking and mooring which are traditional maritime activities in that the occurrence complained of took place on navigable waters and involved traditional maritime activity.

2. Plaintiff, _____, is an insurance company doing business in the State of _____ and is subrogated to all of the rights of its insured, _____, by virtue of having paid a claim made by _____ for the loss of _____ under a policy of insurance issued to him.

3. Defendant, _____, was and is a corporation and at all relevant times was engaged in the business of _____.

4. In 20____, _____ purchased _____ from _____ for his personal use.

5. On and prior to _____, 20____, _____ used the _____ at all

4-I Benedict on Admiralty FORM No. 1-598

times for their intended purpose.

6. On or about _____, 20 _____, while _____ was _____
[describe event].

7. On and prior to _____, 20 _____, _____ had a duty to design, manufacture, sell and distribute the vessel _____ which was not defective and which was reasonably safe when put to the use for which it should have been designed, manufactured, sold and distributed.

8. On and prior to _____, 20 _____, said _____ [vessel] manufactured by _____ was defective and not reasonably safe for the purpose for which it was intended.

9. As a direct and proximate result of the defective and not reasonably safe condition of the _____, she was destroyed. As a result of the loss, _____ was required to pay its insured, _____, a sum of money pursuant to its policy of insurance and incurred additional costs and expenses, all of which totaled in excess of \$_____.

Wherefore, plaintiff, _____, prays this Court to grant it a judgment against defendant, _____, on Count I of this complaint in a sum in excess of \$_____ plus prejudgment interest, costs and such other amounts this Court shall deem proper.

COUNT II NEGLIGENCE

Now comes the plaintiff, _____, by its attorneys, _____, and for Count II of its complaint against defendant, _____ [vessel manufacturer], states as follows:

1-8. _____ realleges paragraphs 1 through 8 of Count I of its complaint as though set forth in full as paragraphs 1 through 8 of Count II of its complaint.

9. On or before _____, 20 _____, defendant _____ was guilty of one or more of the following wrongful acts or omissions: _____ [describe particulars of case].

(a) Carelessly and negligently designed and constructed the _____;

(b) Carelessly and negligently failed to warn the plaintiff _____;

(c) Carelessly and negligently designed and constructed the _____;

(d) Carelessly and negligently used _____ which it knew or should have known was improperly designed so that it was prone to malfunction _____;

(e) Was otherwise negligent and careless.

10. As a direct and proximate result of one or more of _____'s negligent acts or omissions, the _____ [describe damage].

11. _____ paid its insured, _____, for that loss pursuant to the policy of insurance issued to him and has incurred substantial additional expenses. Said loss and expenses were in excess of \$_____.

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Wherefore, plaintiff _____ prays this Court to grant it a judgment against defendant, _____, on Count II of its complaint for a sum in excess of \$ _____, plus prejudgment interest, costs and such other relief this Court shall deem proper.

COUNT III IMPLIED WARRANTY FOR A PARTICULAR PURPOSE

Now comes plaintiff _____ by its attorneys, _____, and for Count III of its complaint against defendant, _____ [*vessel manufacturer*], states as follows:

1-8. Plaintiff, _____, realleges paragraphs 1 through 8 of Count I of its complaint as though set forth in full as paragraphs 1 through 8 of Count III of its complaint.

9. On and prior to _____, 20 _____, defendant _____ impliedly warranted to _____ that the _____ and all of her equipment were fit for the purpose of which they were intended.

10. On and prior to _____, 20 _____, _____ relied upon said implied warranty of fitness for a particular purpose.

11. As a direct and proximate result of the breach of said implied warranty of _____, the _____ caught fire and was rendered a total loss and _____ was obligated to pay its insured, _____, for said loss pursuant to the policy of insurance issued to him. As subrogee of _____, _____ has incurred a substantial loss in excess of \$ _____.

Wherefore, plaintiff, _____, prays this Court to grant it a judgment against _____ on Count III of its complaint for a sum in excess of \$ _____ plus prejudgment interest, costs and such other relief as the Court shall deem proper.

COUNT IV IMPLIED WARRANTY OF MERCHANTABILITY

Now comes plaintiff _____, by its attorneys, _____, and for Count IV of its complaint against defendant _____ [*vessel manufacturer*], states as follows:

1-8. Plaintiff, _____ realleges paragraphs 1 through 8 of Count I of its complaint as though set forth in full as paragraphs 1 through 8 of Count IV of its Complaint.

9. On or before _____, 20 _____, _____ impliedly warranted to _____ that said _____ and equipment were merchantable.

10. On and prior to _____, 20 _____, _____ relied upon said implied warranty of merchantability.

11. As a direct and proximate result of the breach of said implied warranty of _____, the _____ caught fire and was rendered a total loss and _____ was obligated to pay its insured, _____, for said loss pursuant to the policy of insurance issued to him. As subrogee of _____, _____ has incurred a substantial loss in excess of \$ _____.

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Wherefore, plaintiff, _____, prays this Court to grant it judgment against defendant, _____, on Count IV of its complaint in a sum in excess of \$ _____ plus prejudgment interest, costs and such other relief this Court shall deem proper.

COUNT V PRODUCTS LIABILITY

Now comes plaintiff, _____, by its attorneys, _____, and for Count V of its complaint against defendant, _____, ("*appliance manufacturer*"), states as follows:

1. This is an admiralty and maritime matter and jurisdiction of this court is founded on 28 U.S.C. § 1333 and F.R.C.P. Rule 9(h),

2. Plaintiff _____ is an insurance company doing business in _____ and is subrogated to all of the rights of its insured _____ by virtue of having paid a claim made by _____ for the loss of his vessel _____ under a policy of insurance issued to him.

3. Defendant, _____, is a corporation or a corporate type entity and at all relevant times was engaged in the business of designing, manufacturing, selling and distributing a _____ unit know as the _____ ("*_____*").

4. Sometime prior to _____, 20 _____, defendant, _____, purchased a _____ unit from _____ and installed it in the vessel _____ which was then sold to _____.

5. On or about _____, 20 _____, _____ used the _____ unit on board the _____ to _____ [*describe activity*].

6. On or about _____, 20 _____, subsequent to the use of the _____ unit by the _____, the unit malfunctioned, _____ [*describe incident*] which _____ eventually consumed the entire vessel and rendered it a total loss.

7. On and prior to _____, 20 _____, _____ had a duty to design, manufacture, sell and distribute _____ units which were not defective and which were reasonably safe when put to the use for which they were designed, manufactured, sold and distributed.

8. On and prior to _____, 20 _____, said _____ unit manufactured by _____ was defective and not reasonably safe for the purpose of _____ [*describe activity*].

9. As a direct and proximate result of the defective and not reasonably safe condition of said _____ unit the _____ burned and was rendered a total loss. Therefore, _____ was obligated to pay its insured _____ for said loss pursuant to a policy of insurance issued to him and incurred additional expenses all of which totaled in excess of \$ _____.

Wherefore, plaintiff, _____, prays this Court to grant it judgment against defendant, _____, on Count V of its complaint for a sum in excess of \$ _____, plus prejudgment interest, costs and such other relief this Court shall deem proper.

COUNT VI NEGLIGENCE

4-I Benedict on Admiralty FORM No. 1-598

Now comes the plaintiff, _____, by its attorneys, _____, and for Count VI of its complaint against defendant, _____ [*appliance manufacturer*], states as follows:

1-7. _____ realleges paragraph 1 through 7 of Count V of its complaint as though set forth in full as paragraphs 1 through 7 of Count VI of its complaint.

8. On or before _____, 20 _____, defendant, _____ was guilty of one or more of the following wrongful acts or omissions:

- (a) Carelessly and negligently designed and constructed the _____ unit;
- (b) Carelessly and negligently failed to warn users that the _____ unit was prone to malfunction;
- (c) Was otherwise careless and negligent.

9. As a direct and proximate result of one or more of _____'s negligent acts or omissions, the _____ unit caught fire causing the _____ to burn and rendering it a total loss. _____ was obligated to pay its insured _____ for said loss pursuant to a policy of insurance issued to him and incurred additional expenses all of which totaled in excess of \$ _____.

Wherefore, plaintiff, _____, prays this Court to grant it judgment against defendant, _____, on Count VI of its complaint for a sum in excess of \$ _____ plus prejudgment interest, costs and such other relief which this Court shall deem proper.

COUNT VII IMPLIED WARRANTY FOR A PARTICULAR PURPOSE

Now comes plaintiff, _____, by its attorneys, _____, and for Count VII of its complaint against defendant, _____ [*appliance manufacturer*], states as follows:

1-7. Plaintiff, _____, realleges paragraphs 1 through 7 of Count V of its complaint as though set forth in full as paragraph 1 through 7 of Count VII of its complaint.

8. On and prior to _____, 20 _____, defendant, _____, impliedly warranted to _____ that said _____ unit was fit for the purpose of _____.

9. On and prior to _____, 20 _____, _____ relied upon said implied warranty of fitness for a particular purpose.

10. As a direct and proximate result of the breach of said implied warranty of _____, the _____ caught fire and was rendered a total loss and _____ was obligated to pay its insured, _____, for said loss pursuant to the policy of insurance issued to him and incurred additional expenses all of which totaled in excess of \$ _____.

Wherefore, plaintiff, _____, prays this Court to grant it judgment against defendant, _____, on Count VII of its complaint for a sum in excess of \$ _____ plus prejudgment interest, costs and such other relief which this Court shall deem proper.

COUNT VIII IMPLIED WARRANTY OF MERCHANDISE

4-I Benedict on Admiralty FORM No. 1-598

Now comes the plaintiff, _____, by its attorneys, _____, and for Count VIII of its complaint against defendant, _____ [*appliance manufacturer*], states as follows:

1-7. Plaintiff, _____, realleges paragraphs 1 through 7 of Count V of its complaint as though set forth in full as paragraphs 1 through 7 of Count VIII of its Complaint.

8. On or about _____, 20 _____, defendant, _____, impliedly warranted to _____ that said _____ was merchantable.

9. On and prior to _____, 20 _____, _____ relied upon said implied warranty of merchantability.

10. As a direct and proximate result of the breach of said implied warranty of _____, the _____ caught fire and was rendered a total loss and _____ was obligated to pay its insured, _____, for said loss pursuant to the policy of insurance issued to him and incurred additional expenses all of which totaled in excess of \$_____.

Wherefore, plaintiff, _____, prays this Court to grant it judgment against defendant, _____, on Count VIII of its complaint for a sum in excess of \$_____ plus prejudgment interest, costs and such other relief which this Court shall deem proper.

COUNT IX

Now comes the plaintiff, _____, by its attorneys, _____, and for Count IX of its complaint against the defendant _____ [*appliance manufacturer*], states as follows:

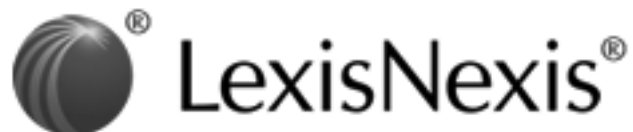
1. Plaintiff, _____ realleges paragraphs 1 through 7 of Count I as paragraphs 1 through 7 of this Count IX and realleges paragraph 3 of Count V as paragraph 8 of this Count IX as if more fully stated herein.

2. As a result of that fire certain claims have been filed against _____ for damage to other boats and dock structures all of which damage allegedly occurred as the result of the fire. The persons filing claims are all claimants in the action pending in this court captioned _____, Case Number _____ and a list of those claimants is attached hereto as Exhibit A.

3. In the event that plaintiff, _____, becomes obligated to pay those claims or _____ is found liable for any or all of those claims, which liability is specifically denied, said liability will be due in whole or in part to the acts of omission or negligence of defendant, _____, and not to any conduct, acts or omission of _____.

Wherefore _____ requests the Court for the following relief on this Count IX in accordance with F.R.C.P. Rule 14(c): (1) judgment against defendant, _____, in an amount commensurate with their liability for the acts and damages alleged by the above mentioned claimants; (2) judgment against defendant, _____, and in favor of the claimants; (3) a judgment finding that defendant, _____, indemnify and hold harmless plaintiff, _____, for any of the acts and damages alleged by the above mentioned claimants; and, (4) such other further relief as this Court may deem proper.

By: _____
One of its attorneys



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PRODUCTS LIABILITY

4-I Benedict on Admiralty FORM No. 1-619

RESERVED

FORM No. 1-619RESERVED



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PROPERTY DAMAGE *

4-I Benedict on Admiralty FORM No. 1-620

FORM No. 1-620 Complaint In Personam Against Vessel Owner--Destruction of Leased Equipmentⁿ¹

[Caption, Jurisdictional Statement and Allegations Concerning Parties] ⁿ²

4. On or about _____, 20 _____, defendant entered into a lease with plaintiff whereby defendant took possession of certain _____, equipment of plaintiff, which equipment at the time defendant took possession thereof, was in good, undamaged and serviceable condition, and which equipment was placed aboard the vessel _____, owned and operated by defendant.

5. The lease and agreement referred to above provided that the defendant shall, at its own expense, protect and preserve the equipment, and that in the event said equipment shall be lost, destroyed or damaged, defendant shall pay the fair market value thereof.

6. Subsequent thereto while aboard the said vessel and in the exclusive care, custody and control of the defendant, said equipment was completely and totally damaged and destroyed.

7. The defendant has failed to return the said equipment in its original condition, less ordinary wear and tear, and the defendant has failed to pay the fair market value of said equipment at the time of its loss.

8. The said equipment had a fair market value at the time of its loss on or about _____, 20 _____ of \$ _____.

[Demand for Judgment] ⁿ³

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Radiomarine Corp. v. Gulf Northern Co., Inc.*, 394 F. Supp. 381,

2075 A.M.C. 2331 (E.D. Mo. 1975), courtesy of Lucas & Murphy, St. Louis, Missouri.

(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. I (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-621

FORM No. 1-621 Complaint In Personam Against Shipyard-- Damage to Yacht

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. The plaintiff is, and was at all times pertinent hereto, the owner of the Yacht _____. The defendant, _____, is, and was at all times pertinent hereto, the owner and operator of a certain boatyard and marine repair business located at _____ Street, _____.

5. On or about _____, 20 _____, the plaintiff delivered the said Yacht _____ to the defendant, _____, at its said boatyard, and the said defendant accepted the same as a bailee for hire. Under the agreement between the parties, _____ [describe terms of agreement].

6. [describe acts leading damage]

7. [defendant was negligent as follows]: _____

8. [allege negligent acts]

9. [alleged damages]

10. As a further direct and proximate result of the foregoing, the plaintiff has incurred extensive damage in the cost of protecting the said yacht in its damaged condition, and in obtaining marine surveys of the damage, in travel and expenses of employees in connection with the protection of the yacht and the plaintiff's rights therein, and long-distance telephone costs. In addition, as a further direct and proximate result of the foregoing, the plaintiff has suffered a loss of the use of the vessel for a period of _____ (_____) months. During this period of time, the plaintiff has been required to continue a skeleton crew on the vessel at a cost in excess of

_____.
11. After repair of the above-described damage to the vessel, by the plaintiff, the plaintiff was required to send the said yacht on a series of "checkout runs" in order to determine the seaworthiness of the vessel, at a cost to the plaintiff of _____.

12. As a direct and proximate result of the carelessness and negligence of the defendant(s) [*alleges injuries 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* 2 Benedict on Admiralty, ch. I (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-622

FORM No. 1-622 Complaint In Personam Against Stevedore--Damage to Vessel During Loading

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. At all times hereinafter mentioned, the plaintiff was and still is the owner of the vessel _____, which prior to the incident hereinafter described was tight, staunch, and strong and in all respects seaworthy and properly manned, officered, equipped and supplied.

5. On _____, 20 _____, the vessel _____ was berthed at _____.

6. On _____, 20 _____, the defendant was engaged in the business of providing stevedoring services; it had been engaged to load and discharge the vessel _____; and pursuant to such engagement, loading and discharging operations were being conducted by the defendant, its agents, servants and employees.

7. On _____, 20 _____, at about _____ the defendant by its agents, servants or employees, while completing loading operations, carelessly and negligently caused the shoreside crane to collide with the _____ of the vessel _____ causing damage to the _____ (or otherwise).

8. The aforesaid collision and damages resulting therefrom were not caused or contributed to by any fault or negligence on the part of those in charge of the vessel _____, but were caused wholly by, and due solely to, fault and negligence of those in charge of the stevedoring operations of _____, in the following particulars, among others, which will be brought out upon trial:

A) The defendant was negligent in failing to provide proper and competent employees for the operation and direction of the crane.

B) The defendant was negligent in failing to take proper and adequate precautions to secure the crane.

C) The defendant was negligent in proceeding with stevedoring operations under the circumstances.

9. By reason of the foregoing, the plaintiff has sustained damages consisting of the costs of obtaining marine surveys of the damage, the cost of repairs, the loss of use of the vessel 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 dully demanded.

COUNT I

10. Plaintiff pursuant to *F.R. Civ. P. 10(c)*, adopts by reference thereto its allegations as set forth in Paragraphs _____ herein as if fully set forth in Count I of its Complaint.

11. On _____, 20 _____, at about _____, the defendant, its agents, servants, and employees failed to properly perform its engagement to load the vessel _____ in a workmanlike manner resulting in damage to the vessel when the shoreside crane operated under the direction and control of the defendant, its agents, servants or employees, collided with the _____ of the vessel _____.

12. As a result of defendant's failure to perform its engagement in a workmanlike manner, the plaintiff suffered damages to the _____ (or otherwise), costs for marine surveys, costs of repairs, loss of use of the vessel and other substantial expenses necessarily incurred as a result of said failure, 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.

[Demand for Judgment] n3

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Jugoslavenska Plovidba Linijska v. Northeast Marine Terminal Co.*, Civ. No. 80-1387 (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, ch. I (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-623

FORM No. 1-623 Complaint In Personam Against Repairman--Damage to Vessel

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. On or about the month of _____, 20 _____, the plaintiff placed the vessel _____ in the care and custody of the defendant for the purpose of making sundry and certain repairs thereto. These repairs were to be made in a workmanlike manner and the vessel _____ was to be returned to the plaintiff in due course after the repairs should be completed and in first class working condition.

5. On or about the _____ day of _____, 20 _____, the vessel _____, while in the sole custody of the defendant, was seriously injured and damaged by fire through and by reason of the negligence and incompetence of the defendant and without any fault or negligence on the part of the plaintiff.

6. The damages sustained by the 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.

[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. I (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-624

FORM No. 1-624 Complaint In Personam Against Repairman--Damage to Yacht

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. Prior to _____, 20 _____, defendant agreed and undertook to effect certain work with respect to the rigging of the yacht _____. On or about _____, 20 _____, defendant accepted possession of the yacht and performed certain work with respect to its rigging.

5. On _____, 20 _____, at approximately _____ o'clock, plaintiff received the yacht _____ from the defendant. On that same day, at approximately _____ o'clock, while sailing in an area southwest of _____, during a gentle breeze, the mast of the yacht _____ collapsed. As a result of the collapse of the mast, the yacht _____, its appurtenances and equipment, were severely damaged.

6. The aforesaid collapse of the mast, and resulting damage, were not caused through any fault, neglect, or want of care, on the part of the plaintiff, _____ or any person or persons for whom the plaintiff was or is responsible, but were caused through the fault, neglect, lack of care and breach of contract on the part of the defendant, _____, its agents, servants and employees, in the following respects, among others, which will be pointed out at the trial of this action:

[*allege negligent acts*]

7. By reason of the premises, plaintiff has sustained damages in the sum of \$ _____, no part of which has been paid, although payment thereof has been duly demanded.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. From adapted from papers filed in *American Railroad Curvelining Corp. v. Seaman Yacht Service, Inc.*, Civ. No. 81-1623 (E.D.N.Y. 1981).

(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. I (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-625

FORM No. 1-625 Complaint In Personam Against Marina--Vandalism of Vessel

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. Prior to and after _____, 20 ____ defendant owned and operated a Marina on _____ for mooring, berthing, caring and maintaining pleasure yachts.

5. On or before _____, 20 ____, plaintiff and defendant entered into a contract whereby in consideration of payments being made to defendant plaintiff would be entitled to berth his boat at defendant's Marina, to expect adequate security for his boat and equipment and would be entitled to all ancillary services described in said contract and in the defendant's literature concerning their Marina.

6. All conditions precedent required of plaintiff have been performed.

7. During the time plaintiff's yacht was moored at said Marina under the custody and control of defendant, same was vandalized by persons unknown at this time, resulting in serious damage and pilferage of equipment.

FIRST CAUSE OF ACTION

8. Defendant breached its contract with plaintiff regarding the mooring of the _____ in defendant's Marina by failing to provide proper and adequate security protection as described in defendant's advertising materials.

9. Plaintiff relied on the representation, _____ *[state representation]* to his detriment and, as a result, his boat was severely damaged and pilfered.

10. Defendant breached its contract of bailment with plain tiff in receiving plaintiff's boat in good order and condition

and returning same in a damaged and pilfered condition.

THIRD CAUSE OF ACTION

11. Defendant was negligent in that it provided inadequate security measures to prevent vandalism and pilferage to plaintiff's boat.

12. 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.

Wherefore plaintiff prays:

- a. That process issue against the defendant, and that defendant be cited to appear and answer the allegations of the complaint.
- b. That final judgment against the defendant be entered in favor of the plaintiff for the amount found due plaintiff with interest and with costs; and
- c. That plaintiff have such other and further relief as may be just.

Attorney for Plaintiff

FOOTNOTES:

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

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



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4-I Benedict on Admiralty FORM No. 1-626

FORM No. 1-626 Complaint in Personam Against Marina--Sinking of Vessel with Exemplary Damagen1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. On or about _____, 20 ____, plaintiff entered into a contract with defendant to have plaintiff's vessel hauled out of the water, placed in a cradle for winter storage and delivered to plaintiff's residence at _____, for an agreed consideration, plus the cost of a cradle if one was not provided by plaintiff. It was further understood and agreed that this work would be done promptly and in a good and workmanlike manner. In compliance with defendant's instructions, plaintiff left his said vessel secured at a mooring designated by defendant in _____, in the vicinity of defendant's dock. Defendant provided plaintiff launch service to its dock after the plaintiff's vessel was moored at defendant's said mooring. At that time, the said vessel was in all respects tight, staunch and seaworthy, and properly secured to the mooring.

5. On or about _____, 20 ____, defendant, by its agents, advised plaintiff that a cradle designated by plaintiff for use in storing the plaintiff's said vessel was unsuitable and plaintiff contracted for additional consideration, to have defendant modify and use a different cradle available at defendant's facility for an additional charge.

6. On or about _____, 20 ____, defendant, by its agents, servants and employees, moved plaintiff's vessel from the mooring at which it had been secured to defendant's dock at _____ for the purpose of hauling it and storing it in the modified cradle, as aforesaid.

7. Thereafter, plaintiff's vessel was caused and allowed to drift away from defendant's dock and was grounded on a shoal in the vicinity of defendant's dock where the said vessel apparently filled with water and sank.

8. On or about _____, 20 ____, defendant, by its agents, servants and employees, attempted to tow plaintiff's vessel off of the shoal and to _____, and in the process of attempting to do so, plaintiff's

vessel was caused to sink in deep water and was totally lost.

9. The loss of plaintiff's vessel was due to the breaches by defendant of its contract to take good care and custody of plaintiff's vessel and to haul and cradle it for storage in a good and workmanlike manner without damage to the said vessel, and deliver it to plaintiff's residence.

10. The damage to and loss of plaintiff's said vessel was caused by the gross negligence and willful and wanton recklessness and carelessness of the defendant, its agents, servants and employees, in failing to take good care of plaintiff's vessel, failing to properly moor it and attach it to its dock, in failing to prevent it from breaking loose from its dock, allowing it to drift away and sink in shoal water and in failing to carefully and properly tow it off said shoal, which resulted in the sinking of plaintiff's vessel in deep water, and the total loss thereof.

11. By reason of the foregoing, plaintiff has suffered the total loss of his vessel and its sails, furnishings and equipment, all in the fair and reasonable value of \$_____.

12. Defendant, its agents, servants and employees, willfully, maliciously and deliberately attempted to conceal and cover-up their gross, willful and wanton recklessness, negligence, carelessness and misconduct with respect to the handling of plaintiff's vessel and to evade, conceal and cover-up its responsibility for the sinking and loss of said vessel, by making deliberate and intentional lies, prevarications and false statements to plaintiff concerning the status and condition of plaintiff's vessel and its whereabouts on several occasions and by defendant's willful failure to notify or inform plaintiff of the sinking and damage to the plaintiff's vessel, which prevented plaintiff from taking steps on his own behalf to protect the vessel and minimize the loss and damage. This willful misconduct on behalf of defendant also resulted in the refusal to settle and pay plaintiff's claim for loss of the vessel and its equipment. By reason of said deliberate and willful lies, prevarications, misconduct and attempted cover-up, plaintiff claims exemplary damages against defendant in the amount of \$_____ which should be awarded to plaintiff as a deterrent to defendant and others who may be inclined to engage in such misconduct.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Thivierge v. Mooringtime Marine Corp.*, Civ. No. 80-791 (E.D.N.Y. 1980).

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

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

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



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4-I Benedict on Admiralty FORM No. 1-627

FORM No. 1-627 Complaint In Personam by Subrogee of Vessel Owner Against Marina--Damage During Storage¹

[Caption, Jurisdictional Statement and Allegation Concerning Parties] n2

FIRST CAUSE OF ACTION

6. At all times hereinafter mentioned, there was in full force and effect an all risk policy of marine insurance issued by plaintiff to _____, providing hull and machinery insurance coverage for its vessel _____.

7. At all times hereinafter mentioned, defendants owned a boat yard located at _____ in the County of _____, State of _____, for the storage of boats.

8. At all times hereinafter mentioned, the defendants operated, maintained, and controlled the said boat yard.

9. Some time in the fall of 20 _____, plaintiff's insured entered into an agreement with the defendants for the storage in the defendants' boat yard of the vessel _____.

10. Thereafter and some time in the fall of 20 _____, defendants hauled the vessel _____ from the navigable waters adjacent to the boat yard and placed the vessel _____ in dry winter storage in the boat yard.

11. On or about _____, 20 _____, the vessel _____ fell from its storage position, cradle, and blocks, resulting in damage to the vessel.

12. The damage to vessel _____ was caused by the negligence of the defendants in storing the vessel

with inadequate and improper shoring, blocking, and supports, in failing to provide adequate shoring and blocking methods so as to properly and safely support the vessel, in failing to use proper and adequate materials in the support of the vessel, and the defendants were further guilty of negligence, all of which caused the vessel _____ to sustain damages, without any negligence on the part of plaintiff's subrogor contributing thereto.

13. On or about _____, 20 _____, plaintiff paid _____, the sum of \$ _____ under the terms of the marine policy of insurance for damages sustained to the vessel _____ pursuant to the terms of the policy of insurance and, by reason thereof, plaintiff was subrogated to the rights and claims of _____, against defendants.

14. As a result of the negligence of the defendants, the plaintiff has been damaged in the sum of \$ _____.

SECOND CAUSE OF ACTION

15. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 1 through 11 and 13 with the same force and effect as if herein set forth at length and, in addition thereto, alleges:

16. Under the agreement for the winter storage of the vessel, the defendants became a bailee of the vessel _____.

17. Defendants breached their contract of bailment by failing to redeliver the vessel _____ to plaintiff's insured in the condition in which the vessel was delivered to defendants.

18. As a result of the breach of contract of bailment on the part of defendants, plaintiff has been damaged in the sum of \$ _____.

THIRD CAUSE OF ACTION

20. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 1 through 11 and 13 with the same force and effect as if herein set forth at length and, in addition thereto, alleges:

20. The damage to the vessel _____ was caused by the breach of the storage agreement on the part of the defendants in failing to store the vessel _____ in a safe and proper manner and to maintain it in a safe and undamaged condition, and in further failing to redeliver the vessel to plaintiff's subrogor in the condition in which it was delivered to the defendants.

21. As a result of the breach of contract on the part of the defendants, plaintiff has been damaged in the sum of \$ _____.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Omaha Indemnity Co. v. Whaleneck Harbor Marina, Inc., Civ. No. 84-2174 (E.D.N.Y. 1984).

(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. I (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-628

FORM No. 1-628 Complaint In Personam by Vessel Owner Against Storage Facility--Fire Damage to Vessel

[Caption] n1

Now comes the plaintiff, _____, by his attorneys _____ and for his complaint against the defendant, _____ Corporation states as follows:

JURISDICTIONAL SUMMARY

This court has jurisdiction of this matter pursuant to 28 U.S.C. Section 1333 and Fed. R. Civ. P. 9(h).

COUNT I

1. Plaintiff is a citizen of the state of _____ and was the owner of the vessel _____ at all times mentioned herein.
2. Defendant _____ Corporation, is a corporation incorporated under the laws of _____ and doing business within the State of _____ as a vessel marina and storage facility.
3. Defendant _____, was at all times, the alter ego of defendant _____ Corporation and acted as the corporation in all matters relevant to the allegations of this complaint.
4. On or about _____, 20 _____, the plaintiff and the defendants entered into a written storage agreement whereby the defendants agreed to act as a bailee, storing plaintiff's vessel _____ from the period of _____, 20 _____ to and until _____

4-I Benedict on Admiralty FORM No. 1-628

_____, 20 _____, for a sum certain at its storage facility in _____.

5. On or about _____, 20 _____, plaintiff delivered and the defendants accepted the vessel _____ which was in good order and condition at that time for storage at defendant's _____ facility for the winter storage.

6. On or about _____, 20 _____, it was discovered that the vessel _____ had been severely damaged as the result of a fire in the facility in which the vessel _____ had been stored by the defendants pursuant to its written storage agreement with the plaintiff. The vessel _____ was damaged while in the sole custody, care and control of defendants.

7. The damage to the vessel _____ was the result of the defendants' willful and/or negligent failure to exercise reasonable care for the vessel while in its custody or control.

8. Prior to the expiration of the Winter Storage Agreement, plaintiff demanded return of the vessel _____ from the defendants, but the defendants did not return the vessel to the plaintiff in the same good order and condition as when delivered to the defendant in _____, 20 _____.

9. Defendant's willful and/or negligent failure to exercise reasonable care constituted a breach of defendants' contract with plaintiff.

10. The plaintiff has performed fully all of his obligations required under the aforementioned contract of bailment.

11. Plaintiff brings this suit for his own benefit and for the benefit of all others who have or may have hereafter acquired an interest in plaintiff's claim against the defendants.

12. As a result of the defendants' breach of the aforementioned contract, plaintiff has sustained damages in the amount of \$ _____, none of which has been paid though plaintiff has made numerous demands for payment.

Wherefore, plaintiff prays for judgment against the defendants in the amount of _____ Dollars (\$ _____), plus interest and cost, and for all other relief which law may require.

COUNT II

1-3. Plaintiff re-alleges Paragraphs 1 and 2 of Count I of this complaint as Paragraphs 1 and 2 of Count II as if more fully stated herein.

4. On or about _____, 20 _____, plaintiff delivered and the defendants accepted the vessel _____ which was in good order and condition at the time for storage at defendants-bailees' _____ facility for the winter storage period.

5. On or about _____, 20 _____, it was discovered that the vessel _____ had been severely damaged while in the sole custody, care and control of defendants-bailees.

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6. Prior to the expiration of the Winter Storage Agreement, plaintiff demanded return of the vessel _____ from the defendants, but defendants did not return the vessel in the same good order and condition as when it had been delivered to the defendants-bailees on or about _____, 20 ____.

7. Damage to the vessel _____ was due solely to defendants-bailees' negligent failure to exercise reasonable care for the bailed property.

8. Plaintiff did not commit any acts of negligence which contributed in any manner to the aforementioned damage.

9. Plaintiff brings this suit for his own benefit and for the benefit of all others who may have or may hereafter acquire interest in plaintiff's claim against the defendants.

10. As a result of defendants' negligent failure to exercise reasonable care as the bailee of the vessel _____ plaintiff has sustained damages in the amount of \$ _____ none of which has been paid by defendants, although plaintiff has made numerous demands for payment.

Wherefore, plaintiff prays for judgment against the defendants in the amount of _____ Dollars (\$ _____), plus interest and costs and for all other relief which the law may require.

COUNT III

1-3. Plaintiff re-alleges Paragraphs 1 and 2 of Count I as Paragraphs 1 and 2 of Count III as if more fully stated herein.

4. On or about _____, 20 ____, the plaintiff delivered the vessel _____ which was in good order and condition at that time, to defendants for storage at defendants' _____ facility for the winter storage.

5. On or about _____, 20 ____, it was discovered that the vessel _____ had been severely damaged solely as a result of defendants' negligent conduct including the failure to provide a safe and adequate structure for the storage of the vessel _____ sufficient to withstand the weight of snow.

6. Plaintiff has not committed any act of negligence which contributed to the aforementioned damage to the vessel _____.

7. As a result of defendants' negligence, plaintiff has sustained damages in the amount of \$ _____, none of which has been paid by defendants though plaintiff has made numerous demands.

8. Plaintiff brings this suit for his own benefit and for the benefit of all others who have or may hereafter acquire interest in plaintiff's claim against defendants.

Wherefore, plaintiff prays for judgment against the defendants in the amount of _____ Dollars (\$ _____), plus interest and cost for all other relief which the law may require.

Attorneys for Plaintiff

FOOTNOTES:

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

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



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Volume 4: Practice and Procedure: Forms
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PROPERTY DAMAGE *

4-I Benedict on Admiralty FORM No. 1-629

FORM No. 1-629 Complaint In Rem and In Personam--Damage to Submarine Cables

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. Plaintiffs are the owners of certain submarine cables extending under the waters of the _____ River from _____ to _____, _____, in the vicinity of a certain railroad bridge crossing the said _____ River owned and operated by _____ Railroad Company.

5. On or about _____, 20 _____, defendant _____ operating three vessels in the vicinity of the said bridge which said vessels were proceeding in the easterly direction through the south channel of the said bridge.

6. The said vessels being operated by defendant, _____ at the said time and place, were the tug _____ owned by defendant _____ the barge _____ owned by the defendant _____, and the tug _____ owned by the defendant _____.

7. At or about the said time and place, defendant _____ was the owner and operator of a certain self-propelled vessel.

8. On or about _____, 20 _____, the submarine cables owned by plaintiffs were damaged and destroyed by the careless and negligent actions of the defendants in the ownership and in the manner and method of operation of the various vessels which were in the vicinity of the bridge and were in the process of moving in an easterly direction through the south channel of the open bridge.

9. The damage to the submarine cables of plaintiff, _____ to the extent of \$ _____
and the damage to the submarine cables of plaintiff, _____, to the extent of \$ _____
_____ was caused by the result of the carelessness, recklessness and negligence of the defendants.

[*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* Forms Nos. 1-3, 1-6, 1-11 and 1-12, *supra*.

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



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4-I Benedict on Admiralty FORM No. 1-630

FORM No. 1-630 Complaint In Rem and In Personam--Damage to Seismic Cable

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. On or about _____, 20____, at approximately _____ the vessel _____ was underway approximately 5 miles off the coast of _____, _____. The vessel was on a course of approximately _____ true and was towing a seismic recording cable approximately _____ feet long. At the end of the cable there were two large red buoys and following the red buoys on the same course and at the same speed was the vessel _____. At about _____ the captain of the vessel _____ observed several shrimp boats in the area, one of which was the vessel _____ and was approximately _____ miles on the starboard bow of the vessel _____. Another of the shrimp boats was the vessel _____ which was _____ miles or more on the starboard quarter of the vessel _____. The captain of the vessel _____ observed that the vessel _____ and the vessel _____ were on courses which would bring them into collision with the seismic cable being towed by the vessel _____, whereupon he sounded warning signals and took evasive action in an effort to keep the cable out of the way of the said two vessels. Meanwhile, the vessel _____ went along side the vessel _____ and advised those in charge of the navigation of the vessel _____ that the cable lay ahead of them. Both the vessel _____ and the vessel _____ ignored the warnings given to them, proceeded on their courses without taking any action to avoid the cable, and the vessel _____ struck the cable about _____ feet astern of the vessel _____, and the vessel _____ struck the cable about _____ feet astern of the vessel _____, and in the area of the tail buoy.

5. The collision aforesaid was not caused by or contributed to by any fault or neglect of the vessel

4-I Benedict on Admiralty FORM No. 1-630

_____ or the vessel _____, but solely was the fault of the vessel _____ and the vessel _____, and each of them, and those in charge of them in the following among other particulars to be shown at the time of trial hereof:

- (a) They were not in charge of competent pilots;
- (b) Their pilots were careless and inattentive to their duties;
- (c) They failed to maintain proper lookouts;
- (d) They failed to keep out of the way of the vessel _____ and the vessel _____ and their tow;
- (e) They failed to sound and/or display proper and timely signals;
- (f) They failed to stop and reverse their engines when danger of collision was or should have been apparent;
- (g) And in other particulars to be shown at the time of trial.

6. As a result of the collision aforesaid, approximately _____ feet of seismic cable were lost and/or damaged. At least _____ feet of cable were lost and/or taken aboard the vessel _____ and/or the vessel _____, but at the time of filing of this complaint plaintiff is not able to determine exactly the extent of damage to the cable which was saved or the amount of cable which was lost.

7. Plaintiff also is unable to determine the full extent of its damages considering the loss of use of its equipment, incidental repairs, and other damages, but the damages amount to \$ _____ as near as they may be calculated at the present time.

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

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Duque & Duarte, Inc. v. Geophysical Services, Inc.*, 401 F.2d 496, 2068 A.M.C. 2284 (5th Cir. 1968), courtesy of Ross, Griggs & Harrison, Houston, 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, ch. I (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-631

FORM No. 1-631 Complaint In Intervention Against Bridge Owner In Personam and Vessel Owner In Rem and In Personam--Damage to Submarine Electrical Service Linen1

[Caption] n2

1. This is an admiralty and maritime claim within the jurisdiction of the United States and of this Honorable Court, and within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*, being brought by virtue of the general maritime law and under the provisions of the Extension of Admiralty Jurisdiction Act, *46 U.S.C. § 740*.

2. Complainant in intervention, _____ is a _____ duly authorized and qualified to do and doing business in the State of _____ with its principal office in _____, and engaged primarily in the business of generating, transmitting, distributing and selling electricity for power, lighting, heating and other such uses in the State of _____.

3. At all material times hereinafter mentioned, the vessel _____, defendant in intervention, was a _____ and documented vessel of the United States of _____ feet in length, feet in beam and feet in draft bearing Official No. _____ with its home port in _____ and is or will be during the pendency of this action within the jurisdiction of this Court.

4. At all material times hereinafter mentioned, defendant in intervention, _____, was and still is a resident of _____ and was and still is the owner and operator of the vessel _____.

5. At all material times hereinafter mentioned, defendant in intervention, _____, was the liability insurer of the vessel _____ and _____ and is amenable to service of process within this State pursuant to _____.

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6. At all material times hereinafter mentioned, defendant, Department of Highways, State of _____, was an agency of the State of _____ capable of suing and being sued and was the owner and operator of a bridge over _____ near _____.

7. At all material times hereinafter mentioned, complainant in intervention was the owner of the electrical distribution system which serviced the bridge over _____ near _____.

8. At _____ a.m. on _____, 20 _____, the vessel _____ entered the passageway of the bridge over _____ near _____, _____, and in so doing came into contact and collided with that bridge, the electrical distribution system and in particular with a _____ on the underside of the bridge.

9. The cause of the collision was the negligence of the operator of the _____ Bridge, acting in the course and scope of his employment with the Department of Highways, State of _____, in failing to operate the bridge in a manner consistent with prudent navigation on _____ and in particular, in being asleep on the job and failing to open the bridge after proper whistle signals had been given by the vessel _____.

10. In the alternative, the cause of the collision was due to the negligence of the operator of the vessel _____ or the unseaworthiness of the vessel _____ in the following particulars:

- a. The vessel _____ was not in charge of competent persons.
- b. The vessel _____ failed to maintain a proper lookout.
- c. The vessel _____ failed to stop her engines and reverse when the danger of a collision became apparent.

11. By reason of the premises and as a result of the said collision, complainant in intervention has suffered damages estimated at this time to be \$ _____ which complainant in intervention was required to expend for the repair of the electrical distribution system of the _____ Bridge.

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

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Hagan v. Dept. of Highways, 368 F. Supp. 446, 2074 A.M.C. 2274 (M.D. La. 1973), courtesy of George & George, Ltd., Baton Rouge, 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, ch. I (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-632

FORM No. 1-632 Complaint--Damages Caused by Flooding from River--Class Actionn1

[Caption] n2

CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs, _____ [*identify all plaintiffs*], suing on behalf of themselves and all others similarly situated, by their attorneys, complain as follows against the defendants, _____ Dredge Company, a _____ Corporation and _____, a Municipal Corporation:

NATURE OF THE CASE

1. This action seeks recovery on behalf of numerous persons and businesses of actual damages sustained as a result of defendants' conduct in connection with the damage to an underground freight tunnel system located in _____ at the _____ bridge (the "Tunnel"). On _____, 20 _____, the damage to the Tunnel caused a sudden and continuing torrent of water from the _____ River to go into the Tunnel. The failure to timely repair this damage to the Tunnel or otherwise prevent the sudden, cataclysmic breach of the Tunnel and Tunnel system resulted in the river water inundating many downtown buildings, with attendant physical damage to property, creation of emergency situations, evacuation of buildings, interruption of electrical and other utility services, and other losses resulting therefrom beginning on _____ and continuing through the date of this Complaint.

PARTIES

2. This action is brought by the following plaintiffs:

[*identify each plaintiff*]

3. The defendants in this action are:

[*identify each defendant*]

CLASS ACTION ALLEGATIONS

4. Plaintiffs bring this action as a class action pursuant to the _____ Code of Civil Procedure [*cite statute*], on behalf of themselves and all other persons and entities who sustained damage as a result of the breach of the Tunnel as stated above (the "Class").

5. The members of the Class are numerous; there are tens of thousands of individuals, in excess of 200 buildings, and thousands of businesses, whose property was damaged, whose business was interrupted or stopped, who lost wages, tips, commissions and business opportunities or who were otherwise damaged. While plaintiffs believe that the number of members of the Class is in the tens of thousands, the identity of each member of the Class is not presently known to plaintiffs, but can be readily ascertained. Joinder of all members is, therefore, impracticable.

6. The claims of the Class involve common questions of both law or fact which predominate over any questions affecting only individual Class members. Among the questions of law and fact common to the Class are:

a. Whether the defendants were negligent.

b. Whether the conduct of the defendants was wilful and wanton and showed an utter indifference to or conscious disregard for the safety of others or their property.

c. Whether the contract between _____ [city] and _____ [dredge owner] created third-party beneficiary rights in plaintiffs and the Class.

d. Whether defendant _____ [city] breached its duty to exercise ordinary care to maintain the Tunnel in a reasonably safe condition.

e. Whether the defendants owed plaintiffs and the Class an extracontractual duty to maintain the Tunnel in a reasonably safe condition.

f. Whether the pile driving activities at the _____ bridge constituted an abnormally dangerous activity.

g. Whether the pile driving activities at the _____ bridge constituted an ultrahazardous activity.

h. Whether plaintiffs and the Class have suffered compensable damages and the extent of such damages.

7. Plaintiffs and their counsel will fairly and adequately protect the interests of the members of the Class. Plaintiffs have retained counsel who are competent and experienced in class action litigation and intent to prosecute this action vigorously.

8. This class action is an appropriate method to adjudicate this controversy and there will not be any difficulties with the prosecution of this class action.

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9. On information and belief, _____ [city] assumed ownership and responsibility for the Tunnel in about _____ from its then bankrupt owner, _____. Before _____, the Tunnel was used as an underground freight transportation system for much of the downtown district of _____ [city].

10. Since approximately _____, _____ [city] knew that the Tunnel crossed under the _____ river in different locations and that it was connected to a number of downtown building. These downtown buildings are predominantly multi-story and contain commercial activities.

11. Since the mid-_____'s, _____'s [city's] primary activity in the Tunnel has been related to generating revenue by leasing access to utility and telecommunication companies amounting to revenue of approximately one million (\$1,000,000.00) dollars in _____.

12. In approximately _____, _____ [dredge owner] contracted with _____ (city) to perform certain pile driving work to, *inter alia*, remove and replace piling clusters at five _____ River bridges, including the _____ bridge (the "Contract").

13. The original pilings to be replaced under the Contract at the _____ bridge were in close proximity to the underground freight Tunnel.

14. Both parties to the Contract knew or should have known of the existence and location of the Tunnel at the _____ bridge, and that the work required under the Contract could result in damage to the Tunnel.

15. _____ [dredge owner] knew or should have known that the Tunnel was connected to a number of downtown buildings and that it contained extensive utility and telecommunication lines and equipment serving _____ [city] and the downtown district of _____ [city].

16. _____ [dredge owner] installed new pilings in a location other than that originally designated in its Contract with _____ [city] and failed to remove all the pilings contracted to be removed.

17. About _____, 20 _____, _____ (dredge owner) claimed it fully completed performance of the construction work under its Contract with _____ [city].

18. _____ [dredge owner], in pounding and driving the pilings into the riverbed, caused one or more of the following conditions:

- a. an actual hole or breach of the Tunnel wall with the piling or pilings physically breaking the Tunnel wall.
- b. a weakening of the Tunnel wall creating cracks or weakness in the structural integrity of the Tunnel.
- c. a compacting of the earth around the Tunnel walls creating excessive pressure on the Tunnel.
- d. such other events which proximately caused the Tunnel wall to partially collapse or break.

19. On information and belief, _____ [city] never finally inspected the work at the _____ bridge.

20. On information and belief, _____ [both defendants] and/or _____ [dredge owner] filed with the appropriate _____ authorities a report or reports that all existing wood pilings at

the _____ bridge were removed as part of the construction when in fact they were not.

21. In _____, 20 _____, a cable television crew using the Tunnel discovered a breach of the Tunnel at the _____ bridge.

22. By _____, 20 _____, _____ [city] was notified of the damage to the Tunnel by said cable television crew.

23. In _____, 20 _____, _____ [city] employees inspected the damaged portion of the Tunnel and photographed the damage.

24. By early _____, 20 _____, inspectors and supervisors within _____ [city] were advocating immediate repairs to the Tunnel.

25. On information and belief, on at least two prior occasions, _____ [city] acted, or knew that others had acted promptly to repair damage to the Tunnel's integrity in order to avoid the type of catastrophe and damages at issue in this suit.

26. By _____, 20 _____, neither _____ [city] nor any other defendant had repaired or physically attempted to repair the damage to the Tunnel at the _____ bridge.

27. On or about _____, 20 _____, as a result of the damage to the Tunnel, a sudden torrent and continuing flow of water from the _____ River rushed into the underground Tunnel. This breach of the Tunnel resulted in a local emergency and the mid-day evacuation of numerous buildings in the downtown district and, on information and belief, approximately _____ persons. The event threatened the safety of all individuals affected and caused damages in the many millions of dollars. The area was also declared a federal disaster area by the President of the United States and a state disaster area by the Governor of the State of _____.

28. The damages sustained by plaintiffs and the Class were caused by the violation and partial collapse of the Tunnel at the _____ bridge, and specifically, in the immediate vicinity of the pilings installed by _____ [dredge owner] and related conduct of the defendants.

29. The Plaintiffs and other members of the Class were forced to evacuate the buildings which they owned, in which they conducted their business, or in which they were employed as a result of this sudden and calamitous event and sustained injury to their property; lost revenues, sales, profits and good will; suffered lost wages, tips and commission; and suffered other expenses and losses proximately caused by the complained of conduct.

30. As a result of the defendants' conduct, each of the plaintiffs was damaged:

[describe damage for each plaintiff]

COUNT I WILFUL AND WANTON CONDUCT

(Dredge Owner)

1-23. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-8, 12-20, 22 and 28-32 of the general allegations above as if fully set forth herein.

24. _____ [dredge owner] owed to plaintiffs and the Class the following duties, both ordinary and extracontractual based upon the work and the Tunnel:

- a. the duty to conduct the _____ bridge construction with reasonable care and in accordance with the standards observed by contractors carrying out such projects; and
- b. the duty to accurately report to governmental authorities about the work performed under the Contract, including both during and after construction completion.

25. These duties were owed to the public and specifically to those parties likely to be adversely affected by a break in the wall of the Tunnel system in a location such as concerned here.

26. _____ [dredge owner] breached these duties, failed to exercise ordinary care in the performance of its work, and showed an utter indifference to, and conscious disregard for the safety, life, property and interests of plaintiffs and the Class by:

- a. failing to consult or confer with knowledgeable authorities and to refer to _____ [city] maps regarding the existence and location of the Tunnel;
- b. failing to take adequate safeguards against a breach of the Tunnel by the _____ River when it changed the location of the pilings; and
- c. failing to file with the appropriate State of _____ authorities accurate reports about the work that was performed under the Contract.

27. As a direct and proximate result of the wilful and wanton conduct of _____ [dredge owner], the Tunnel was damaged and plaintiffs and the Class have suffered the following types of damages:

- a. damage to real and personal property;
- b. loss of income, sales and profits;
- c. additional unnecessary payroll expenses;
- d. loss of wages, tips, earnings and commissions; and
- e. other expenses proximately caused by defendant's conduct.

28. The precise amount of such loss and damage to plaintiffs and the Class is not known to plaintiffs at this time, but plaintiffs estimate those damages to be far in excess of one million (\$1,000,000.00) dollars.

29. At all times relevant, plaintiffs and the Class were free from any negligence on their part.

Wherefore, plaintiffs request this Court to enter the following orders:

A. That this action be declared and maintained as a class action pursuant to Section _____ of the _____ Code of Civil Procedure;

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B. That judgment be entered for plaintiffs and the Class against _____ [dredge owner] in the full amount of their loss and damage;

C. That following a finding of strict liability, a special master be appointed by this Court to assist the Court in determining damages;

D. That an order be entered awarding the special master, plaintiffs and the Class their reasonable attorneys' fees, expenses of litigation and costs of suit; and

E. That the Court award such other relief as the Court may consider appropriate and just.

COUNT II NEGLIGENCE

(Dredge Owner)

1-23. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-23 of Count I as if fully set forth herein.

24. _____ [dredge owner] owed to plaintiffs and the Class the following duties, both ordinary and extracontractual based upon the work and the Tunnel:

a. the duty to conduct the _____ bridge construction with reasonable care and in accordance with the standards observed by contractors carrying out such projects; and

b. the duty to accurately report to governmental authorities about the work performed under the Contract, including both during and after construction completion.

25. These duties were owed to the public and specifically to those parties likely to be adversely affected by a break in the following orders:

A. That this action be declared and maintained as a class action pursuant to Section _____ of the _____ Code of Civil Procedure;

B. That judgment be entered for plaintiffs and the Class against _____ [dredge owner] in the full amount of their loss and damage;

C. That following a finding of strict liability, a special master be appointed by this Court to assist the Court in determining damages;

D. That an order be entered awarding the special master, plaintiffs and the Class their reasonable attorneys' fees, expenses of litigation and costs of suit; and

E. That the Court award such other relief as the Court may consider appropriate and just.

COUNT III WILFUL AND WANTON CONDUCT

(City)

1-26. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-12, 15-16 and 21-32 of the general allegations above as if fully set forth herein.

27. The _____ [city] owed to plaintiffs and the Class the following duties, both ordinary and extracontractual based upon the work and the Tunnel:

- a. the duty to exercise ordinary care to inspect, maintain and protect its property, and specifically, the Tunnel in a reasonably safe condition;
- b. the duty to promptly repair the known dangerous condition created by the breached Tunnel; and
- c. the duty to warn plaintiffs and the Class about the dangerous condition of the Tunnel when it became known to the _____ [city].

28. The _____ [city] breached its duty, failed to exercise ordinary care to maintain the Tunnel in a reasonably safe manner and showed an utter indifference to, and conscious disregard for the safety, life, property and interests of plaintiffs and the Class by:

- a. failing to repair the damage to the breached Tunnel when it became known to the city; and
- b. failing to warn plaintiffs and the Class about the dangerous condition when it became known to the city; and

29. As a direct and proximate result of the wilful and wanton conduct of the city, the Tunnel was damaged and plaintiffs and the Class have suffered the following types of damages:

- a. damage to real and personal property;
- b. loss of income, sales and profits;
- c. additional unnecessary payroll expenses;
- d. loss of wages, tips, earnings and commissions; and
- e. other expenses proximately caused by defendant's conduct.

30. The precise amount of such loss and damage to plaintiffs and the Class is not known to plaintiffs at this time, but plaintiffs estimate those damages to be far in excess of one million (\$1,000,000.00) dollars.

31. At all times relevant, plaintiffs and the Class were free from any negligence on their part.

Wherefore, plaintiffs request this Court to enter the following orders:

A. That this action be declared and maintained as a class action pursuant to Section _____ of the _____ Code of Civil Procedure;

B. That judgment be entered for plaintiffs and the Class against _____ [city] in the full amount of their loss and damage;

C. That following a finding of strict liability, a special master be appointed by this Court to assist the Court in determining damages;

D. That an order be entered awarding the special master, plaintiffs and the Class their reasonable attorneys' fees, expenses of litigation and costs of suit; and

E. That the Court award such other relief as the Court may consider appropriate and just.

COUNT IV NEGLIGENCE

(City)

1-26. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-26 Count III as if fully set forth herein.

27. The _____ [city] obtained insurance for the work and was an additional insured on the insurance policy of _____ [dredge owner]. A copy of the insurance certificate is attached hereto as Exhibit "B".

28. The _____ [city] owed to plaintiffs and the Class the following duties, both ordinary and extracontractual, based upon the work and the Tunnel:

- a. the duty to exercise ordinary care to inspect, maintain and protect its property, and specifically, the Tunnel in a reasonably safe condition;
- b. the duty to promptly repair the known dangerous condition created by the breached Tunnel; and
- c. the duty to warn plaintiffs and the Class about the dangerous condition of the Tunnel when it became known to the _____ [city].

29. The _____ [city] breached its duties by:

- a. failing to inform and advise _____ [dredge owner] about the existence and location of the Tunnel;
- b. failing to adequately contract for, supervise and monitor the placement of the pilings;
- c. failing to regulate and/or provide for safeguards in the Contract to limit the potential damage in the event of a breach of the Tunnel;
- d. failing to maintain the Tunnel in a reasonably safe condition; and
- e. failing to take such other reasonable, responsible and competent actions necessary to safeguard the safety, lives, property and interests of plaintiffs and the Class.

30. As a direct and proximate result of the negligent conduct of, the Tunnel was damaged and plaintiffs and the Class

have suffered the following types of damages:

- a. damage to real and personal property;
- b. loss of income, sales and profits;
- c. additional unnecessary payroll expenses;
- d. loss of wages, tips, earnings and commissions; and
- e. other expenses proximately caused by defendant's conduct.

31. The precise amount of such loss and damage to plaintiffs and the Class is not known to plaintiffs at this time, but plaintiffs estimate those damages to be far in excess of one million (\$1,000,000.00) dollars.

32. At all times relevant, plaintiffs and the Class were free from any negligence on their part.

Wherefore, plaintiffs request this Court to enter the following orders:

A. That this action be declared and maintained as a class action pursuant to Section _____ of the _____ Code of Civil Procedure;

B. That judgment be entered for plaintiffs and the Class against _____ [city] in the full amount of their loss and damage;

C. That following a finding of strict liability, a special master be appointed by this Court to assist the Court in determining damages;

D. That an order be entered awarding the special master, plaintiffs and the Class their reasonable attorneys' fees, expenses of litigation and costs of suit; and

E. That the Court award such other relief as the Court may consider appropriate and just.

COUNT V THIRD PARTY BENEFICIARY CLAIM

(_____ [city] and _____ [dredge owner])

1-23. Plaintiffs repeat and reallege each and every allegation contained in paragraph 1-10, 12, 15-21 and 23-32 of the general allegations above as if fully set forth herein.

24. Plaintiffs and the Class are third-party beneficiaries of the Contract.

25. There is a contractual duty to act with reasonable care in the performance of the construction operation from the above stated contractual relationship.

26. The _____ [city] and _____ [dredge owner] breached these duties by failing to act with reasonable care under the circumstances.

27. As a direct and proximate result of these actions and/or failures to act, plaintiffs and the Class have suffered the following types of damages:

- a. damage to real and personal property;
- b. loss of income, sales and profits;
- c. additional unnecessary payroll expenses;
- d. loss of wages, tips, earnings and commissions; and
- e. other expenses proximately caused by defendant's conduct.

28. The precise amount of such loss and damage to plaintiffs and the Class is not known to plaintiffs at this time, but plaintiffs estimate those damages to be far in excess of one million (\$1,000,000.00) dollars.

29. At all times relevant, plaintiffs and the Class were free from any negligence on their part.

Wherefore, plaintiffs request this Court to enter the following orders:

A. That this action be declared and maintained as a class action pursuant to Section _____ of the _____ Code of Civil Procedure;

B. That judgment be entered for plaintiffs and the Class against _____ [city] and _____ [dredge owner] in the full amount of their loss and damage;

C. That following a finding of strict liability, a special master be appointed by this Court to assist the Court in determining damages;

D. That an order be entered awarding the special master, plaintiffs and the Class their reasonable attorneys' fees, expenses of litigation and costs of suit; and

E. That the Court award such other relief as the Court may consider appropriate and just.

COUNT VI GUARANTEE

_____ [dredge owner]

1-23. Plaintiffs repeat and reallege each and every allegation contained in paragraph 1-8, 12-21 and 28-32 of the general allegations above as if fully set forth herein.

24. Plaintiffs and the Class are third-party beneficiaries of the guarantee provided to the _____ [city] by _____ [dredge owner] covering its material and workmanship. A copy of the guarantee is attached hereto as Exhibit "C" and made a part hereof.

25. The precise amount of such loss and damage to plaintiffs and the Class is not known to plaintiffs at this time, but plaintiffs estimate those damages to be far in excess of one million (\$1,000,000.00) dollars.

26. At all times relevant, plaintiffs and the Class were free from any negligence on their part and were not responsible for any of the actions caused herein.

Wherefore, plaintiffs request this Court to enter the following orders:

A. That this action be declared and maintained as a class action pursuant to Section _____ of the _____ Code of Civil Procedure;

B. That judgment be entered for plaintiffs and the Class against _____ [dredge owner] in the full amount of their loss and damage;

C. That following a finding of strict liability, a special master be appointed by this Court to assist the Court in determining damages;

D. That an order be entered awarding the special master, plaintiffs and the Class their reasonable attorneys' fees, expenses of litigation and costs of suit; and

E. That the Court award such other relief as the Court may consider appropriate and just.

COUNT VII ABNORMALLY DANGEROUS ACTIVITY

(_____ [city] and _____ [dredge owner])

1-25. Plaintiffs repeat and reallege each and every allegation contained in paragraph 1-20 and 28-32 of the general allegations above as if fully set forth herein.

26. Defendants' activities in relation to their excavation and construction work constituted an abnormally dangerous activity. The carrying on of pile driving activities in the river in close proximity to an extensive underground structure such as the Tunnel was likely to cause serious damage even when conducted with the utmost degree of care.

27. The creation and maintenance of a tunnel under a riverbed is an unnatural condition of land and constitutes an inherently dangerous condition.

28. As a direct and proximate result of these abnormally dangerous activities and conditions, the Tunnel was breached by the _____ River and the _____ [city] and _____ [dredge owner] are strictly liable for the resulting damages.

29. Plaintiffs and the Class sustained the types of harm expected given the dangerous condition of the land and activity. Specifically, plaintiffs and the Class have suffered the following types of damages:

- a. damage to real and personal property;
- b. loss of income, sales and profits;
- c. additional unnecessary payroll expenses;
- d. loss of wages, tips, earnings and commissions; and
- e. other expenses proximately caused by defendant's conduct.

30. The precise amount of such loss and damage to plaintiffs and the Class is not known to plaintiffs at this time, but plaintiffs estimate those damages to be far in excess of one million (\$1,000,000.00) dollars.

31. At all times relevant, plaintiffs and the Class were free from any negligence on their part.

Wherefore, plaintiffs request this Court to enter the following orders:

A. That this action be declared and maintained as a class action pursuant to Section _____ of the _____ Code of Civil Procedure;

B. That judgment be entered for plaintiffs and the Class against the _____ [city] and _____ [dredge owner] in the full amount of their loss and damage;

C. That following a finding of strict liability, a special master be appointed by this Court to assist the Court in determining damages;

D. That an order be entered awarding the special master, plaintiffs and the Class their reasonable attorneys' fees, expenses of litigation and costs of suit; and

E. That the Court award such other relief as the Court may consider appropriate and just.

COUNT VIII ULTRA-HAZARDOUS ACTIVITY

(_____ [city] and _____ [dredge owner])

1-25. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-25 of Count VII as if fully set forth herein.

26. Defendants' activities in relation to their excavation and construction work constituted an ultra-hazardous activity or enterprise. The carrying on of pile driving activities in the river in close proximity to an extensive underground structure such as the Tunnel necessarily involved an enormous risk of harm to plaintiffs and the Class which could not be eliminated by the exercise of the utmost care.

27. The creation and maintenance of a tunnel under a riverbed is an unnatural condition of land and constitutes an ultra-hazardous condition.

28. As a direct and proximate result of these ultra-hazardous activities and conditions, the Tunnel was breached by the _____ River and the _____ [city] and _____ [dredge owner] are strictly liable for the resulting damages.

29. Plaintiffs and the Class sustained the types of harm expected given the ultra-hazardous condition of the land and the activity. Specifically, plaintiffs and the Class have suffered the following types of damages:

- a. damage to real and personal property;
- b. loss of income, sales and profits;
- c. additional unnecessary payroll expenses;

d. loss of wages, tips, earnings and commissions; and

e. other [6expenses proximately caused by defendant's conduct.

30. The precise amount of such loss and damage to plaintiffs and the Class is not known to plaintiffs at this time, but plaintiffs estimate those damages to be far in excess of one million (\$1,000,000.00) dollars.

31. At all times relevant, plaintiffs and the Class were free from any negligence on their part.

Wherefore, plaintiffs request this Court to enter the following orders:

A. That this action be declared and maintained as a class action pursuant to Section _____ of the _____ Code of Civil Procedure;

B. That judgment be entered for plaintiffs and the Class against the _____ [city] and _____ [dredge owner] in the full amount of their loss and damage;

C. That following a finding of strict liability, a special master be appointed by this Court to assist the Court in determining damages;

D. That an order be entered awarding the special master, plaintiffs and the Class their reasonable attorneys' fees, expenses of litigation and costs of suit; and

E. That the Court award such other relief as the Court may consider appropriate and just.

Attorneys for CLASS

FOOTNOTES:

(n1)Footnote 1. This Form is taken from the lawsuits filed in the Chicago Flood Litigation arising out of the flooding of the Chicago Tunnel System on April 13, 1992.

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

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



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Volume 4: Practice and Procedure: Forms
CHAPTER I COMPLAINTS
PROPERTY DAMAGE *

4-I Benedict on Admiralty FORM No. 1-633

FORM No. 1-633 Vessel Damage - - Contact With Bridge

[Caption] n1

COMPLAINT

Now comes the plaintiff, _____, by its attorneys, _____, and for its complaint states against the defendant the following:

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 "_____") is a _____ corporation organized and existing under the laws of the State of _____.

5. At all times pertinent to this complaint the _____ was the owner and operator of a _____ [name object and its location] and had the duty to safely man, maintain, operate and repair said bridge in accordance with the applicable federal, state and local rules of navigation and also in accordance with the local custom and practice.

4-I Benedict on Admiralty FORM No. 1-633

6. At all times pertinent to this complaint, the _____ [vessel] was in compliance with all applicable rules of navigation and was exercising due care and safety in the navigation of the _____ River.

7. On _____, 20 _____, at _____ hours, the _____ [vessel] arrived at the dock of _____ at _____ and discharged her cargo of _____. Said discharge was completed at _____ hours.

8. At _____ hours, the _____ [vessel] left the dock of _____ under tow of the _____ owned and operated by the defendant _____. The _____ [vessel] proceeded outbound on the _____ River to _____.

9. As the _____ [vessel] approached the _____ Bridge the draw of the bridge was open and all traffic lights were green indicating that it was safe for the _____ to proceed.

10. As the _____ [vessel] passed under the draw of the _____ Bridge, the draw of the bridge began to descend without notice or warning and prior to the time the _____ [vessel] had cleared the bridge, and struck the _____ [vessel] causing extensive physical damage to the vessel.

11. By failing to keep the bridge open until the _____ [vessel] had passed completely through and was at a safe distance away from the Bridge, the _____ was negligent and breached its duty to safely man, maintain, operate and repair said bridge. As a result of the negligence of the _____, the _____ [vessel] was extensively damaged causing loss to the plaintiff in excess of \$ _____.

12. Plaintiff has given due and proper notice to the _____ pursuant to _____. A copy of said notice is attached hereto as Exhibit A.

Wherefore, plaintiff _____, respectfully request this court for judgment against defendant _____, in the amount of \$ _____ plus interests, costs and such other further relief as the court deems just in the premises.

[name of party]

By: _____

[attorney]

FOOTNOTES:

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

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



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CHAPTER I COMPLAINTS

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4-I Benedict on Admiralty FORM No. 1-660

RESERVED

FORM No. 1-660RESERVED



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CHAPTER I COMPLAINTS
REPAIRS *

4-I Benedict on Admiralty FORM No. 1-661

FORM No. 1-661 Complaint In Rem and In Personam--Repairs

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. At or during the period between _____, 20 _____, and _____, 20 _____, plaintiff upon the order and request of defendant, furnished at _____, _____, certain material, services, repairs, and supplies to the said vessel of reasonable value of approximately \$ _____.

5. Despite numerous requests to do so, the said defendant _____, as owner of the said _____, has failed, neglected and refused to pay any portion of the said charges which are now due and owing to plaintiff on account thereof, plus accrued service charges of \$ _____, as nearly as the same can now be estimated.

[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* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, §§ 33-39 (Matthew Bender 7th ed.).



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CHAPTER I COMPLAINTS
REPAIRS *

4-I Benedict on Admiralty FORM No. 1-662

FORM No. 1-662 Complaint In Rem and In Personam by Assignee of Claim--Repairs

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. At all times herein mentioned _____ and _____ were, and now are, doing business at the port of _____, as a _____ [describe business entity], under the firm name of _____ & _____.

5. During the month of _____, 20 _____, at the port of _____, said _____ furnished to said vessel _____, at the instance and request of the master of said vessel, certain repairs to the sails of said vessel, of the reasonable and agreed value of \$_____.

6. Although demand has been made upon said vessel, her master and owners, for the payment of said sum of \$_____, no part thereof has been paid.

7. Thereafter, and prior to the commencement of this action, said claim against said vessel _____, together with the maritime lien against said vessel _____ arising out of said claim and held by said _____, were duly assigned by said _____ to plaintiff, and that plaintiff is the present owner and holder of the same.

[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 1-10 through 1-13 *supra*.

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, §§ 33-39 (Matthew Bender 7th ed.).



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CHAPTER I COMPLAINTS
REPAIRS *

4-I Benedict on Admiralty FORM No. 1-663

FORM No. 1-663 Complaint In Personam Against Insurer and Boatyard--Delay of Repairs

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. The plaintiff was, from _____, 20 _____, and through the date of filing of the original complaint herein, the _____ registered owner of the vessel _____, Official Number _____. The defendant, _____ Insurance Company, entered into a contract of insurance, Number _____, with the plaintiff on _____, 20 _____, to insure the said vessel _____ for _____ year(s) for the sum of _____ Dollars (\$ _____); a copy of said contract of insurance is attached hereto and incorporated herein as Exhibit A. The said insurance was payable to plaintiff and _____, which said company then held a preferred ship mortgage on the said vessel _____ in the approximate amount of _____ Dollars, (\$ _____).

5. The said insurance policy provided that in the event of loss or damage, the underwriters should be notified so that they might appoint their own surveyor; further, that the underwriters would be entitled to decide the port to which a damaged vessel should proceed for docking and repairing, and further, that the underwriters should also have a right of veto in connection with the place of repair or repairing firm proposed, and that the underwriters might take or might require to be taken tenders for the repair of such damage.

6. While the said vessel _____ insured as aforesaid by the defendant, _____ Insurance Company on or about _____, 20 _____, the said vessel departed on a voyage within the territorial limits of the State of _____; on or about _____, 20 _____, the said vessel, through no fault of the plaintiff, drifted and ran aground on a beach near _____, _____. The beaching was reported promptly to defendant _____ Marine Surveyor, Marine Adjuster and agent of the defendant-insurance company. On or about _____, 20 _____, the

4-I Benedict on Admiralty FORM No. 1-663

said _____, agent of the defendant-insurance company, took complete charge and control of salvage operations; the defendant _____ entered into a contract with a commercial salvage firm to deliver the said vessel to a marine railway at the Port of _____; the said vessel was so delivered and placed on _____ Marine Railway at _____, _____ on or about _____, 20 _____, the said _____, agent of the defendant-insurance company, took complete charge and control of salvage operations; the defendant _____ entered into a contract with a commercial salvage firm to deliver the said vessel to a marine railway at the Port of _____, _____; the said vessel was so delivered and placed on _____ Marine Railway at _____, _____ on or about _____, 20 _____, where it remained until _____, 20 _____, undergoing hull repairs under a contract made by the said defendant, _____, with the said Marine Railway.

7. While the said vessel _____ was on the said marine railway, the defendant, _____, agent of the defendant-insurance company, made a verbal contract with the defendant, _____, to repair the engine and accessories of the said vessel. The said defendant, _____, employed an incompetent mechanic to effect the said repairs. The said repairs were not properly done and were never completed. A reasonable time to complete said repairs is _____ days, but the said engine repair work was commenced on _____, 20 _____, and the said engine never operated in a satisfactory manner at any time to the date of the filing of this suit. When plaintiff objected to the continuation of the employment of the aforesaid incompetent mechanic, plaintiff was told by defendant _____, agent of the defendant-insurance company, and by officers and agents of the defendant, _____, that plaintiff had no choice in the matter of selection or employment of mechanics. The defendants, jointly and severally, through their agents and employees, assumed full control of the said repairs to the said engine and accessories, and denied to plaintiff any and all control over the said repairs, and denied plaintiff access to the said vessel.

8. It was the duty of the defendant, _____ Yacht Storage Company, to complete the said engine and accessory repairs to the said vessel _____ within a reasonable time, but the defendant, _____, through inattention, carelessness, neglect, and improper mechanical work, caused the vessel to be laid up, causing damage and loss to plaintiff.

9. It was the duty of the defendant, _____ Insurance Company and its agent, defendant _____, having elected to assume control and direction of the repair of the damage to the said vessel, to expedite the said repairs and/or pay the losses sustained by the plaintiff, but the said defendants were negligent in the performance of their duties they elected to assume, and failed in the diligent performance thereof, causing damage and loss to the plaintiff. It was the duty of defendant, _____ Insurance Company, and its agent, _____, as insurer, with knowledge of procedures and occupying an authoritative and advantageous position, to deal fairly with the insured plaintiff, but the defendant, _____ Insurance Company, through its agents, coerced, threatened, abused, and took advantage of the helpless condition of the plaintiff, causing damage and loss to the plaintiff.

10. Because of defendant-insurance company's assumption of control of the said vessel, and the incompetence or negligence of the _____ Yacht Storage company, the plaintiff was denied the use of his said vessel for _____ operations from _____, 20 _____, a reasonable date for completion of the aforesaid repairs to engine and accessories, to the present date. The plaintiff, because of the representations of the defendants, their agents, and employees, that the vessel would soon be returned to him, suffered loss and damage to his other business interests and to his business affairs.

11. As the result of the assumption of control over said vessel by the defendant-insurance company and its agent, defendant _____, and because of the inattention, neglect, and incompetence of the defendant,

_____ Yacht Storage Company, plaintiff was unable to meet mortgage payments on the said vessel
_____.

12. The plaintiff has been forced to sue, labor, and travel in the interests of preserving his rights in and to the said vessel _____ at great personal expense, being hindered by the acts or omissions of the defendant-insurance company, through its agent, the defendant _____, and because of the neglect, inattention, and indifference of the defendant _____ Yacht Storage Company, its agents or employees.

13. The plaintiff proffered his personal time and services and did everything possible to help expedite the aforesaid repairs to the said vessel _____.

14. The value of the said vessel _____, immediately prior to the beaching was \$ _____; the value of the said vessel early in the year 20____, was \$ _____; the diminution of its value being the result of intermittent, improper, and careless repairs, or lack of repairs, made to the said vessel, over an excessive period of time.

15. As a direct and proximate result of the carelessness and negligence of the defendant(s) [*allege injuries 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* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, §§ 33-39 (Matthew Bender 7th ed.).



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REPAIRS *

4-I Benedict on Admiralty FORM No. 1-664

FORM No. 1-664 Complaint In Personam--Shipyard and Breach of Contract and Breach of Warranty

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

FIRST CAUSE OF ACTION

4. On or about _____, 20 _____, plaintiff delivered to the defendant a propeller for reconditioning, which services were performed by defendant at a cost of \$_____.
5. Upon the completion of the reconditioning of said propeller, it was delivered to _____ Shipyard, at _____ where it was installed upon the vessel _____ some time between _____, 20 _____, when the vessel was placed on dry-dock, and _____, 20 _____, when the vessel underwent a sea trial.
6. During said sea trial, on or about _____, 20 _____, the vessel _____ experienced vibration in the propeller, which required said vessel to discontinue the sea trial, return to _____ Shipyard, and undergo repairs to the propeller.
7. The damage to the propeller was caused without fault on plaintiff's part and was due solely to the careless, negligent, unskilled, and unworkmanlike manner in which defendant reconditioned the propeller.
8. As a result thereof, plaintiff has sustained damage in the amount of \$ _____, as nearly as can now be ascertained, no part of which has been paid although duly demanded.

SECOND CAUSE OF ACTION

9. Plaintiff entered into a contract and agreement with defendant to recondition the propeller on the vessel

_____ for which work plaintiff agreed to pay to defendant the cost thereof.

10. Plaintiff entered into said contract with defendant relying upon an implied warranty by defendant that said reconditioning work would be done in a careful, skillful, and workmanlike manner.

11. Defendant failed to perform said reconditioning work and repair work, as provided for in the contract, in a careful, skillful, and workmanlike manner, as heretofore alleged, and thereby breached the warranty entered into with plaintiff.

12. Plaintiff has duly performed all of the conditions of said contract on its part to be performed and, as a result of the breach of warranty on the part of defendant, plaintiff has suffered the injuries heretofore alleged.

13. By reason thereof, plaintiff has been damaged in the sum of \$ _____ as nearly as can now be ascertained, no part of which has been paid although duly demanded.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Red Star Towing and Transportation Co. v. Godfrey Propeller Adjusting Corp.*, Civ. No. 84-2551 (E.D.N.Y. 1984).

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

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-665

FORM No. 1-665 Complaint In Personam Against Boatyard--Negligent Performance of Repairs to a Yacht

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

A FIRST CAUSE OF ACTION

4. The plaintiff is and was at all times hereinafter mentioned the owner and operator of the Yacht _____, a _____, and was engaged in the business of vessel charter hiring.
5. Defendant _____ [yacht club], is and was at all times hereinafter mentioned the owner and operator of a certain marina, boatyard, and marine repair business located at _____.
6. On or about _____, 20 _____, the plaintiff engaged the defendant to conduct repairs to the Yacht _____ and to acquire and install two custom built aluminum fuel tanks aboard said vessel, which custom built fuel tanks would replace the fuel tanks previously removed from the Yacht _____.
7. Although plaintiff paid the defendant the sum of \$ _____ for the fuel tanks, their installation, and additional repair work to be done, defendant breached its agreement with the plaintiff by neglecting and failing to make the proper repairs and tank installations required to be made, by failing to furnish the custom built fuel tanks required to be installed, and by re-delivering the Yacht _____ to the plaintiff in _____, 20 _____, in a dangerous and unseaworthy condition.
8. Despite repeated demands by plaintiff, the defendant has failed, neglected, and refused, and continues to refuse, to correct the dangerous and unseaworthy conditions resulting from its improper work performed on the Yacht _____.
9. As a result of the foregoing, plaintiff has been damaged in the amount of \$ _____.

A SECOND CAUSE OF ACTION

10. Plaintiff repeats, reiterates, and realleges Paragraphs 1 through 8 of this Complaint with the same force and effect as if set forth fully herein at length.

11. By reason of defendant's failure to return the Yacht _____ to plaintiff in a seaworthy condition, plaintiff has not been able to use the vessel since _____, 20 _____, and has suffered damages and lost profits amounting to approximately \$ _____.

A THIRD CAUSE OF ACTION

12. Plaintiff repeats, reiterates, and realleges Paragraphs 1 through 5 of this Complaint with the same force and effect as if set forth fully herein at length.

13. Upon information and belief, on or about _____ 20 _____, the Yacht _____, while in the sole care, custody, and control of defendant, sustained serious structural damages by reason of the recklessness, carelessness, and negligence of the defendant and without any fault or negligence on the part of plaintiff when the defendant on its own initiative sought to move the plaintiff's vessel in its boatyard.

14. As a result of defendant's carelessness and negligence, plaintiff's vessel sustained serious damages, including damage to its hull and center beam and the collapse of its inner deck.

15. Although plaintiff has demanded that defendant repair the damages sustained by the Yacht _____, defendant has refused and continues to refuse to make the necessary repairs.

16. By reason of the foregoing, plaintiff has sustained damages in the amount of \$ _____.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Stan Fay, Inc. v. Star Island Yacht Club, Inc.*, Civ. No. 84-3418 (E.D.N.Y. 1984).

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

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, §§ 33-39 (Matthew Bender 7th ed.).



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CHAPTER I COMPLAINTS
REPAIRS *

4-I Benedict on Admiralty FORM No. 1-666

FORM No. 1-666 Complaint--Improper Ship Repairs to Chartered Vessel

[Caption] n1

1. This is a case of Admiralty and Maritime Jurisdiction as hereinafter more fully appears, and is an Admiralty or Maritime claim within the meaning of Rule 9(h).
2. At all times hereinafter mentioned, the plaintiff, _____, was a corporation duly organized and existing under and by virtue of the laws of _____, with an office and principal place of business at _____.
3. Upon information and belief, at all times hereinafter mentioned, the defendant, _____, was and still is a corporation organized and existing under and by virtue of the laws of the State of _____ with an office and principal place of business at _____.
4. At all times relevant hereto, the plaintiff, _____, owned a vessel, named, " _____."
5. At all times relevant hereto, the defendant, _____ engaged in the business of ship and/or boat repairing at its location in _____.
6. On or about the month of _____ 20 _____, the plaintiff placed the vessel, " _____" in the care and the custody of the defendant for the purpose of making sundry and certain repairs thereto. These repairs were to be made in a workmanlike manner and the yacht was to be returned to the plaintiff in due course after the repairs should be completed and in first-class working condition.

4-I Benedict on Admiralty FORM No. 1-666

7. At all times relevant hereto, the defendant agreed to perform repairs and to upgrade the vessel, _____, into a first-class working condition.

8. The vessel, _____, owned by the plaintiff, was engaged in the business of chartering in the _____ and the _____ regions off the coast of the United States.

9. Throughout a period of approximately _____ months, the vessel, _____, remained in the custody and control of the defendant, who was allegedly completing repairs, pursuant to agreement, aboard said vessel.

10. The cost to the plaintiff for the repairs and work done by the defendant throughout the period of time that the _____ was within his custody is estimated in excess of _____ (\$ _____) Dollars. This amount has been duly paid by the plaintiff.

11. At all times relevant hereto, _____ was the principal officer of _____, and the owner of the vessel, _____.

12. In addition to repairs to the _____ the defendant, _____, agreed to paint the vessel, _____, for an additional _____ (\$ _____) Dollars.

13. The painting of the vessel delayed delivery to the plaintiff and was done in an unsatisfactory and unworkmanlike manner, resulting in the loss of charter to the plaintiff of _____ (\$ _____) Dollars.

14. The repair and upgrading work performed by _____ pursuant to contract with the plaintiff was done in an unseamanlike and unworkmanlike manner, was faulty and defective, which resulted in the vessel, _____, sustaining serious damage off the coast of _____ and having to be towed into port.

15. The damage to the vessel, _____, because of the negligence on the part of the defendant, was extensive, causing the vessel to take on large amounts of water and damaging almost all systems on board the vessel.

16. The aforesaid casualties aboard the vessel, _____, and the subsequent damage were not caused by any fault, neglect or want of care on the part of the plaintiff, _____, or its principal officer, or any person or persons for whom the plaintiff was or is responsible, but was caused by the fault, neglect, lack of care and breach of contract on the part of the defendant, _____, its agents, servants, and employees in failing to perform pursuant to contract the repairs and upgrading of the vessel.

17. Subsequently, the vessel, _____, could not maintain her schedule of charters and the vessel became a virtual total loss, causing the plaintiff, _____, to cease as a viable business.

18. The estimated replacement value of the vessel, _____, is estimated at _____ (\$ _____) Dollars.

19. The contract entered into by the plaintiff and the defendant was entered into in the State of _____.

20. The damages sustained by the plaintiff as a result of the improper repairs done by the defendant and the loss of the vessel, amount as nearly as plaintiff can now ascertain, to the sum of _____ (\$ _____) Dollars, no part of which has been paid, although payment thereof has been duly demanded.

SECOND CAUSE OF ACTION

21. Plaintiff repeats, reiterates and realleges each and every allegation set forth in the complaint numbered 1 through 20 with the same force and effect as if set forth herein at length.

22. As previously mentioned, the vessel, _____, was engaged in the business of being chartered in the waters of the _____ and the _____ Sea. As a result of the loss of the vessel, _____, for the negligence and fault of the defendant herein, the plaintiff has lost all revenue from said chartering.

23. The damages sustained by the plaintiff by reason of the loss of chartering of the vessel, _____, as nearly as plaintiff can now ascertain, is in the sum in excess of _____ (\$ _____) Dollars per year and business loss is estimated at an excess of _____ (\$ _____) Dollars as of this date.

Wherefore, plaintiff demands judgment against the defendant in the sum of _____ (\$ _____) Dollars for the first cause of action, and (\$ _____) Dollars as and for the second cause of action in addition to interest, costs and attorneys fees.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

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

* *See* 1 Benedict on Admiralty, ch. XII (Matthew Bender 7th ed.); 2 Benedict on Admiralty, §§ 33-39 (Matthew Bender 7th ed.).



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SALVAGE *

4-I Benedict on Admiralty FORM No. 1-667

FORM No. 1-667 Complaint In Rem by Owner on Behalf of All Concerned--Salvage

[Caption and Jurisdictional Statement] n1

2. At all the times hereinafter mentioned the plaintiff _____ was and is a corporation organized under and by virtue of the laws of the State of _____ and was and is the owner of the vessel _____.

3. The vessel _____ [salvaged vessel] is within the port of _____ and within this district.

4. The vessel _____ is a _____ [describe]. The vessel is of the value of about \$ _____ and upwards and is engaged in the transportation of oil and petroleum products for her owner, and at the times hereinafter mentioned was under the command of _____, an experienced master, and was well manned.

5. The vessel _____ left _____, at _____ on _____, 20 _____, in ballast, bound for there to take on a cargo of _____, the property of her owner, and urgently needed by it. While she was proceeding on her voyage, and about _____ A.M. on _____, those in charge of the vessel sighted a vessel about five miles distant which, when the vessel _____ had approached within about one and one-half miles, proved to be a dismasted ship flying signals of distress and with her colors at half mast. In response to the signals of distress the course of the vessel _____ was thereupon immediately changed, and, upon nearer approach, it was discovered that the vessel was the _____. She was lying dismasted and adrift in an apparently helpless condition in the trough of the sea in about latitude _____, longitude _____. It was ascertained that the ship had been in this helpless condition since early morning of the _____.

previous day, when her rigging had been carried off in a topsail gale. The vessel _____ approached within speaking distance of the distressed ship and asked the master of the _____ if he desired to abandon her. The master replied that he did not, but begged for assistance and that the _____ be taken in tow. To this the master of the vessel _____ assented and proceeded to endeavor to make fast to the _____. The weather at the time was very rough and a high sea was running, and the necessary maneuvering in making a line fast to the _____ required a high degree of skill and was attended with considerable risk of collision. For a long time there was no success, but, with persistent and careful effort, directed with varying changes of method, at about _____ o'clock in the afternoon of _____, the _____ was able to take the _____ in tow and proceed toward the port of _____ which was the nearest available refuge and over two hundred miles distant. The _____ furnished all towage equipment, consisting of _____. Towage continued until about _____ P.M. when the valuable 10" hawser of the _____ parted at the _____'s forecandlehead chocks, in spite of the utmost care used by the _____ in conducting the towage. As it was then too dark and the weather was too rough to attempt to do any more that night, the _____ stood by until _____ A.M. on the next morning, and, after skillful maneuvering, again succeeded in getting the _____ in tow at about _____ A.M. About _____ P.M., _____, 20 _____, the _____ arrived with the _____ in tow off the _____ Light Ship, and at _____ P.M. received a pilot from the port of _____ and proceeded into _____ Harbor with the _____ still in tow, where she was finally anchored off quarantine at about five o'clock in the afternoon.

6. The plaintiff alleges upon information and belief, that the value of the _____ in the condition in which she arrived at _____ amounted to the sum of \$ _____, and the value of her cargo, consisting of _____, amounted to \$ _____, all of which was fully saved by reason of the salvage services rendered.

7. By reason of the services aforesaid the vessel _____ was greatly delayed on her voyage to _____ consumed a considerable extra quantity of fuel, and sustained damage to her hawsers to an amount as yet unknown to the plaintiff, but which they ask to recover as expenses from the sailing ship and her cargo and freight.

8. The vessel _____ at the time that the _____ came to her rescue was in an utterly helpless condition, and was with her cargo in imminent danger of becoming a total loss. She was shipping water over both sides and her crew were anxious to abandon the vessel and were prevented only by the urgent request of her master and the dangerous condition of the sea, which would have made the launching of the boats and their navigation thereafter a highly perilous undertaking. The work of extricating the vessel from this situation required skillful seamanship and the services so rendered by the sailors were, with danger to their own exceedingly valuable vessel, performed efficiently, expeditiously and without loss of or injury to the _____ or her cargo; and thus the vessel's freight and the whole venture were saved to the respective owners. The plaintiff, and all those engaged in the undertaking on whose behalf this action is brought, by reason of the services so performed and the time lost and danger incurred in saving and towing the said sailing ship are justly entitled to a meet and competent salvage for such services.

9. The amount of just compensation claimed for these just meritorious salvage services is \$ _____.

[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, 1-11 and 1-12, *supra*.

* *See* 1 Benedict on Admiralty § 161 (Matthe Bender 7th ed.); 2 Benedict on Admiralty §§ 51, 52 (Matthe Bender 7th ed.); 3 Benedict on Admiralty §§ 21, 33, 45, 66 (Matthe Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-668

FORM No. 1-668 Complaint In Rem by Owner on Behalf of All Concerned--Salvage

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. The vessel _____ is a _____ built in 20 _____. She is _____ feet long, _____ feet wide and _____ feet deep. Her gross registered tonnage is _____ tons and her net is _____. Her under deck tonnage is _____ and her engines develop an indicated horsepower of _____. Her value at the time of the salvage services hereinafter mentioned was approximately _____.

5. At the time of the salvage services hereinafter mentioned, the crew of the vessel _____ consisted of her _____.

6. The barges _____, _____, _____, _____, and _____ are dock barges of the type customarily used in _____ Harbor for the carriage of _____, and were, as far as the plaintiff has any information, approximately _____ feet long, _____ feet wide and _____ to _____ feet deep. Plaintiff is informed and believes that the approximate value of each of the aforesaid barges at the time the services referred to herein were rendered was from \$ _____ to \$ _____.

7. On the evening of _____, 20 _____ at about _____ o'clock, the vessel _____ while proceeding down the River sighted a fleet of barges which afterwards proved to be the fuel barges referred to herein, drifting in a direction from the _____ to the _____. The night was dark and because of the poor light shown by the six barges, the vessel was close upon them before her master could see them with sufficient clearness to ascertain the nature of the vessels.

8. The vessel _____ altered her course and went alongside the fuel barges, which proved to be drifting, although made fast to one another. The persons on board the barges stated to the master of the vessel _____ that they had drifted away from their moorings off _____ and requested that the master of the vessel _____ tow them to the stakeboat.

At the time the vessel _____ first sighted the fuel barges they were about one-third of the distance from the _____ to the _____ and were in the channel for vessels passing up and down the harbor, and were also drifting rapidly on a flood tide under the influence of a southwesterly wind toward the _____ where they would have been in the course of vessels rounding the _____. The barges, being thus forced toward the _____ shore, were also in danger of colliding with the piers at the south end of Island or with vessels moored at those piers. In accordance with the request of the persons on board the six barges, the vessel _____ took them in tow and proceeded with them to the stakeboat at the north side of the _____. The six barges were then made fast and left in safety at the stakeboat. The services rendered by the vessel _____ were hindered and impeded and rendered more difficult by the fact that the harbor was full of floating Ice which interfered with the towing of the barges, and made it necessary for the tug to exercise unusual care to prevent the scows from being damaged by contact with the ice.

The aforesaid services were rendered by the vessel _____ over a period of approximately one and a half hours, and the tug succeeded in towing the fuel barges through the ice for a distance of approximately one to one and a half miles.

Just as the vessel _____ first picked up the fuel barges, the lights of a vessel which afterward proved to be the _____, were seen a short distance away, heading almost directly for the barges. The vessel was proceeding out to sea and apparently had not sighted the barges until the vessel _____ blew an alarm signal followed by two blasts in answer to which the vessel changed her course just in time to avoid a collision with the six barges, passing close off the starboard side of the fleet.

9. The services rendered by the vessel _____ and the plaintiff were salvages services of a high order of merit. They were furnished promptly, efficiently and skillfully and under conditions which were rendered difficult especially because of the ice in the harbor, and resulted in taking the six barges from the dangerous position in which they were on account of their helpless condition to a place of safety without damage.

10. By reason of the premises the plaintiff is entitled to a liberal salvage award.

There has not been any payment for these services to the plaintiff.

[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, 1-11 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty § 161 (Matthe Bender 7th ed.); 2 Benedict on Admiralty §§ 51, 52 (Matthe Bender 7th ed.); 3 Benedict on Admiralty §§ 21, 33, 45, 66 (Matthe Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-669

FORM No. 1-669 Complaint In Personam by Master on Behalf of All Concerned Against Vessel Owner--Salvage

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

4. On the _____ day of _____, 20 _____, plaintiff, being at sea, and bound to the port of _____, in the said vessel _____, observed a vessel with a signal of distress flying, and immediately made for the vessel and discovered that she was aground on the beach, and was informed by her master that she was the vessel _____, of _____, and had been a ground for several hours, and had, by force of the wind and tide, worked so far into the sand, that he feared she would not float at high water, without assistance, and said master asked plaintiff to assist him.

5. Plaintiff thereupon consented to render such assistance as was in his power, and for that purpose let go his anchor and got out hawsers to said vessel, and by constant heaving, prevented her working further up into the sand, and at high water succeeded in heaving her off without injury. Thereupon the master of the vessel informed plaintiff that he was bound to sea, and desirous of not being delayed, and that he would give plaintiff a letter to his owner, the defendant, _____ who would pay him his reasonable salvage. The said master thereupon gave plaintiff a letter to said defendant, informing him that plaintiff had rendered to the vessel _____ valuable assistance and was entitled to salvage.

6. Plaintiff therefore consented to allow the said vessel to pursue her voyage, and on his arrival in the port of _____, he presented said letter to said owner, and for himself and his vessel's company, and his owners, whose vessel had been periled in rendering such assistance, and offered to accept the sum of \$ _____, if paid without delay or trouble to plaintiff, although as he had previously been informed, said vessel and cargo were worth the sum of \$ _____, and the said sum of \$ _____ was an inadequate salvage compensation, but said owner refused to pay the same, or to pay any more than \$ _____.

[*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 § 161 (Matthe Bender 7th ed.); 2 Benedict on Admiralty §§ 51, 52 (Matthe Bender 7th ed.); 3 Benedict on Admiralty §§ 21, 33, 45, 66 (Matthe Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-670

FORM No. 1-670 Complaint In Rem by Seaman on Behalf of All Concerned--Salvage

[Caption and Jurisdictional Statement] n1

2. At the time hereinafter mentioned, plaintiff and those on whose behalf he sues were mariners composing the crew of the vessel _____.

3. The vessel _____, on a passage from _____ to _____, and being tight, staunch, and well found, and manned with a crew of about _____ men, on or about the _____ day of _____, 20 _____, on the high seas, fell in with the wreck of the vessel _____, about _____ miles from the port of _____, said vessel then drifting about at the mercy of the waves, entirely abandoned by her crew, and derelict, and having the appearance of having been broken open and partly plundered.

4. After the discovery of said wreck, a boat was lowered from the vessel _____, and a boat's crew sent on board to take possession of the said wreck so abandoned, and after considerable exertion they made fast to the said vessel _____ with hawsers, and altering the course of the said _____, proceeded to the port of _____ with the said vessel and cargo on tow, and continued to tow her for about _____ days, when, having arrived at the port of _____, and in perfect safety, she was put in charge of the vessel _____, which towed her to the wharf, in said port, where she now lies.

5. Said [salvaged vessel] was at the time loaded with an assorted cargo, and was at the time of her wreck bound from _____ to the _____, and had it not been for the assistance so rendered to the said vessel and cargo, the same would have been entirely lost.

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6. Plaintiff was on board said vessel _____ at the time of saving said vessel, and assisted in saving her and her cargo.

7. By reason of the service so performed, the plaintiff and the others of the crew of the vessel _____ are justly entitled to salvage for such service, and to so much as has been and is usually allotted by this court to persons doing and performing the like service, with all charges and expenses attending the same.

[*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* 1 Benedict on Admiralty § 161 (Matthe Bender 7th ed.); 2 Benedict on Admiralty §§ 51, 52 (Matthe Bender 7th ed.); 3 Benedict on Admiralty §§ 21, 33, 45, 66 (Matthe Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-671

FORM No. 1-671 Complaint In Rem by Salvage Company Against Cargo--Salvage

(Where Salvage of Vessel Has Been Subject of Settlement or Sued for by a Separate Complaint)

[*Caption and Jurisdictional Statement*] n1

2. At all the times herein mentioned plaintiff was and now is a corporation duly organized and existing under the laws of the State of _____, having its principal place of business at _____, _____, _____, and chartered owner in possession of the vessel _____ which is a powerful steel vessel of _____ gross tons, and at the times herein mentioned was efficiently manned and specially equipped and supplied with wrecking appliances used for performing salvage work.

3. Plaintiff and the corporations and organizations of which it is the successor, have for a long time maintained extensive equipment for the purpose of salving vessels and their cargoes in _____ and _____ waters, such equipment including vessels built for and especially adapted for the wrecking business.

4. Said cargo of _____ ex the vessel _____ is now, or during the currency of process hereunder will be, within this district and within the jurisdiction of this Honorable Court.

5. The aforesaid cargo of _____, at the time the services hereinafter mentioned were rendered, were and now are worth, as plaintiff is informed and believes, upwards of \$_____.

6. On or about _____, 20 _____, the vessel _____, a steel cargo vessel of

4-I Benedict on Admiralty FORM No. 1-671

_____ gross tons, _____ net tons register, _____ feet long, and _____ feet beam, laden with a large and valuable cargo of _____ of which the aforesaid cargo _____ were part, while proceeding on a voyage from _____ to _____, stranded on the side of _____ Reef, off _____. Said vessel went hard aground and lying on an uneven keel, commenced to take water in all holds.

7. About _____ P.M., _____, 20 _____, the vessel _____, with a salvage crew and fully equipped with wrecking equipment in charge of an experienced wrecking master, having knowledge that the _____, laden with a valuable cargo, was aground totally disabled and both vessel and cargo were in extreme peril off _____, left _____ and proceeded to the _____. The vessel _____ arrived at _____ P.M., _____. The _____ [*salvaged vessel*] was found to be hard aground with from _____ to _____ feet of water in cargo holds and lying broadside on a reef, with a considerable list to port. Part of her cargo was so damaged as to be a total loss and all of her cargo was in great peril and subject to becoming a total loss unless promptly removed. An agreement was reached by which plaintiff agreed to render salvage services to the _____ and her cargo and freight on the usual "no cure, no pay" basis.

8. Upon examining the situation, the _____ prepared salvage pumps for installation and made full preparations for salving the _____ and her cargo. On the morning of _____, cables were laid, pumps installed and the _____ worked diligently day and night in conjunction with the vessel _____, salving cargo and hull. Damaged cargo was shifted and jettisoned to facilitate the work and the dry and undamaged cargo heretofore mentioned was lightened into _____ and placed safely in a warehouse.

On the evening of _____, the _____ [*salvaged vessel*] was floated and towed safely into _____ where remaining cargo was discharged.

During the course of the services rendered the _____ and her cargo while the vessel was stranded, severe weather was encountered and the vessel _____ and her crew were subjected to great dangers and exposure. Gases were generated in the holds of the vessel _____ notwithstanding which the crew of the vessel _____ went down into the holds and subjected themselves to great danger.

9. The service rendered by the vessel _____, her master and crew, was a salvage service of a high order of merit. The _____ and her valuable cargo were in extreme peril and but for the service rendered by the vessel _____ in conjunction with the vessel _____, both vessel and cargo would have been a total loss.

The service was prompt, efficient and successful, requiring a high degree of skill on the part of the masters and crews of the vessels _____ and _____, involving not only considerable hardship but also great risk to the vessel _____ and _____, their equipment and crew. The service was long and arduous and in performing same, and plaintiff incurred heavy expenses and charges for fuel and equipment.

Wherefore plaintiff prays:

1. That process in due form of law, according to the rules and practice of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the aforesaid [*cargo*].

2. That all persons having any claim or interest therein may be cited to appear and answer on oath all and singular the

matters aforesaid;

3. That this Honorable Court may be pleased to decree to plaintiff a liberal salvage award in the premises and that the said [*cargo*] may be condemned and sold to pay the same; and

4. That plaintiff may have such other and further relief in the premises as may be just.

[*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* 1 Benedict on Admiralty § 161 (Matthe Bender 7th ed.); 2 Benedict on Admiralty §§ 51, 52 (Matthe Bender 7th ed.); 3 Benedict on Admiralty §§ 21, 33, 45, 66 (Matthe Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-672

FORM No. 1-672 Complaint Against United States (Suits in Admiralty Act)--Salvage

[Caption] n1

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears. This action arises under the Suits in Admiralty Act, 46 U.S.C. §§ 741-752, and plaintiff elects to have this suit proceed in accordance with the principles of actions in rem and desires also to seek relief in personam.
2. At all the times herein mentioned, plaintiff was and now is a corporation duly organized and existing under the laws of _____ with its principal place of business in _____, and owner of the vessel _____, and bailee of the cargo laden thereon.
3. Upon information and belief, the vessel _____ is a _____ of tons gross, _____ tons net register, _____ feet long and _____ feet beam and at the time of the service hereinafter mentioned was laden with a valuable cargo and proceeding on a voyage from _____ to _____. The vessel _____ was worth, with her cargo and freight money, about \$_____.
4. At all the times hereinafter mentioned defendant was and still is a sovereign power and owner of the vessel _____, a _____ of tons gross, tons net register, _____ feet long and _____ feet beam.
5. The vessel _____ at all the times hereinafter mentioned was and now is operated as a merchant vessel and now is or during the pendency of this action will be within the territorial jurisdiction of the United States.
6. At the time of the service hereinafter described, the vessel _____ was laden with a large and

valuable cargo on a voyage to _____ and was worth with her cargo and freight money as plaintiff is informed and believes, upwards of \$ _____.

7. On or about _____, 20 _____, the vessel _____, in the prosecution of her voyage to _____ became totally disabled by reason of having stripped her turbine gearing. She was unable to make such repairs at sea as would enable her to propel herself and promptly sent out calls for assistance giving her position latitude _____--longitude _____. The _____'s calls for assistance were picked up by the vessel _____ on the morning of _____ and the vessel _____ immediately replied that she was proceeding to render assistance and would arrive about _____ p.m. The vessel _____ kept in communication with the vessel _____ and received a message from the vessel _____ that towing hawsers were being rigged up and would be ready upon the vessel _____'s arrival. The vessel _____ came up with the vessel about _____ p.m. The sea was choppy, wind southerly and it was fast getting dark. The vessel _____ immediately lowered a boat and sent over a messenger to the vessel _____ to receive the towing hawsers. Two wire towing hawsers were taken from the vessel _____ and the vessel _____ commenced towing at about _____ p.m. The vessel _____ kept a constant watch on the vessel _____ and the towing hawsers and during the night was compelled to stop to adjust the hawsers. Changes of speed were made as required and at _____ a.m. _____, the vessel _____ stopped and pilots were taken aboard both vessels. The vessel _____ towed the vessel _____ to a safe anchorage at _____ and cast off at _____ p.m.

8. The service rendered by the vessel _____, her master and crew, was a salvage service of great merit. The vessel _____ was totally disabled and, drifting helplessly along a rocky coast, was in great peril of being carried ashore by the seas and coast in draughts and becoming a total loss. The service was prompt, efficient and successful, requiring a high degree of skill on the part of the master and crew of the vessel _____ and involving also great risk to the officers and crew of the vessel _____ who put out in a small boat to take towing hawsers to the vessel _____ and who stood by the hawsers during the towing.

9. The vessel _____, by reason of the service lost considerable time, incurred additional expense for fuel and supplies and, notwithstanding the skill and diligence exercised in rendering the service, sustained damage to equipment including damage resulting from the loosening of her mainmast.

Wherefore plaintiff prays that defendant may be required to appear and answer all and singular the premises aforesaid and that this Court will make a decree awarding liberal salvage to plaintiff and the master and crew of the vessel _____, and damages sustained, together with interest and costs and that plaintiff may have such other and further relief in the premises as may be just.

[Verification] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty § 161 (Matthe Bender 7th ed.); 2 Benedict on Admiralty §§ 51, 52 (Matthe Bender 7th ed.); 3 Benedict on Admiralty §§ 21, 33, 45, 66 (Matthe Bender 7th ed.).



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4-I Benedict on Admiralty Form 1-683

Form 1-683 Complaint -- Preferred Ship Mortgage

COMES NOW Plaintiff [FINANCIAL INSTITUTION], and for its causes of action against the Defendant vessel, M/V [VESSEL NAME], Official No. [OFFICIAL NUMBER], her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining, (hereafter collectively referred to as the "VESSEL"), *in rem*, and against Defendants [VESSEL OWNERS], *in personam*, alleges as follows:

GENERAL ALLEGATIONS

1. This is a case of admiralty jurisdiction as hereinafter more fully appears, and is an admiralty and maritime 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. § 31325*, *28 U.S.C. § 1331*, and *28 U.S.C. § 1333*.
2. Plaintiff [FINANCIAL INSTITUTION] (hereinafter referred to as "Plaintiff") is a [STATE] corporation, with an office in [PLACE OF BUSINESS]. Plaintiff is, among other things engaged in the business of marine financing.
3. The VESSEL is a [VESSEL PARTICULARS], identified by Hull Identification Number [HULL IDENTIFICATION NUMBER], equipped with two marine engines, identified by serial numbers [ENGINE NUMEBRS], and is registered with the United States Coast Guard, Official No. [OFFICIAL NUMBER]. She is now located in [LOCATION OF VESSEL], within the jurisdiction of this Court.
4. Defendants, *in personam*, [VESSEL OWNERS] (hereinafter collectively referred to as the "Owners") are individuals and residents of the State of California.
5. On or about [DATE], the [VESSEL OWNERS] executed a Promissory Note Secured by a Mortgage (the "Note") under which Plaintiff extended credit to [VESSEL OWNERS], and the [VESSEL OWNERS] agreed to pay Plaintiff, the total sum of [MORTGAGE AMOUNT], together with interest and other costs and expenses. A true and correct copy

of the Promissory Note is attached hereto as Exhibit "A". Under the Note and in consideration of Plaintiff's extension of credit to them, the [VESSEL OWNERS] granted Plaintiff a security interest in the VESSEL.

6. On [DATE], the [VESSEL OWNERS] as sole owners of the VESSEL, executed and delivered to Plaintiff a First Preferred Ship Mortgage on the VESSEL securing payment of the total amount financed under the Agreement (the "Mortgage"). A copy of the Mortgage is attached hereto as Exhibit "B".

7. Plaintiff is informed and believes, and based thereon alleges, that the Mortgage was duly filed with the United States Coast Guard in substantial compliance with 46 U.S.C. § 31321 on [DATE] at [TIME], and that all things required to be done by the Ship Mortgage Act of 1920, as amended and recodified, (46 U.S.C., Chapter 313) in order to give the Mortgage the status of a First Preferred Ship Mortgage on the VESSEL were done or caused to be done and that the Mortgage was recorded in Book Number [BOOK NUMBER AND PAGE].

8. The [VESSEL OWNERS] have defaulted on the Mortgage. Specifically, the [VESSEL OWNERS] have been late with payments, and have allowed claims of lien to be asserted against the VESSEL, among other defaults.

9. By reason of the foregoing, there is now due and owing by the [VESSEL OWNERS] to Plaintiff under the Note and Mortgage the sum of [AMOUNT OWED], plus interest, commencing on [DATE], to the date of satisfaction, plus, among other costs, late fees, costs of retaking and sale, reasonable attorneys' fees, costs of suit, and such other sums as the court may award.

FIRST CAUSE OF ACTION

(Action *in rem* to Foreclose Preferred Ship Mortgage Pursuant to 46 U.S.C. § 31325(b)(1))

10. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 9 of this Verified Complaint.

11. By reason of the [VESSEL OWNERS]' default under the Note and Mortgage, Plaintiff is entitled to immediate foreclosure of the Mortgage and to recovery of all sums due thereunder.

SECOND CAUSE OF ACTION

(Action *in personam* For Mortgage Indebtedness Pursuant to 46 U.S.C. § 31325(b)(2))

12. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 11 of this Verified Complaint.

13. By reason of [VESSEL OWNERS]' default under the Note and Mortgage, the [VESSEL OWNERS] are now indebted to Plaintiff in the amount of [AMOUNT] plus interest commencing on [DATE], plus costs of retaking and sale, late fees, reasonable attorneys' fees, costs of suit, and such other sums as the court may award.

THIRD CAUSE OF ACTION

(Action *in personam* For Mortgage Indebtedness Pursuant to 46 U.S.C. § 31325(b)(2)(A))

14. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 13 of this Verified Complaint.

15. On or about [DATE], the [VESSEL OWNERS] executed an unconditional Promissory Note (the "Note") in favor of Plaintiff in which the [VESSEL OWNERS] guaranteed payment of all installments under the Note when due and, upon acceleration, the entire unpaid balance thereof. A default has, therefore, occurred under the Note and continues to occur.

16. The [VESSEL OWNERS] have failed to pay the installments under the Note when due and, upon acceleration, the

entire unpaid balance thereof. A default has, therefore, occurred under the Note and continues to occur.

17. By reason of the [VESSEL OWNERS]' default under the Note, Plaintiff is entitled to recovery of all sums due under the Note.

18. By reason of the foregoing, there is due and owing by the [VESSEL OWNERS] to Plaintiff under the Note the sum of [AMOUNT] plus interest commencing on [DATE], plus among other costs, late fees, costs of retaking and sale, reasonable attorneys' fees, costs of suit, and such other sums as the court may award.

WHEREFORE, PLAINTIFF [FINANCIAL INSTITUTION] demands judgment as follows:

A. On the First Cause of Action against the VESSEL:

1. That process *in rem* and a 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/V [VESSEL NAME], Official No. [OFFICIAL NUMBER], 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 the mortgage be declared a valid and subsisting lien upon the VESSEL, her 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 VESSEL;

3. That this Honorable Court shall direct the manner in which the actual notice of the commencement of this suit shall be given by Plaintiff under 46 U.S.C. § 31325;

4. That the VESSEL, her engines, masts, anchors, cables, 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 the [VESSEL OWNERS] under the Note and Mortgage, including without limitation, [AMOUNT], plus interest commencing on [DATE], plus costs of retaking and sale, late fees, reasonable attorneys' fees, costs of suit, and all sums allowed by the court;

5. That judgment be entered in favor of Plaintiff against the [VESSEL OWNERS] for the full amount of mortgage indebtedness or for any deficiency owed after the sale of the VESSEL and distribution of the proceeds thereof, and

6. That it be decreed that any and all persons claiming any interest in the VESSEL 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 VESSEL, and every part thereof, by reason of any such interest.

B. On the Second Cause of Action against the [VESSEL OWNERS]:

That judgment be entered against [VESSEL OWNERS] in the amount of [AMOUNT], plus interest commencing on [DATE], plus costs of retaking and sale, late fees, reasonable attorneys' fees, costs of suit, and all other sums allowed by the court.

C. On the Third Cause of Action against the [DATE]:

That judgment be entered against [DATE] in the amount of [AMOUNT], plus interest commencing on [DATE], plus costs of retaking and sale, late fees, reasonable attorneys' fees, costs of suit, and all other sums allowed by the court.

D. On all causes of action:

That this Court award such other and further relief as is just and proper.

VERIFICATION

I, [BANK OFFICER], declare:

1. I am the Recovery Manager for Plaintiff, [FINANCIAL INSTITUTION], and am authorized to make this verification on its behalf.

2. I have read the foregoing complaint and know the contents thereof. The facts stated in the complaint are true. As to those facts stated upon information and belief, I believe such facts to be true.

Executed this [DATE] at [PLACE].

I declare under penalty of perjury that the foregoing is true and correct.

[BANK OFFICER]

* *See* 1 Benedict on Admiralty § 161 (Matthe Bender 7th ed.); 2 Benedict on Admiralty §§ 51, 52 (Matthe Bender 7th ed.); 3 Benedict on Admiralty §§ 21, 33, 45, 66 (Matthe Bender 7th ed.).



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RESERVED

FORM No. 1-693RESERVED



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4-I Benedict on Admiralty FORM No. 1-694

FORM No. 1-694 Complaint In Rem--Stevedoring Services

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. Between _____, 20____, and _____, 20____, inclusive, at the port of _____, at the special instance and request of the agents of the vessel _____ plaintiff performed and rendered certain necessary labor and services to the said vessel, that is, stevedoring and necessary incidental services, and paid or incurred certain expenses on her behalf in connection therewith. The items of such labor, services and expenses, amounting in all to the sum of \$ _____, and the dates when rendered or incurred, are set forth in Schedule "A" attached hereto and incorporated herein as Exhibit 1. For said work, labor and services, the agents of the said vessel promised and agreed with plaintiff to pay to plaintiff the usual and customary rates obtaining in the port of _____ for similar work, and promised and agreed that said work, labor and services should all be rendered and performed in accordance with the usual and customary terms obtaining at the port of _____.

5. The said charges made by plaintiff for the said work, labor and services and the said expenses are reasonable in amount and in accordance with the prevailing rates at the port of _____. Such services and expenses were necessary for the said vessel.

6. By reason of the premises there is justly due and owing to plaintiff from the vessel _____ and her owners the sum of \$ _____, with interest, and under the general maritime law and the Acts of Congress plaintiff has a lien against the vessel _____ for the said sum of \$ _____, with interest.

7. Payment of the said sum of \$ _____ has been duly demanded by plaintiff of the vessel _____ and her owners, but has been refused and no part thereof has been paid. The said sum remains

wholly due, unpaid and owing from the vessel _____ and her owners to plaintiff.

[*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, 1-11 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty, § 37 (Matthew Bender 7th ed.). For stevedore injury or death, see Form Nos. 1-372 through 1-379 *supra*.



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4-I Benedict on Admiralty FORM No. 1-695

FORM No. 1-695 Complaint in Intervention In Rem and In Personam by Stevedore--Failure of Vessel to Vacate Berth

[Caption] n1

1. Intervenor is and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of _____ and engaged in the business of stevedore and terminal operator.

2. At all times hereinafter mentioned intervenor was and still is stevedore and terminal operator of Pier _____, _____, _____, _____.

3. On or about _____, 20 _____, the vessel _____ was berthed at Pier _____, and cargo operations in connection with said vessel were completed at _____ hours on said date.

4. After the completion of said cargo operations, the vessel _____ failed, neglected and/or refused to vacate its berth at Pier _____ although demand was duly made that said berth be vacated.

5. Said vessel is still presently at Pier _____ and by reason of its refusal to vacate, intervenor has been and continues to be damaged by being deprived of its berth space.

6. Thereafter the said vessel was attached by the United States Marshal for the _____ District of _____ and the said vessel is presently under attachment under the custody of the United States Marshal.

7. By reason of the premises there is due intervenor the sum of \$ _____ per day as of

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_____ hours, _____, 20 _____, for wharfage.

8. The berth presently occupied by the vessel _____ is scheduled to be occupied by two vessels on or about _____, 20 _____, and the failure of the vessel _____ to vacate the berth as demanded will cause intervenor to sustain damages in the sum of \$ _____.

[*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, 1-11 and 1-12, *supra*.

* *See* 2 Benedict on Admiralty, § 37 (Matthew Bender 7th ed.). For stevedore injury or death, see Form Nos. 1-372 through 1-379 *supra*.



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4-I Benedict on Admiralty FORM No. 1-696

FORM No. 1-696 Intervening Complaint--Failure to Pay for Stevedoring and Terminal Services

[Caption] n1

Intervening plaintiffs, _____, and _____ Corporation of _____,
by their attorneys, _____, complaining of the defendants, allege as follows:

1. This is an action within the Admiralty and Maritime jurisdiction of this Court and is an Admiralty or Maritime Claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*.

2. At all times relevant hereto, plaintiff _____, was and is a corporation organized and existing under and by virtue of the laws of the State of _____, qualified to do business in the State of _____, with an office and principal place of business in _____.

3. At all times relevant hereto, plaintiff Corporation of _____ was and is a corporation organized and existing under and by virtue of the laws of the State of _____ with an office and principal place of business in _____.

4. Upon information and belief, at all times relevant hereto defendant _____, was and is a corporation organized and existing under the laws of the State of _____, with an office and principal place of business in _____, _____, and was and is the owner and/or operator of the vessel _____ (hereinafter the "Vessel"). The Vessel is registered and documented under the laws of the United States.

5. Upon information and belief, the Vessel is now, or during the pendency of this action will be, within the jurisdiction

of this Court.

6. Between _____, 20 ____ and _____, 20 ____ inclusive, at the ports of _____ and _____, at the special instance and request of _____ and/or its agents, plaintiffs performed and rendered certain stevedoring, terminal, trucking and/or other miscellaneous services for _____ and the Vessel, amounting to the sum of \$ _____.

7. For the said stevedoring and terminal services rendered in Baltimore, _____ promised to pay the rates agreed upon between _____ and _____ in a contract dated _____, 20 ____, as amended from time to time. For the said stevedoring and terminal services rendered in _____, _____ promised to pay the rates agreed upon between _____ and _____ in a contract dated _____, 20 ____, as amended from time to time. The charges made by plaintiffs for the said stevedoring and/or terminal services were reasonable in amount and in accordance with the respective contracts or the usual and customary rates in the ports of _____ and _____ for similar services. Such stevedoring and terminal services and expenses were necessary for the operation of the Vessel.

8. By reason of the premises, there is justly due and owing to plaintiffs from _____ and the Vessel the sum of \$ _____, together with interest, for which, under the general maritime law and 46 U.S.C. § 31301 *et seq.*, plaintiffs have a maritime lien against the Vessel.

9. Payment of the sum of \$ _____ has been duly demanded by plaintiffs from _____ and the Vessel but has been refused and no part thereof has been paid.

Wherefore, plaintiffs pray:

1. 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;

2. That process in due form of law according to the practice of this Court in causes of admiralty and maritime jurisdiction may issue against the Vessel, her engines, etc., in rem, pursuant to Rule a of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, and that all persons having or claiming any interest therein be cited to appear and answer under oath all and singular the matters aforesaid;

3. That this Court shall pronounce judgment in favor of each of the plaintiffs against _____ and the Vessel for its damages as aforesaid, with interest and costs and the disbursements of this action;

4. That the said Vessel, her engines, tackle, appurtenances etc. may be condemned and sold to pay such judgment;

5. That this Court may grant to plaintiffs such other and further relief as may be just and proper.

Dated: _____

Attorney for Plaintiffs

FOOTNOTES:

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

* *See* 2 Benedict on Admiralty, § 37 (Matthew Bender 7th ed.). For stevedore injury or death, see Form Nos. 1-372 through 1-379 *supra*.



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4-I Benedict on Admiralty FORM No. 1-697

FORM No. 1-697 Complaint (Counterclaim) Against Stevedore Alleging Improper Discharge

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. On or about _____, 20____, the vessel _____ called at _____ for the purpose of discharging cargo.

5. Plaintiff, _____, was hired to discharge cargo from the vessel _____.

6. Among the cargoes to be discharged from the vessel _____ by plaintiff, _____, were _____, which were carried from _____ to _____ pursuant to Bills of Lading Nos. _____ and from _____ to _____ pursuant to Bills of Lading Nos. _____.

7. Prior to the discharge of the aforesaid cargo of _____ [cargo] plaintiff, _____, was informed of the manner in which the cargo had been stowed aboard the vessel _____ so that such _____ [cargo] could be sorted and applied to their corresponding Bills of Lading.

8. Contrary to said instructions, plaintiff, _____, discharged the cargo in such a manner that sorting was required in the terminal warehouse.

9. In performing the said discharge in an improper and negligent manner, plaintiff, _____, caused additional sorting to be performed by _____, the terminal operator. Said terminal operator has rendered a bill to the defendant and claimant in the amount of \$ _____.

10. Despite demand for payment thereof of plaintiff, _____, said debt remains outstanding.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Delaware Operating Company v. MV Terrie U, Civ. No. 80-2457 (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, § 37 (Matthew Bender 7th ed.). For stevedore injury or death, see Form Nos. 1-372 through 1-379 *supra*.



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4-I Benedict on Admiralty FORM No. 1-698

FORM No. 1-698 Complaint In Personam Against Stevedore--Damage to Cargo After Discharge from Vesseln1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. On or about _____, 20 _____, at the Port of _____, a cargo of _____ of which the plaintiff was the owner and consignee, were delivered to the vessel at _____ in good order and condition for ocean carriage to the Port of _____.

5. Said cargo was accepted by the vessel _____ and a clean bill of lading was issued. (Bill of Lading attached hereto as Exhibit 1.)

6. The cargo were placed in container Nos. _____ and _____.

7. On or about _____, 20 _____, containers Nos. _____ and _____, still in good order and condition, were discharged from the vessel _____ by the Defendant at the _____ Marine Terminal in _____.

8. Upon information and belief, containers Nos. _____ and _____ were discharged by the defendant in a safe and prudent manner. However, after fully unloading the cargo from the vessel _____ and by virtue of the defendant's negligence in repositioning and otherwise safeguarding container No. _____ at the _____ Marine Terminal, said container was caused to overturn, thereby severely damaging the plaintiff's cargo.

9. By reason of the defendant's negligence, the plaintiff has sustained damages in the amount of \$ _____, no part of which has been paid, although duly demanded.

10. The plaintiff was the purchaser, consignee, and owner of said shipment and brings this action on its own behalf and as an agent and trustee on behalf of, and for the interest of, all parties who may be or become interested in said shipment, as their respective interests may appear, and plaintiff is entitled to maintain this action.

11. All conditions precedent are required of the plaintiff and its predecessors in interest in said shipment have been performed.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *B. Elliott (Canada) Ltd. v. John T. Clark & Son of Maryland, Inc.*, 704 F.2d 1305 (4th Cir. 1983), furnished through the courtesy of H. John Bremermann III, Esq., Lord, Whip, Coughlan & Green, Baltimore, Maryland.

(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, § 37 (Matthew Bender 7th ed.). For stevedore injury or death, see Form Nos. 1-372 through 1-379 *supra*.



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FORM No. 1-719RESERVED



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4-I Benedict on Admiralty FORM No. 1-720

FORM No. 1-720 Complaint In Rem and In Personam--Supplies

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

4. In the month of _____, 20 _____, at the port of _____, the plaintiff, upon the request of the master of the vessel _____ *[or other duly accredited representative of the defendant]*, furnished and delivered to the said vessel the provisions and stores contained in the schedule hereto annexed, all of which were necessary for the use of the vessel and the value whereof amounted to the sum of \$ _____, and the same were furnished at the prices in said schedule stated, which prices were reasonable market prices.

5. The said master and the said owner have been requested to pay the said bill, but have hitherto wholly neglected and refused to pay the same, and the sum of \$ _____, including interest, is now justly due and owing to the plaintiff for the same.

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

FOOTNOTES:

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

(n2)Footnote 2. *See* Form Nos. 1-3, 1-6, 1-10 through 1-13 *supra*.

* *See* 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-721

FORM No. 1-721 Complaint In Rem and In Personam--Supplies, With Assertions Under Federal Maritime Lien Act¹

[Supplement Form No. 1-186, supra, by adding the following:]

6. The fuel so provided to the vessel _____ and defendant _____ Lines constitutes a necessary within the meaning of 46 U.S.C. § 31342 and plaintiff is entitled to the benefits therein provided.

7. By reason of the premises, plaintiff is entitled to damages in the amount of \$ _____ plus interest, reasonable attorneys' fees, and costs.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in BP North America Trading Inc. v. Constellation Lines S.A., Civ. No. 84-289 (E.D.N.Y. 1984).

* See 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-722

FORM No. 1-722 Complaint In Rem--Supplies, With Assertions Under Federal Lien Statuten1

[Caption] n2

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

2. At all times hereinafter mentioned, plaintiff was and still is a _____ corporation with an office and place of business at _____, _____.

3. Upon information and belief, the vessel _____ is a vessel, and is now or will be during the pendency of this action within this District and within the jurisdiction of this Honorable Court.

4. On or about _____, 20____, plaintiff furnished \$ _____ worth of fuel oil, engine stores and/or lubricants to the vessel _____ at _____:
_____.

5. Said fuel oil, engine stores and/or lubricants have not been paid for, although duly demanded.

6. Pursuant to *46 U.S.C. § 31342* plaintiff is entitled to assert and foreclose a maritime lien on the vessel _____ in the amount of \$ _____.

Wherefore, plaintiff prays that:

1. Process be issued in rem according to the practices of this Honorable Court in cases of admiralty and maritime jurisdiction against the vessel _____, her engines, tackle, and other appurtenances, and that all

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persons claiming any right or interest in her, be cited to file claim, appear and answer;

2. Plaintiff's claim be adjudged a preferred maritime lien on said vessel in the amount of \$ _____;

3. Said vessel be condemned or sold to satisfy said lien, with interest and costs;

4. Plaintiff be granted such other and further relief as may be just and proper.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Gulf Trading & Transportation Co. v. M/V Tento*, 694 F.2d 1201 (9th Cir. 1982), furnished through the courtesy of Eric Danoff, Esq., Graham & James, San Francisco, California.

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

* *See* 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-723

FORM No. 1-723 Complaint--Supplies and Repairs, With Assertion Under Federal Lien Statute

[Caption] n1

The plaintiff, _____, through his attorney, _____, complaining of the defendant, _____, respectfully alleges as follows:

1. This is a case of Admiralty and Maritime jurisdiction, as hereinafter more fully appears, within the meaning of Rule 9(h), for a judgment and maritime lien pursuant to *46 U.S.C. § 31342, et seq.*

2. That at all times hereinafter mentioned, the plaintiff was and still is a resident of _____, County of _____, State of _____.

3. That the said plaintiff is engaged, among other things, in the furnishing of supplies and repairs to vessels of all kinds and descriptions.

4. That, upon information and belief, the defendant vessel, _____ No. _____, is owned by _____ and is under _____ registry and is, and will be during the pendency of this action, within the jurisdiction of the United States and of this Honorable Court.

5. That in or about _____, 20 _____, upon the order of the owner of the aforesaid vessel, _____ No. _____ and her Master and other representatives in whose custody the boat was entrusted by the owner, and who had authority for said purpose, the plaintiff did certain work in the nature of repairs to the said boat, and furnished certain materials, all of which were necessary to maintain said boat in proper condition for navigation, which said work was done, and materials supplied.

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6. That the plaintiff delivered to the owner his bills for work done and materials supplied (Exhibit 1) [*omitted*].

7. That said bills represent charges which are fair and reasonable for the work done and materials supplied to the said vessel in the sum of \$ _____.

8. That the said owner accepted said bills.

9. That the owner has paid on account thereof the sum of \$ _____, leaving a balance due in the amount of \$ _____ plus interest from _____, 20____.

10. That the plaintiff is informed, and therefore alleges, that he has a lien against the said vessel for the sums due him for the necessary work and materials supplied to said vessel and therefore files this complaint to enforce his lien.

Wherefore, plaintiff demands judgment against the defendant in the sum of _____ Dollars and _____ Cents (\$ _____), plus interest from _____, 20 _____, and costs, and for such other and further relief as to this Court seems just, equitable and proper.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

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

* *See* 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-724

FORM No. 1-724 Complaint in Rem--Supplies

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

4. During the months of _____, _____ and _____, 20 _____, the plaintiffs furnished and supplied the vessel _____, at the port of _____, with certain materials, supplies and equipment, consisting principally of the reasonable and agreed value of _____ dollars (\$ _____); and all of the material, supplies and equipment were furnished to the vessel _____ by the plaintiffs, upon the order and at the request of one _____ who was then the managing owner and agent of the vessel.

5. Neither the owners of the _____, nor the agent, nor the master, though often requested to pay for such material, supplies and equipment, have paid the sum of _____ dollars (\$ _____), or any part thereof; the plaintiffs have not received payment of such sum from any person whomsoever; and the whole amount thereof, together with interest thereon from _____, 20 _____, is due and owing to plaintiffs.

[*Prayer for Process and Verification*] n2

FOOTNOTES:

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

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

* *See* 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-725

FORM No. 1-725 Complaint In Rem by Several Suppliers

[Caption] n1

Plaintiffs, _____ by _____, their attorney, for their complaint against defendant _____ allege upon information and belief as follows:

FIRST CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF _____ (*SHIP REPAIRER*)

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and this is an admiralty and maritime claim within the meaning of Rule 9(h).

2. Plaintiff, _____ [*ship repairer*] is a _____ corporation with offices at _____ Street, _____, and at all times hereinafter mentioned was in the business of supplying and furnishing work, labor and materials for the repair, refurnishing and servicing of seagoing vessels.

3. The vessel _____, owned by _____, now is, or during the pendency of process hereunder will be, within this district and within the jurisdiction of this Honorable Court.

4. Between the period _____, 20 ____ up to and including _____, 20____, plaintiff, _____, performed certain work, labor and services to the vessel _____ in supplying her with work, labor and services to each and every part of the said vessel, including but not limited to her main engine, air conditioning system, generator, fuel pump, sanitary pump and pneumatic crane pursuant to written agreements with the owners, _____, and with their domestic agents, _____, as agents for said owners. Said services were performed by the plaintiff, _____, on the said vessel while the said vessel was berthed at a pier in the Port of _____. The agreed total price for the said work,

labor and services and the reasonable value of said services amounted to the sum of \$_____.

5. By reason of said work, labor and services, plaintiff, _____ Ship Repairs, Inc., has a maritime lien against the vessel _____.

6. By reason of the premises the vessel _____ was and is obligated to the plaintiff, _____, in the sum of \$ _____, no part of which has been paid except the sum of \$ _____, leaving a balance due and owing to the plaintiff, _____, in the sum of \$ _____, together with interest thereon and costs.

SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFF _____ [MARINE SUPPLY CO.]

7. [allegation as in paragraph # 1]

8. Plaintiff, _____ [Marine Supply Co.], is a _____ corporation with offices at _____ Street, _____, _____, and at all times hereinafter mentioned was engaged in the business of a ship chandler supplying and furnishing all of the items and provisions required aboard ship.

9. [allegation as in paragraph #3]

10. Between the period _____, 20 _____ up to and including _____, 20 _____, the plaintiff, _____ [Marine Supply Co.], supplied various provisions to the said vessel _____, including but not limited to _____ [state supplies], all while the said vessel was berthed at a pier in the Port of _____, and all pursuant to written agreement with the owners, _____, and with their domestic agents, _____. The total agreed price and the reasonable value of the material and services and provisions supplied to the vessel amount to \$_____.

11. By reason of the furnishing of the said materials and services and provisions, plaintiff, _____, has a maritime lien against the vessel _____.

12. [allegation as in paragraph #6]

Wherefore, plaintiffs, _____ [ship repairer] and _____ [Marine Supply Co.] pray that process in rem according to the practices of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the vessel _____, her engines, boilers, tackle, etc., and that all persons claiming any right, title or interest in said vessel may be summoned to claim, appear and answer under oath all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree that plaintiff, _____ [ship repairer], recover the balance due for their work, labor and services furnished to the vessel _____ in the sum of \$ _____ with interest and costs, and that the plaintiff, _____ [Marine Supply Co.], recover the sum of \$ _____ as the balance remaining for their materials and services and provisions supplied to the vessel _____, and that the vessel _____, her engines, boilers, tackle, etc. may be condemned and sold to satisfy said decree, and that plaintiffs have such other and further relief as may be just and proper.

Attorney for Plaintiffs

[*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* 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-726

FORM No. 1-726 Complaint In Rem and In Personam Against Foreign State Shipowner--Suppliesn1

[Caption and Jurisdictional Statement] n2

COUNT I

2. At all times hereinafter mentioned the Plaintiff, _____ [*supply co.*], was and now is a corporation organized and existing under the laws of one of the states of the United States with an office and principal place of business at _____, and at all times hereinafter mentioned was engaged in the business of a ship Chandler supplying and furnishing all of the items and provisions required for seagoing vessels.

3. The vessel _____, owned by _____, an _____ corporation, now is, or during the pendency of process hereunder will be, within this district and within the jurisdiction of this Honorable Court.

4. Between the period commencing on or about December _____, 20 _____, up to and including _____, 20 _____, plaintiff, furnished to the vessel _____, at the request of her owners, master, and/or authorized agents, various and sundry supplies, provisions, and materials in the port of _____, as set forth in the documents denoted as Exhibit A attached hereto [*exhibit omitted*], the receipt and acceptance of which were acknowledged and agreed to by the owners, master, and/or authorized agents of the vessel _____. The total price and reasonable value of said supplies, provisions, and materials furnished the vessel _____ amount to \$ _____ as appears in Exhibit A [*exhibit omitted*].

5. By reason of furnishing said provisions, supplies, and materials, plaintiff, _____, has a maritime lien against the vessel _____.

6. By reason of the above premises the vessel _____ was and is obligated to the plaintiff, _____, in the sum of \$ _____ together with interest thereon and costs, no party of which has been paid to plaintiff, although due demand has been made therefor.

COUNT II

7. Upon information and belief, Defendant _____ is an agency or instrumentality of a foreign state within the meaning of 28 U.S.C. § 1603(b), having its principal place of business at _____, and is the owner of the vessel _____. Jurisdiction is invoked pursuant to the provisions of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330;1391(f)(2); and 1602-1611.

8. Plaintiff, _____, repeats and realleges each and every allegation set forth in paragraphs 2 through 6 herein.

9. By reason of furnishing said supplies, provisions and materials to the vessel _____, defendant _____ was and is obligated to Plaintiff, _____, in the sum of \$ _____ together with interest thereon and costs, no part of which has been paid to Plaintiff, although due demand has been made therefor.

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

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Atlantic Steamers Supply Co. v. The Vessel M.V. Raseltin*, Civ. No. 81-2005 (E.D.N.Y. 1981).

(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*.

* *See* 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-727

FORM No. 1-727 Complaint In Personam--Breach of Ship Supplier's Agency Agreementn1

[Caption, Jurisdictional Statement and Allegation Concerning Parties] n2

5. During the years 20____ through 20 ____, plaintiff, _____, at various times contracted with defendant for the supplying of necessities to the vessels that plaintiff managed. Defendant, in turn, arranged with suppliers, world wide, to provide necessities to such vessels.

6. During 20____ through 20 ____ plaintiff paid more than \$ _____ to defendant as fees for the supplying of vessels that plaintiff managed.

7. Defendant has not paid some of the suppliers of necessities for all of those necessities for which plaintiff has paid defendant. Insofar as plaintiff can now ascertain, those suppliers that have not been paid by defendant and the amounts that remain outstanding are as follows:

[set forth suppliers and amounts owed]

The total of the amounts outstanding is \$ _____.

8. The necessities were supplied to vessels managed by plaintiff in foreign commerce. Therefore, the suppliers thereof may be entitled to maritime liens against those vessels. One of the suppliers referred to in Paragraph 7, above, _____ has already obtained the arrest of a vessel managed by plaintiff, the vessel _____, on account of non-payment by defendant for necessities supplied to that vessel. It is possible that, due to defendant's breach of the fiduciary duty owed to plaintiff, plaintiff may have to pay a second time for those necessities for which it has previously paid defendant in order to satisfy the claims or maritime liens of such suppliers.

9. As nearly as can now be determined, plaintiff will be required to pay in excess of \$ _____ in legal fees and expenses to effect the release of the vessel _____ and to defend against the claims of suppliers.

[*Demand for Judgment*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Skaarup Ship Management Corp. v. Span Steamship Supply Co., Civ. No. 84-365 (E.D.N.Y. 1984).

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

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

* *See* 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty Form 3-731

Form 3-731 Complaint -- Breach of Charter Party (With Request for Issuance of Process of Attachment)

Plaintiff PLAINTIFF NAME] (hereinafter referred to as "Plaintiff"), by and through its attorneys, [FIRM NAME], and for its verified complaint against defendant [DEFENDANT NAME] (hereinafter "Defendant"), alleges as follows:

JURISDICTION

1. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears and is a maritime claim within the meaning of *Rule 9 (h) of the Federal Rules of Civil Procedure*. This court has jurisdiction pursuant to *28 U.S.C. 1333*.

PARTIES

2. At all material times herein, [PLAINTIFF NAME] was and is a business entity organized and existing under the laws of [COUNTRY] with its principal place of business in [PLACE OF BUSINESS].

3. Plaintiff [PLAINTIFF NAME] is informed and believes and thereupon alleges that at all material times herein, defendant [DEFENDANT NAME] was and is a business entity organized and existing under the laws of Russia.

4. Plaintiff [PLAINTIFF NAME] is informed and believes and thereupon alleges that the M/V [VESSEL NAME], a [FLAG STATE] flagged tween decker of approximately 17,850 gross tons, is currently owned by [DEFENDANT NAME], and is now within this district or will be during the pendency of this action.

CLAIM FOR RELIEF

5. On or about [DATE], [DEFENDANT NAME] entered into an agreement to time charter the M/V [VESSEL NAME] to [PLAINTIFF NAME] to carry a cargo of [TYPE OF CARGO] from [PORT OF LOADING] to [PORT OF

DISCHARGE]. A true and correct copy of the charter party is attached hereto as Exhibit "A" and is incorporated by reference.

6. Delivery of the vessel to [PLAINTIFF NAME] was to take place at the [PLACE OF DELIVERY] on [DATE] at which time the vessel was to be "ready to receive cargo with clean swept holds and tight, staunch, strong and in every way fitted for ordinary cargo service."

7. [DEFENDANT NAME] promised [PLAINTIFF NAME] that it was "obligated to deliver and keep the vessel, her Crew and anything pertaining thereto supplied with up to date and complete certificates, approvals and equipment enabling the vessel and her crew to carry the cargoes as directed." [DEFENDANT NAME] also promised [PLAINTIFF NAME] that the vessel was entered with the [INSURER] for protection and indemnity coverage.

8. [DEFENDANT NAME] promised [PLAINTIFF NAME] that the "[v]essel's cargo gear and all other equipment...shall comply with the regulations of the countries to which the vessel may trade.

9. [DEFENDANT NAME] promised [PLAINTIFF NAME] that it would "immediately notify [[PLAINTIFF NAME] of the ship's delay and reasons therefore" in failing to arrive at the designated place and time of delivery. In the event of a delay in delivery, the charter party allows [PLAINTIFF NAME] to "extend the canceling date or cancel the vessel."

10. [DEFENDANT NAME] promised [PLAINTIFF NAME] that upon delivery the holds and hatches of the vessel were "to be thoroughly clean, dry, free of loose rust, loose rust scale, cargo residue and free of odor injurious to cargo in order to pass Cleanliness Survey, as required. Any time lost by vessel not being clean and ready as per above, to be for Owners' account and vessel to be off-hire from time of rejection."

11. The M/V [VESSEL NAME] did not arrive at the [PORT OF DELIVERY] until [DATE]. Upon arrival she was inspected by boarding officers from the Marine Safety Office of the United States Coast Guard. The investigation revealed that the Loadline, Safety Construction, Safety Equipment, and Safety Radio Certificates required under the laws of the United States, and warranted in Clause 29 of the Charter Party were expired.

12. The United States Coast Guard investigators also discovered "excessive fuel oil and lube oil leaks in way of main engine into the bilge." Their investigation also revealed numerous soft patches in the engine room salt water cooling system. Furthermore, Coast Guard officials found that the portside lifeboat falls could not be released and that the life ring buoy water lights were totally inoperative. Moreover, the crew hired by owners to operate the vessel were unable to show proficiency in conducting required lifeboat drills. As a result of these serious structural and safety deficiencies, the Coast Guard Marine Safety Office issued a Captain of the Port Order detaining the vessel at anchorage and forbidding her to sail without correction of her violations.

13. On [DATE], [SURVEYOR NAME], a marine surveyor representing both [DEFENDANT NAME] and [PLAINTIFF NAME] performed a complete survey of the vessel at anchorage. The survey revealed that the cargo gear suffered from broken strands and rusting, with indentations in the cross trees and heels. The surveyor also reported that the vessel suffers from missing side battens, bent hatch access covers, bent hatch access covers, bent hatch coaming stiffeners, distorted airpipe guards, missing paint locker doors, corroded and wasted hatch cover security bars, bent and sheared off ballast pipe guards, bent and distorted after ballast pipe and valve spindle guard plates, corroded and wasted deck plating, corrugation plating doors sheared from their hinges, bent and distorted forward roller pipes, loose rust on the Number 3 tank top, and sheared off ventilation doors among several dozen deficiencies. The surveyor also performed a hose test on or after hatch covers which revealed several leaks. A hose test was not performed on the forward hatch covers because they were inoperative due to a hydraulic system failure.

14. At the time that the [DEFENDANT NAME] entered into the charter party with [PLAINTIFF NAME], it was fully aware of the unseaworthiness of the M/V [VESSEL NAME]. [PLAINTIFF NAME] would never have entered into the

charter party had it been aware of the actual condition of the vessel. [DEFENDANT NAME] misrepresented the condition of the vessel. [DEFENDANT NAME] misrepresented the condition of the vessel and fraudulently induced [PLAINTIFF NAME] to enter into the charter party.

15. The failure of [DEFENDANT NAME] to provide a seaworthy vessel to [PLAINTIFF NAME] to transport its cargo of [TYPE OF CARGO] represents a breach of the charter party. As a result, [PLAINTIFF NAME] has been forced to hire a replacement vessel at greater cost resulting in damages in the amount of [AMOUNT].

16. [PLAINTIFF NAME] is informed and believes and thereupon alleges that [DEFENDANT NAME] cannot be found within the district in that it does not have an agent for service of process within and does not have sufficient contacts within the jurisdiction to subject it to the *in personam* jurisdiction of the court. However, [DEFENDANT NAME] has goods, chattels, or credits and effects within the district, to wit: the M/V [VESSEL NAME].

17. Because [DEFENDANT NAME] can not be found within the district but has goods within the district, [PLAINTIFF NAME] seeks jurisdiction over [DEFENDANT NAME] by attaching its goods, chattels, credits and effects within this district pursuant to Supplemental Admiralty Rule B of the Federal Rules of Civil Procedure.

14. The charter party between [DEFENDANT NAME] and [PLAINTIFF NAME] relating to the M/V [VESSEL NAME] includes a London arbitration provision. [PLAINTIFF NAME] reserves its right to arbitrate its claims against [DEFENDANT NAME] in London in accordance with the terms of the charter party, but nonetheless, is entitled to attachment and security within this district.

WHEREFORE, plaintiff [PLAINTIFF NAME] prays as follows:

1. That process in due form of law according to the practice of this court may be used against the defendant [DEFENDANT NAME] and that the defendant be cited to appear and answer the allegation herein;
2. That all goods, chattels, credits and effects belonging to defendant [DEFENDANT NAME] within this district or will be within this district, be attached pursuant to Supplemental Admiralty Rule B, Fed. R. Civ. P.;
3. That all persons claiming any interest to said property attached may be cited to appear and answer the matters aforesaid;
4. That the property attached be condemned and sold to satisfy plaintiff [PLAINTIFF NAME]'s claim against defendant [DEFENDANT NAME] with interest thereon, attorney's fees and costs and the expenses and costs of attachment;
5. That judgment be entered in favor of plaintiff [PLAINTIFF NAME] against defendant [DEFENDANT NAME] in the amount of [AMOUNT] plus interest, attorney's fees and costs and expenses and costs of attachment; and
6. That this court grant plaintiff [PLAINTIFF NAME] such each other and further relief which it may deem appropriate.

* See 1 Benedict on Admiralty §§ 720 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 33-39 (Matthew Bender 7th ed.).



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RESERVED

FORM No. 1-738RESERVED



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4-I Benedict on Admiralty FORM No. 1-739

FORM No. 1-739 Complaint In Rem--Towage

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

4. At various times from and including the _____ day of _____, 20 _____, to and including the _____ day of _____ 20 _____, at the instance and request of the master or owner or persons in charge of the vessel _____, plaintiff performed certain towage services for and rendered towage assistance to the vessel _____, that is, at the times and from and to the places set forth in the schedule attached hereto and incorporated herein as Schedule A.

5. By agreement between plaintiff and the owner of the vessel _____, plaintiff was to receive, for the towage services so rendered by plaintiff's tug boats to the vessel _____, the several sums of money set forth in respect of each item of service in the aforesaid Schedule A hereto annexed, which sums amount in the aggregate to \$_____.

6. Plaintiff has demanded the said sum of \$ _____ from the owner of the vessel _____, but the said owner has at all times refused to pay the same, and the said sum of \$ _____, with interest thereon, is now due and owing to plaintiff and constitutes a lien upon the vessel _____.

[*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* 1 Benedict on Admiralty § 231 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 37 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty Form No.1-740

Form No.1-740 Complaint In Rem--Towage

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

4. Between _____, 20 _____, and _____, 20 _____, plaintiff performed certain towage services to the _____ in towing her, from a position where she was disabled several hundred miles at sea to _____, pursuant to a written contract with _____, as agents for said owner. The agreed towage price and the reasonable value of said services amounts to \$ _____. The towage services were performed by the _____.

5. By reason of said towage services, plaintiff has a maritime lien against the _____.

6. By reason of the premises the _____ is obligated to the plaintiff in the amount of \$ _____ no part of which has been paid although duly demanded, together with interest thereon and costs.

[*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, 1-11 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty § 231 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 37 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-741

FORM No. 1-741 Complaint In Rem--Towage

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

4. During the month of _____, 20 _____, the vessel _____, being in the port of _____, and standing in need of certain towage services in and about her business, the plaintiff, at the special instance and request, and upon the orders of the persons to whom the management of the vessel at that port was entrusted, caused the vessel _____ to perform the services towing and assisting the vessel from _____ anchorage to _____.

5. By reason of the premises the vessel _____ and her owners are indebted to the plaintiff in the total sum of \$ _____ with interest. The plaintiff duly demanded payment but same was refused and that sum is now due and payable to the plaintiff with interest.

6. The plaintiff claims a maritime lien against the vessel _____, her engines, boilers, machinery, tackle, apparel and furniture under and by virtue of the Acts of Congress of the United States of America and the general maritime law.

[*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* 1 Benedict on Admiralty § 231 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 37 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-742

FORM No. 1-742 Complaint In Rem and In Personam--Damage to Barge Tow and Cargo

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n1

4. The defendant _____, having agreed to tow plaintiff's barge _____ with cargo from _____ to _____, about _____ P.M., on _____, 20 _____, those in charge of the defendant's tug _____ made fast the _____, a tank barge, seaworthy and fully manned and equipped, with about _____ tons of _____ in her tanks, on the port side of the tug _____ with her bow extending a considerable distance forward of the _____'s bow and left _____, bound for the _____ in _____ via the _____ Canal. The weather was good and the barge drew _____ forward and _____ feet aft.

5. At about _____ P.M. on _____, 20 _____, the _____ got off her course and the _____ shaking and trembling, fetched up hard west of the channel about opposite _____ Point. By working her engines, the _____ freed the _____ about _____ P.M. and at about _____ P.M. with the _____ made fast on the tug's port side with her bow extending a considerable distance forward of the tug's bow, the _____ proceeded on.

6. At about _____ A.M. on _____, 20 _____, when the flotilla was in the vicinity of _____ Point approaching the western entrance to the Canal, an ice field of heavy floating pieces or cakes of ice was encountered. The tug continued on and the _____'s bow and sides came in contact with heavy pieces or cakes of ice which caused her to tremble. About _____ when the flotilla was nearing _____ City the ice field was cleared, and no other ice was seen.

7. After the _____ was pulled off the strand off _____ Point and while the flotilla passed through the ice field and after the ice field was cleared, the _____ pumps kept the _____ slight leakage under control until about _____ A.M. when the leakage became so great that the _____ pumps could not control it, and the barge sank off _____ Point near _____ and she with her cargo and the crew's personal effects became a total loss.

8. The sinking and loss of the _____ and her cargo and the crew's personal effects were not caused or contributed to by fault or negligence on the part of the _____ and those in charge of her but were caused solely by fault and negligence on the part of the defendant and its tug _____ and those in charge of her in the following respects among others:

- a. The _____ was manned with incompetent persons with the privity and knowledge of the defendant.
- b. The _____ got off her course and stranded the _____ on a hard bottom in the vicinity of _____ Point.
- c. When those in charge of the _____ encountered the ice field in the vicinity of _____ Point, they failed to stop.
- d. The _____ with the barge alongside, her bow extending a considerable distance forward of the tug's bow, proceeded through the ice too fast.
- e. While proceeding through the ice field, the _____ failed to protect her tow from the ice.
- f. While proceeding through the ice field, the _____ failed to take her tow on short hawsers.
- g. And in other ways to be pointed out at the trial.

9. As a result of the sinking and loss of the _____ and her cargo, the plaintiff has sustained damages in the approximate sum of _____ with interest from 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, 1-5, 1-10, 1-11 and 1-12 *supra*.

* *See* 1 Benedict on Admiralty § 231 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 37 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-743

FORM No. 1-743 Complaint In Rem and In Personam--Damage to Barge Tow

[Caption and Jurisdictional Statement] n1

FIRST CAUSE OF ACTION

2. At all times hereinafter mentioned, plaintiffs were and still are domestic corporations having an office and principal place of business within this jurisdiction, and were the operator and owner respectively of the Barge No. _____ which was in all respects tight, staunch, strong and seaworthy.

3. At all times hereinafter mentioned, the tugs _____ and _____ are now and during the pendency of this action will be within this District and within the jurisdiction of this Honorable Court.

4. At all times hereinafter mentioned, the defendant, _____, was and still is a corporation with an office and principal place of business at _____, _____, and was the operator of the tug _____.

5. At all times hereinafter mentioned, the defendant, _____, was the owner of the tug _____.

6. At all times hereinafter mentioned, the defendant, _____, was the operator of the tug _____.

7. At all times hereinafter mentioned, the defendant, _____, was the owner of the tug _____.

8. On or about _____, 20 _____, pursuant to agreement between the plaintiffs and the defendants, the

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Barge No. _____ was being towed by the tug _____ with the tug _____ assisting.

9. On or about _____, 20 _____, while the Barge No. _____ was being towed by the defendants, said barge was caused to ground and strike bottom causing damage to the said barge.

10. The foregoing grounding and striking bottom was caused by the negligence of the defendants and the unseaworthy condition of the tugs _____ and _____ without any negligence on the part of the plaintiffs contributing thereto.

11. By reason of the premises aforesaid, the plaintiff sustained damages in the sum of \$ _____, no part of which has been paid although duly demanded.

SECOND CAUSE OF ACTION

12. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 11 with the same force and effect as if set forth at length herein.

13. In undertaking to tow the Barge No. _____ the defendants warranted that they would perform their towing services in a careful, safe, prudent and workmanlike manner.

14. The defendants failed to tow the Barge No. _____ in a careful, safe, prudent and workmanlike manner and therefore breached this warranty, all to plaintiffs' damage in the sum of \$ _____, 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 1-11 through 1-13 *supra*.

* *See* 1 Benedict on Admiralty § 231 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 37 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-744

FORM No. 1-744 Complaint In Rem and In Personam--by Barge Tow by Collision with Bridgen1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

6. On or about _____, 20 _____, the _____ barge was in tow of and under the sole navigation and control of the tug _____.

7. While so engaged, the tug _____ proceeded through the _____ draw of the _____ Bridge in the Port of _____, more particularly in the waters of the lower _____ Bay, and caused the barge _____ to strike said bridge, resulting in damage to the barge _____ and loss and injury to its owners.

FIRST CAUSE OF ACTION

8. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 7 above as if set forth at length herein.

9. The casualty referred to in paragraphs 6 and 7 was caused solely and proximately by the negligence and lack of reasonable care by the tug _____ and its owner _____.

10. The casualty referred to in paragraphs 6 and 7 occurred without any fault or negligence on the part of _____ and _____ or the barge.

11. By reason of the premises _____ and _____ have sustained damage and injury in the amount of \$ _____ in the nature of repairs and loss of use of the vessel.

12. Plaintiffs repeat and re-allege each and every allegation contained in paragraph 1 through 7 above as if set forth at length herein.

13. Defendants, by allowing the barge _____ to strike the bridge and to sustain damages as a result thereof, breached their contractual obligations, including, but not limited to, the warranty of workmanlike service to plaintiffs.

14. By reason of the premises, plaintiffs have sustained additional damage in their efforts to be made whole, including, but not limited to, attorneys' fees in connection with this suit, and thereby have been further damaged in the amount of \$ _____ or an amount to be determined by the Court as the proximate result of defendants' breach of the warranty of workmanlike service.

[Prayer for Relief, Demand for Judgment and Verification] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Bouchard Transportation Co. v. McAllister Brothers, Inc.*, Civ. No. 83-208 (E.D.N.Y. 1983)

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

(n3)Footnote 3. *See Form Nos. 1-3, 1-6, and 1-10 through 1-13 supra.*

* *See* 1 Benedict on Admiralty § 231 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 37 (Matthew Bender 7th ed.).



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WAGES *

4-I Benedict on Admiralty FORM No. 1-767

FORM No. 1-767 Complaint In Rem and In Personam--Wages and Repatriationn1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

FIRST CAUSE OF ACTION

5. Plaintiffs herein joined the said vessel as members of the crew thereof and fully performed their duties as such crew members and accrued earned wages.

6. The defendant failed, refused, and neglected to make payment of the full wages due to said plaintiffs, said wages, upon information and belief, being in excess of \$_____.

7. Demand for said wages was made upon the owners and payment of same was wrongfully and improperly refused.

SECOND CAUSE OF ACTION

8. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 7 of this complaint with the same force and effect as if fully set forth herein.

9. By reason of the premises aforesaid, there became due and owing to plaintiffs certain sums for repatriation expenses, in an amount in excess of \$ _____, none of which has been paid although duly demanded.

THIRD CAUSE OF ACTION

10. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 9 of this complaint with the same force and effect as if fully set forth herein.

11. By reason of the refusal and neglect to pay wages when same became due and owing, plaintiffs are entitled to two days pay for each and every day during which payment is delayed in an amount believed now to be in excess of \$

_____.

[*Prayer for Process and Verification*] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers files in Kulatunga v. M/V Agapi, Civ. No. 81-434 (E.D.N.Y. 1981).

(n2)Footnote 2. *See* Forms Nos. 1-1 and 1-7 *supra*.

(n3)Footnote 3. *See* Form Nos. 1-3, 1-10 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty § 33 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 32, 52 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-768

FORM No. 1-768 Complaint In Rem and In Personam--Enforcement of Maritime Lien for Wages and Expensesⁿ¹

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

5. That, according to plaintiff's knowledge and belief, during _____ the defendant _____ entered into a contract for the sale of the vessel _____ with _____ a corporation owned by _____, following which the defendant received a substantial sum of money from _____ as partial compensation pursuant to the sales contract.

6. That on or prior to _____, 20 _____, the plaintiff entered into an agreement with _____ to act as seaman performing the duties of a _____ aboard the vessel _____ on a contemplated voyage from _____ to _____. The sale to _____ not having been completed at that time, the plaintiff was requested by _____, with the knowledge and consent of the defendant, to proceed to _____ from his home in _____, to assist in preparing the vessel for the contemplated voyage and to watch and maintain the vessel, her engines, tackle and apparel, check her moorings, etc., and to perform the duties of a shipkeeper until such time as the vessel was in full readiness for the voyage.

7. That plaintiff commenced his duties aboard the vessel _____ on _____, 20 _____, at the Port of _____ and has and continues to reside aboard the vessel carrying out the duties for which he was originally engaged and, in addition, performing certain other duties requested by the defendant.

8. That plaintiff had a verbal agreement with _____ for the payment of wages in the sum of _____ Dollars _____ (\$ _____) per day plus travel expenses and subsistence, all of which defendant, _____, was aware of and had agreed to pay but that to date

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plaintiff has not been paid for the services which he has rendered and there is due and owing him through _____, 20 _____, the sum of _____ Dollars (\$ _____) plus transportation of approximately _____ Dollars (\$ _____), together with sundry amounts advanced for the vessel and for plaintiff's maintenance, amounts to be earned by plaintiff in the future, penalties and interest.

9. That the vessel _____ is now in the Port of _____, moored at Dock _____, within this District.

10. That the plaintiff has a lien against the said vessel for payment of his wages, including penalties and interest, subsistence, cash advances and transportation.

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

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Mercereau v. M/V Woodbine*, 551 F. Supp. 811 (N.D. Ohio 1982), furnished through the courtesy of David G. Davies, Ray, Robinson, Hanninen & Carle, Cleveland, Ohio.

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

(n3)Footnote 3. *See* Form Nos. 1-3, 1-6, 1-11 and 1-12 *supra*.

* *See* 2 Benedict on Admiralty § 33 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 32, 52 (Matthew Bender 7th ed.).



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4-I Benedict on Admiralty FORM No. 1-769

FORM No. 1-769 Complaint in Rem and In Personam--Wrongful Refusal of Wages

[Caption] n1

FIRST CAUSE OF ACTION

Plaintiffs, _____ complaining of defendants, _____ by their attorneys,
_____ respectfully allege as follows:

1. This is an action within the Court's Admiralty and Maritime jurisdiction. The jurisdiction of this Court arises under and by virtue of the Admiralty and Maritime jurisdiction of the District Courts of the United States and this is an Admiralty Claim within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure*.

2. Upon information and belief, at all times hereinafter mentioned, the defendants _____, and _____ were and still are foreign corporations engaged in the vessel owning business, which do business in the State of _____.

3. Upon information and belief, at all times hereinafter mentioned, the defendants _____, and _____ owned, operated and controlled the vessel _____.

4. Upon information and belief, at all times hereinafter mentioned, the vessel _____ is a vessel of _____ Registry, and is at present within or during the pendency of this action will be within the Federal District in which this action was commenced.

5. Plaintiffs herein joined the said vessel as members of the crew thereof and fully performed their duties as such crew members and accrued earned wages.

6. The defendants failed, refused and neglected to make payment of the full wages due to said plaintiffs, said wages upon information and belief being in excess of \$_____.

7. Demand for said wages was made upon the owners and payment of same was wrongfully and improperly refused.

8. All and singular the foregoing matters are true and within the Admiralty and Maritime jurisdiction of the United States and this Honorable Court, and the defendants should be compelled to answer upon an oath, all and singular the matters aforesaid, and this Honorable Court be pleased to decree payment of your plaintiffs' claim.

SECOND SEPARATE AND DISTINCT CAUSE OF ACTION

9. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 8 of this Complaint with the same force and effect as if fully set forth herein.

10. By reason of the premises aforesaid, there became due to plaintiffs certain sums for repatriation expenses, in an amount in excess of \$ _____, none of which has been paid although duly demanded.

THIRD SEPARATE AND DISTINCT CAUSE OF ACTION

11. Plaintiffs repeat and reallege each and ever allegation set forth in paragraphs 1 through 10 of this Complaint with the same force and effect as if fully set forth herein.

12. By reason of the refusal and neglect to pay wages when same became due and owing, pursuant to *46 U.S.C. 10313* plaintiffs are entitled to penalty wages and to two days pay for each and every day during which payment is delayed in an amount believed now to be in excess of \$ _____.

Wherefore, plaintiffs pray:

1. That a warrant of arrest be issued against the said vessel, _____, her boilers, engines, tackle, appurtenances, etc. and that all persons claiming any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid;

2. That citation may issue against defendants _____, and _____, to appear and answer all and singular the matters aforesaid;

3. That this Honorable Court may enter judgment for plaintiffs in accordance with the sums set forth as aforesaid together with interest, costs and counsel fees;

4. That the said vessel, her boilers, engines, tackle, appurtenances, etc. may be condemned and sold to pay the same;

5. That plaintiffs may have judgment against the defendants for said wages, double wages, penalty wages and transportation as aforesaid together with interest, costs and counsel fees; and

6. That this Honorable Court may direct such other and further relief as in law and justice the plaintiffs may be entitled to receive.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

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

* *See* 2 Benedict on Admiralty § 33 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 32, 52 (Matthew Bender 7th ed.).



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FORM No. 1-770 Complaint In Personam--Unlawful Dischargen1

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

4. On or about _____, 20 ____, plaintiff joined the said vessel as a member of the crew in the capacity of _____ and signed articles for a foreign voyage at the rate of \$ _____ per month, together with overtime, fund, bonus and allowance.

5. On or after _____, 20 ____, while under said foreign articles, and before one month's wages were earned, plaintiff was discharged from the crew of the said vessel without cause or without any fault on his part.

6. _____, 20 ____, the United States Coast Guard, investigating the discharge of the plaintiff from the said vessel, found that the discharge was without justification.

Wherefore the plaintiff demands judgment against the defendant for his wages to the end of the voyage, and for such other and further relief as may be just, together with interest, costs, damages and attorney fees.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Mackensworth v. American Trading Transp. Co., Inc.*, 367 F. Supp. 373, 2074 A.M.C. 237 (E.D. Pa. 1973), courtesy of Cohen and Lore, Philadelphia, Pa.

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

* *See* 2 Benedict on Admiralty § 33 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 32, 52 (Matthew Bender 7th

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FORM No. 1-771 Complaint (Counterclaim) Against Master Alleging Damages to Vessel and Abuse of Process

[Caption, Jurisdictional Statement and Allegations Concerning Parties] n2

FIRST SEPARATE AND DISTINCT COUNTERCLAIM

4. The vessel _____, while under the command of the plaintiff, sailed through the passage between _____ and _____ on _____, 20 ____.
5. There are two channels between _____ and _____, the _____ Channel and the _____ Channel. The _____ Channel is preferred over the _____ Channel, because of the narrowness and sharp curve of the _____ Channel. The Coast Guard advises mariners to navigate low-powered vessels, such as the _____, through the _____ Channel only at times of slack water.
6. The information concerning the passage between _____ and _____, set forth in Paragraph 5 herein, was expressly communicated to the plaintiff by First Officer _____ prior to the commencement of the voyage. Plaintiff was or should have been aware of such information.
7. Plaintiff imprudently ignored the serious dangers attendant on navigating the _____ Channel at a time other than at slack water and took the vessel _____ through _____ Channel at such time.
8. As a result of the perilous situation in _____ Channel and the presence of other vessels in the vicinity, the vessel _____ was washed into channel buoy # _____ and damaged below the water line.

9. The defendant, upon being informed of the collision of the vessel _____ with the buoy, instructed plaintiff to immediately inform the Coast Guard Marine Inspection Office at _____ and to have inspectors come to the vessel to approve repairs, and to immediately begin shifting ballast so that the vessel could be heeled over to make repairs.

10. Plaintiff did not follow the instructions given him by the defendant, with the result that further delays were incurred before the vessel could be repaired.

11. By reason of the plaintiff's negligent seamanship and failure to follow proper orders, defendant has been damaged in the sum of \$ _____, as set forth in the schedule annexed hereto as Exhibit _____.

SECOND SEPARATE AND DISTINCT COUNTERCLAIM

12. Defendant repeats and realleges each and every allegation contained in paragraphs 1 through 11 inclusive, with the same force and effect as if fully set forth herein.

13. That on _____, 20 _____, defendant paid the plaintiff _____ for pay to that date, severance pay, leave pay, and travel expenses, which was all that was owed to plaintiff and which sum was agreed to and accepted by plaintiff.

14. Thereafter and on or about _____, 20 _____, plaintiff caused a summons to be issued out of the United States District Court for the _____ District of _____ and caused an order of attachment against the vessel _____, property of the defendant, to be issued out of the Court to the U.S. Marshall commanding him to attach property of defendant.

15. Thereafter on or about _____, 20 _____, notwithstanding payment of all monies owed to the plaintiff by defendant, and notwithstanding that plaintiff knew a corporate officer of defendant was available within this jurisdiction for service of process, the plaintiff with full knowledge of all the facts and without probable cause, wrongfully and maliciously caused the U.S. Marshall to attach, arrest and detain property of defendant, to wit the vessel _____. Thereupon, the U.S. Marshall, acting under and by virtue of the order of attachment and seizure, arrested and seized the vessel _____, property of the defendant.

16. By reason of the foregoing, defendant has been wrongfully deprived of its property and has been damaged in the sum of \$ _____.

17. Defendant also claims punitive damages in the sum of \$ _____ for plaintiff's willful abuse of process.

[Demand for Judgment] n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Miller v. Young America Marine Educational Society, Inc.*, Civ. No. 80-1797 (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 § 33 (Matthew Bender 7th ed.); 3 Benedict on Admiralty §§ 32, 52 (Matthew Bender 7th ed.).



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FORM No. 1-793 Complaint In Rem--Wharfage

[Caption and Jurisdictional Statement] n1

2. Plaintiffs _____, doing business in _____, under the firm name of _____ were at all the times hereinafter mentioned the owners [*or lessees*] and in possession of the pier or wharf known as Pier _____, in _____, _____, and were and still are entitled to recover wharfage from all vessels lying at said wharf.

3. The vessel _____, her tackle, apparel and furniture, now are, or during the pendency of this action will be, within the jurisdiction of this Honorable Court.

4. On the _____ day of _____, 20____, the vessel _____ came alongside and moored at plaintiff's wharf, where she remained until the _____ day of _____, 20____ [*or where she still lies*].

5. The fair and reasonable value of the use of said wharf by the vessel _____ at the regular wharfage rates of the city [*or the agreed price and charge for the use of said wharf as fixed by agreement between plaintiffs and the master of vessel*], is the rate of \$ _____ a day, or, in all, the sum of \$ _____, which, nevertheless, the owner and the master of said vessel have refused to pay.

6. Plaintiffs are also the owners of a storehouse in _____, and the master of the vessel _____ stored in said storehouse, at the usual rates of storage, the _____ [*list equipment*] and of the vessel while she was undergoing repairs, and plaintiffs are entitled to receive for such storage the sum of \$ _____, which her owner and master have refused to pay.

[*Prayer for Process and Verification*] n2

FOOTNOTES:

(n1)Footnote 1. *See* 1 Benedict on Admiralty § 213 (Matthew Bender 7th ed.); 2 Benedict on Admiralty §§ 38, 48.

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