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Benedict on Admiralty

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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 26 GENERAL PROVISIONS GOVERNING DISCOVERY

4-III Benedict on Admiralty FORM No. 3-210

FORM No. 3-210 Motion To Stay Taking of Deposition, Rule 26(c)

[Caption] n1

Now comes the Defendant, _____, by its attorneys, _____, and moves the court to stay the taking of the deposition of _____ by plaintiff pursuant to the notice served on defendant by plaintiff on _____, 20 _____, until _____, on the ground that examination of the witness has already been commenced and is now proceeding in an action pending in the _____ Court of the State of _____, entitled _____ v. _____, which action involves the same issues as are involved in this action, as more particularly appears from the affidavit of _____ attached hereto [*or, another action between the same parties and involving the same subject matter is now pending in the _____ Court of the State of _____, which defendant is informed and believes will come on for trial before the trial of this action, and the judgment in which will be dispositive of the issues in this action; defendant intends to move for summary judgment on the ground of _____, which if granted will make it unnecessary to take the deposition; or as the case may be*].

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-211

FORM No. 3-211 Order To Stay Taking of Deposition Pending Taking of Deposition in Another Action, Rule 26(c)

[Caption] n1

This cause came on to be heard on motion of defendant for an order staying the taking of the deposition of _____ and it appearing to the court that the deposition of the witness is already being taken by plaintiff in an action pending in the _____ Court of the State of _____ entitled _____ v. _____, which action is between the same parties and involves the same issues as this action,

It Is Ordered, that the examination of _____ be stayed pending the prosecution of the examination in the state court action; this stay to expire _____ days after the completion of the examination in the state court, such expiration to be without prejudice to the rights of defendant or plaintiff to move for such further orders as may then be warranted.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-212

FORM No. 3-212 Motion to Quash Notice of Deposition, Rule 26(c)n1

[Caption] n2

Now comes the defendant, _____, by its attorneys _____ and pursuant to *Rule 26(c) of the Federal Rules of Civil Procedure*, respectfully moves this Court to quash the Notice of Deposition filed herein on _____, 20 ____ by plaintiffs. In support of this motion, the defendant states as follows.

(1) That said notice was received by Defendant on _____, 20 ____ scheduling the deposition of Defendant's designee pursuant to Rule 30(b)(6) on _____, 20 ____ and that said notice is therefore not reasonable as contemplated by *Rule 30(b)(1) of the Federal Rules of Civil Procedure* and Rule _____ [local rule] of the Rules of this Court;

(2) The said notice requires the presence of Defendant's designee which designee is not a party to this action, in _____ [State A] while such witness resides in [State B], and Plaintiffs have not paid or secured said witness's cost of travel and actual loss of wages sustained as required by Rule _____ [local rule] of the Rules of this Court nor have Plaintiffs caused a subpoena to be served on said witness; and

(3) That _____ [State A] is an inconvenient location for the said deposition.

Wherefore, Defendant _____ respectfully requests the court to quash the Notice of Deposition filed in this action on _____, 20 ____.

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Adapted from papers in *Jarrell v. Eastern Air Lines, Inc.*, 430 F. Supp. 884 (E.D. Va. 1977), furnished through the courtesy of Hunton & Williams, Richmond, Virginia.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-213

**FORM No. 3-213 Notice of Motion to Dismiss and to Stay Discovery Pending Decision on Motion to Dismiss,
Rule 26(c)n1**

[Caption] n2

Sirs:

Please Take Notice, that, upon the Memorandum of Defendant in Support of Motion to Dismiss the Complaint as to It and to Stay Discovery Pending a Decision on this Motion to Dismiss, submitted herewith, the affidavit of _____, the Complaint, and all of the papers and proceedings heretofore had herein, defendant _____ will move this Court before the Honorable _____ at _____, M. on 20 _____ in Room _____, at the United States Court House, _____ [state address], or as soon thereafter as counsel may be heard, for an order pursuant to Rule 9(b) and *Rule 12(b)(6) of the Federal Rules of Civil Procedure* granting dismissal of the complaint as to it and for an order pursuant to *Rule 26(c) of the Federal Rules of Civil Procedure* staying discovery pending a decision on this motion to dismiss.

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Adapted from papers in *Weinberger v. Kendrick*, 431 F. Supp. 316 (S.D.N.Y. 1977), furnished through the courtesy of Douglas A. Fisher, Dewey, Ballantine, Bushby, Palmer & Wood, New York, New York.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III *Benedict on Admiralty* FORM No. 3-214

FORM No. 3-214 Joint Motion for Extension of Time Within Which to Complete Discovery, Rule 26(d)n1

[Caption] n2

Now comes the plaintiff, _____, by its attorneys, _____, and the defendant, _____, by its attorneys, _____, and moves this court for an order extending the time within which to complete discovery from _____ to and until _____. In support of this motion the parties state as follows.

(1) Pursuant to this Court's initial pre-trial order, counsel for the parties were to meet on or before _____, 20 ____ to discuss *inter alia* discovery procedure. On or about _____, 20 ____ (two days before the scheduled meeting) a report of the initial meeting was filed by counsel.

(2) Pursuant to the aforementioned pre-trial order and counsel's initial report, discovery was to be completed on or before _____, 20 ____ (approximately four months after the scheduled meeting.)

(3) Inasmuch as plaintiff is a resident of the State of _____ and cannot reasonably return to _____ [the forum state] for the purpose of conducting a deposition requested by defendant until the week beginning _____, 20 ____ [a date occurring after the discovery cut off date], counsel respectfully requests a thirty (30) day extension of time within which to complete discovery and to perform all other acts as set forth in this Court's previous pre-trial order and the stipulation of counsel previously on file.

Wherefore, plaintiff _____ and defendant _____ respectfully move this court for an order extending the time within which to complete discovery from _____ to and until _____.

Attorney for Plaintiff
Office and P.O. Address

Attorney for Defendant
Office and P.O. Address

FOOTNOTES:

(n1)Footnote 1. Adapted from papers in *Kraus v. Cleveland Clinic*, 442 F. Supp. 310 (N.D. Ohio 1977), furnished through the courtesy of Arter and Hadden, Cleveland, Ohio.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-215

FORM No. 3-215 Order for Completion of Discovery, Rule 26(d)n1

[Caption] n2

It having been brought to the court's attention that certain processes of discovery are contemplated and not completed, it is therefore

Ordered

That all parties in the above entitled matter shall commence forthwith the processes of discovery, including but not limited to the propounding of interrogatories, filing of requests for production of documents, requests for admission of facts and genuineness of documents and taking of all depositions of all witnesses or parties, and have the same completed on or before _____, 20____.

All discovery shall be completed by the date indicated, including the propounding of all requests, responses thereto, and the taking of all depositions, including those to be used at trial, as well as any motions to compel or for sanction under *Fed. R. Civ. P. 37*.

If a party does not complete all of the above processes of discovery on or before the aforesaid date, such party shall be precluded from thereafter attempting to discover, unless by leave of court first granted and by showing good cause why the processes of discovery were not completed prior to the time limit specified herein; but nothing contained herein shall be construed as preventing the further use of discovery if an opposing party brings out matter at the time of discovery which may, in the discretion of the court, justify additional discovery proceedings.

The time required to transcribe discovery depositions shall not be considered in determining the completion dates of discovery.

Dated: _____, 20 _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. Adapted from papers in *United States v. Airways Service, Inc.*, 429 F. Supp. 843 (N.D. Iowa 1977), furnished through the courtesy of Alan H. Kirshen, U.S. Attorney, Sioux City, Iowa.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-216

FORM No. 3-216 Motion for Leave to File Additional Interrogatories, Rule 26n1

[Caption] n2

Now Comes the Defendant _____, by its attorneys, _____, moves this Court for leave to propound additional Interrogatories to the plaintiff in this proceeding and in support of this motion states as follows.

1. On _____, 20 _____, defendant propounded a set of interrogatories to the plaintiff consisting of _____ numbered interrogatories. These interrogatories have not yet been answered.
2. One of the issues raised in this proceeding is whether or not defendant can limit its liability to plaintiff pursuant to the provisions of a certain harbor tariff to which defendant is a party.
3. The threshold question that must be addressed with respect to whether or not the tariff applies to limit defendant's liability is whether or not plaintiff had notice of the tariff. The attached additional interrogatories are directed solely to that issue.
4. Under the terms of Local Rule _____ of this Court, Defendant is prohibited from propounding more than _____ interrogatories to plaintiff unless good cause be otherwise shown. The propounding of the attached additional interrogatories without leave of Court would exceed that limit.
5. The propounding of the attached additional interrogatories is necessary for the resolution of this proceeding.

Wherefore, defendant respectfully requests that this Court grant leave to propound additional interrogatories to the plaintiff.

Attorney for Defendant

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 Bremnermann III, Esq., Lord, Whip, Coughlan & Green, Baltimore, Maryland.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-217

FORM No. 3-217 Protective Order

Pursuant to Rule _____ of the _____ Rules, and the stipulation of the parties, it is hereby ordered:

1. All documents produced in this action (which includes consolidated action No. _____) shall be treated as confidential, and such documents shall not be utilized by the opposing party or counsel except in connection with the prosecution and/or defense of this action.
2. Except as provided in paragraph 4 below, no documents produced in this action as "highly confidential" (and stamped as such shall be exhibited or disclosed to anyone other than the following: (a) counsel; and (b) salaried employees of counsel.
3. Except as provided in paragraph 4 below, no other documents produced herein shall be exhibited or disclosed to anyone other than the following: (a) counsel; (b) salaried employees of counsel; and (c) either of two representatives from each party, to be designated by the party in question.
4. Notwithstanding the provisions of paragraphs 2 and 3 above, any documents may be exhibited and disclosed to the following people, if counsel for either party has first obtained the written agreement of such persons to be bound by the terms of this order: (a) experts and consultants; and (b) witnesses and prospective witnesses. The requirement of obtaining such written agreement may be satisfied by obtaining the signature of any such person at the foot of any copy of this order, after having had such person read the order and having explained the contents thereof to such person. A copy of the order as signed shall be furnished opposing counsel.
5. To the extent that any document or information contained therein is disclosed by any motion, transcript, exhibit or other pleading or proceeding in this action, such pleading or proceeding shall also be subject to the terms of this order and shall be filed under seal.

6. Counsel for both of the parties shall use their best efforts to preserve the business secrets of their opposing party and agree to introduce into the public record only those documents or information contained therein which are material and relevant to the issues of the above-captioned cause.

7. At the conclusion of this action, all documents subject to this shall be returned to the party furnishing such documents within 120 days or, at the option of the furnishing party, destroyed.

8. This order shall in no way constitute a waiver by the producing party of any claim or assertion that particular documents or information constitute trade secrets or other confidential information, or to seek and obtain from the Court an order that a trade secret or other confidential information not be disclosed, or be disclosed only in a designated way.

9. This order shall in no way constitute a waiver by the discovering party of any objection, or of any right to contest or object, to any assertion or claim by the producing party that particular documents or information constitute trade secrets or other confidential information, or to seek and obtain from the Court an order wholly or partially declassifying any confidential document, and nothing in this order shall be deemed to limit the right of the Court to wholly or partially so declassify on its own motion.

Date: _____ ENTERED: _____

I have read, understand and agree to be bound by the terms of this order:



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4-III Benedict on Admiralty Form 3-218

Form 3-218 Ex Parte Application for Order Allowing Immediate Discovery

TO THIS HONORABLE COURT AND TO ALL INTERESTED PARTIES:

Pursuant to *Rule 26(d) of the Federal Rules of Civil Procedure*, Plaintiff [FINANCIAL INSTITUTION] (hereinafter referred to as "Plaintiff"), will and hereby does move this Court for an order permitting the following discovery pursuant to subpoenas immediately issued and served herein:

1. All written communications concerning the location of the Defendant vessel, M/Y [VESSEL NAME], Official No. [OFFICIAL NUMBER], her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining (hereinafter collectively referred to as the "Vessel").
2. Deposition, pursuant to notice, of Defendants, [VESSEL OWNERS] (hereinafter collectively referred to as the "Owners") for the limited purpose of determining the location of the Vessel so as to subject her to arrest and service of process.

Plaintiff makes this motion pursuant to *Rule 26(d) of the Federal Rules of Civil Procedure* on the grounds that the discovery sought herein will serve the interest of convenience of the parties and witnesses, as well as the interests of justice. Plaintiff also makes this motion on the ground that good cause exists for the immediate undertaking of the discovery sought herein.

Dated:

[ATTORNEY]

MEMORANDUM OF POINTS AND AUTHORITIES
I. STATEMENT OF FACTS

Plaintiff incorporates by reference the factual allegations of its Complaint filed herein as if fully set forth.

This motion seeks urgent discovery to preserve evidence and prevent the removal of the Defendant Vessel from this judicial district. It focuses on securing the testimony of her owners, the [OWNER NAME], who have refused, pursuant to their obligations under the First Preferred Ship Mortgage, to disclose the location of the Defendant Vessel and Plaintiff believes that the withholding of this information disguises their intent to cause the removal of the Vessel from this judicial district and frustrate the instant action *in rem* for foreclosure of a preferred mortgage pursuant to the Ship Mortgage Act of 1920, as amended, 46 U.S.C. Chapter 313, Subchapter II.

As established by the record herein, on [DATE], Plaintiff filed its Verified Complaint against, among others, the M/Y [VESSEL NAME], Official No. [OFFICIAL NUMBER], her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining (hereinafter collectively referred to as the "Vessel") *in rem*.

Plaintiff is unable to serve process on the Vessel due to an inability to discover its true location and the willful refusal of her owners to disclose such information to Plaintiff or its designee. By frustrating arrest and foreclosure of the First Preferred Ship Mortgage, Defendants risk removal of the Vessel from this judicial district and expose the Vessel to diminution in value by the passage of time or willful malfeasance.

II. FED. R. CIV. P. 26(d) GIVES THIS COURT THE AUTHORITY TO ISSUE AN ORDER ALLOWING THE DISCOVERY SOUGHT BY THIS MOTION

Fed. R. Civ. P. 26(d) provides in pertinent part:

"Except when authorized under these rules or by local rule, order or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by subdivision (f). Unless the court upon motion, for the convenience of the parties and in the interests of justice orders otherwise, methods of discovery may be used in any sequence ..."

Plaintiff addresses the facts underlying the interests of the parties and witnesses and in the interests of justice under *Fed. R. Civ. P. 26(d)*, above.

III. CONCLUSION

The discovery sought herein should be ordered to allow Plaintiff to enforce its right under the mortgage and to secure the arrest of the Vessel.



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4-III Benedict on Admiralty FORM Nos. 3-219-3-227

Reserved

FORM Nos. 3-219
Reserved



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 RULE 27 DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

4-III *Benedict on Admiralty* FORM No. 3-228**FORM No. 3-228 Petition To Perpetuate Testimony Before Action, Rule 27(a)(1)**

UNITED STATES DISTRICT COURT

_____ District of _____

In the Matter
 of

The Petition of _____,)	
as guardian <i>ad litem</i>)	
of _____, an infant, to)	Civil Action No. _____
Perpetuate the Testimony of)	Petition To
_____, said infant.)	
)	
)	

The petition of _____, as guardian *ad litem* of her son, _____, an infant, under appointment by this Court, and individually as his mother, respectfully shows:

1. Petitioner, as well as said infant, are citizens and residents of the State of _____, and reside in _____, City, County and State of _____, and within the jurisdiction of this Court. The United States of America is a sovereign which, under the Suits in Admiralty Act, has consented to be sued in respect of the cause of action hereinafter described, and under the provisions of said Act a complaint *in personam* may be brought in the district of plaintiff's residence.

2. Petitioner intends to file a complaint *in personam* in this court against the United States to recover damages for personal injuries sustained by said infant on land as a result of the negligent operation of the merchant vessel " _____", owned by the United States, but said complaint cannot be filed now because, under the

4-III Benedict on Admiralty FORM No. 3-228

Admiralty Jurisdiction Extension Act, 46 U.S.C. § 740, written notice of the claim must first be presented to the Federal agency owning or operating the vessel involved, and then six months must elapse before the complaint may be filed.

Notice of petitioner's claim was served on the Secretary of _____ on _____, 20_____, and the six month period does not expire until _____, 20_____.

3. Petitioner shows that said infant was seriously injured on _____, 20_____, when the vessel "_____" negligently struck the pier located at _____, upon which the infant was standing, causing the infant to fall off the pier and to sustain the following serious injuries: [*state particular injuries*].

4. The accident happened as follows: [*set forth details of the accident*].

5. Petitioner shows that the medical opinion, as expressed to her, makes it doubtful if said infant will survive his injuries. He is his own most important witness. The officers or crew members, responsible for the accident, may or may not admit their negligence and petitioner may or may not be able to locate said officers or crew members to procure their testimony. Furthermore, the injured infant can best relate what caused the accident; his freedom from contributory negligence; and only he can testify to his pain and suffering.

6. Petitioner shows that should her said son not survive that she, as his surviving dependent parent, he being unmarried, would have a cause of action for her pecuniary loss and also for damage for the conscious pain and suffering endured by her said son. This testimony is vitally important in such action.

7. Petitioner desires to perpetuate the testimony of said _____, who is presently a patient at the _____ Hospital, _____, and the substance of his testimony which petitioner expects to elicit will be to establish the facts recited in paragraph four hereof.

Wherefore, petitioner prays the court for an order authorizing her to take the deposition of _____ upon oral examination for the purpose of perpetuating his testimony pursuant to *Rule 27 of the Federal Rules of Civil Procedure*.

Attorney for Petitioner,
Office and P.O. Address

[*Verification*] n1

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 1-11 *supra*.



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RULE 28 PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

4-III Benedict on Admiralty FORM No. 3-229

FORM No. 3-229 Motion for Commission To Take Deposition, Rule 28(b)

[Caption] n1

Now Comes the [Plaintiff or Defendant] _____ by its attorneys and _____ moves this court for an order directing that a commission be issued, directed to _____ [descriptive title], empowering him to take the deposition of _____ whose address is _____, on [written interrogatories and cross-interrogatories or, oral examination], and in support of this motion states as follows:

1. This is an action for _____.
2. The matters concerning which the witness will be interrogated are as follows: _____.
3. [State reasons for seeking commission for the individual].

Wherefore, [plaintiff or defendant] _____ moves this court for an order directing that a commission be issued empowering _____ to take the deposition of _____.

Dated: _____

Attorney for Plaintiff or
Defendant

FOOTNOTES:

(n1)Footnote 1. See Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-230

FORM No. 3-230 Order for Commission To Take Deposition, Rule 28(b)

[Caption] n1

This Cause, coming on to be heard on plaintiff's motion for a commission to take the deposition of an officer of _____, a resident of _____, and it appearing to the Court that the testimony of the said officer will be material and relevant to the subject matter of this action and that it is necessary that a commission issue in order that plaintiff may take the said deposition,

It Is Ordered that a commission issue directed to _____, notary public, authorizing him to take the deposition of an officer of _____ on written interrogatories and cross interrogatories to be annexed thereto and directing him to reduce the said testimony to writing, cause the deposition to be signed by the witness, and certify and return the same to the Clerk of this Court together with the commission.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form 3-1 *supra*.



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RULE 28 PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

4-III Benedict on Admiralty FORM No. 3-231

FORM No. 3-231 Commission To Take Depositions, Rule 28(b)

[Caption] n1

The President of the United States to _____ greeting:

You have been duly appointed and you are hereby authorized at a certain day and place or certain days and places to be appointed by you, to cause _____ to come before you and then and there examine _____ on oath or affirmation, upon the interrogatories and cross-interrogatories annexed to this commission [*or, orally*] as witness--for the _____ in the above entitled cause; to reduce testimony to writing and cause the same to be signed by said witness--; to annex said testimony hereto, close the same under your seal and make return hereof unto this court with all convenient speed.

Witness the Honorable _____, Judge of said Court, the _____ day of _____, A.D. 20 _____.

Clerk

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 28 PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN

4-III Benedict on Admiralty FORM No. 3-232

FORM No. 3-232 Application and Order for Letters Rogatory, Rule 28(b)n1

[Caption] n2

Now Comes the [plaintiff or defendant] _____, and makes this its application for letters rogatory directed to the appropriate judiciary authority in _____, and in support of this motion states as follows:

1. Plaintiff in this case claims that he was injured in _____ while serving aboard the vessel _____ as a result of the negligence of the defendant and/or the unseaworthiness of the vessel _____. The plaintiff apparently received an _____ injury in some manner while ashore in _____. The defendant desires to have the testimony of Dr. _____, the physician who treated plaintiff in _____. The defendant would show that the above-named person is a resident of _____, and that his testimony is necessary in order that justice may be done in this case.

2. Defendant respectfully requests that defendant be given _____ days within which to file with the Court written interrogatories pursuant to *Fed. R. Civ. P. 33* addressed to the above-named witness to be filed with and attached to the letters rogatory to be issued by the Court and forwarded to competent judicial authority in _____. The defendant further requests that cross-interrogatories, redirect and recross-interrogatories be filed.

Wherefore, defendant prays that its application for letters rogatory be in all things granted and defendant be given _____ days therefrom within which to file written interrogatories with the Court to be forwarded with the letters rogatory, and for such other and further relief, general and special, which defendant is otherwise justly entitled to receive.

Dated: _____

Attorney for Defendant

ORDER

[Caption] n3

Application for letters rogatory is granted and the [plaintiff or defendant] is hereby given _____ days within which to file written interrogatories, and plaintiff is given _____ days within which to file cross-interrogatories, and redirect and recross-interrogatories shall be filed within _____ days.
Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Central Gulf S.S. Corp. v. Sambula*, 405 F.2d 291, 2068 A.M.C. 2521 (5th Cir. 1968), courtesy of Mandell & Wright, Houston, Texas.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.

(n3)Footnote 3. *Id.*



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4-III Benedict on Admiralty FORM No. 3-233

FORM No. 3-233 Letters Rogatory, Rule 28(b)n1

[Caption] n2

The President of the United States to the appropriate Judicial Authority in _____, Greeting:

Whereas there is now pending in the United States District Court for the _____ District of _____ a complaint in which the plaintiff, _____, is claiming he was attacked by unknown assailants in _____, and the defendant, _____, the owner and or operator of the vessel _____, is defending against the plaintiff's allegations that it was negligent and that the vessel _____ was unseaworthy, proximately resulting in the injuries to plaintiff; it has been suggested to us that the witness, Dr. _____, is residing within your jurisdiction, without whose testimony justice cannot be completely done between the plaintiff and the defendant: We therefore request that in furtherance of justice you will, by the proper and usual process of your Court, cause such witness as named herein to you to appear before you, or some competent person by you for that purpose to be appointed and authorized, at a precise time by you to be fixed, and there to answer on his oath or affirmation in the usual manner the interrogatories, translated if necessary, prepared by the parties' respective counsel and that you will cause his testimony to be committed to writing in English and returned to us under cover, duly closed and sealed up, together with these presents. We shall be ready and willing to do the same for you in a similar case, when required.

Witness the Hon. _____, Judge of the United States District Court for the _____ District of _____, and the seal of said District Court of _____, and the seal of said District Court at the City of _____, in the District of _____, the _____ day of _____, 20 ____.

Clerk

4-III Benedict on Admiralty FORM No. 3-233

United States Of America

_____ district of _____

I, _____, Judge of the United States District Court in and for the _____ District of _____, do hereby certify that _____, whose signature is attached to the letters rogatory hereto attached, was at the date thereof the Clerk of the United States District Court in and for the _____ District of _____; that the official acts and doings of said clerk are entitled to full faith and credit; and that the testation to said letters rogatory is in due form of law. I further certify that the seal attached to said letters rogatory is the seal of this Court.

Witness my hand and seal of said Court in the City of _____, the _____ day of _____, in the year of our Lord 20 _____.

United States District Judge

United States Of America

_____ District Of _____

(City), (State), _____, 20 _____

I, _____, Clerk in and for the United States District Court for the _____ District of _____, do hereby certify that _____, whose name is signed to the accompanying papers, is now, and was at the time of signing the same, a United State District Judge in and for the _____ District of _____.

In Witness Whereof, I have hereunto set the seal of this District Court at the City of _____, in the _____ District of _____, this _____ day of in the year of our Lord 20 _____.

Clerk

FOOTNOTES:

(n1)Footnote 1. Forms adapted from papers used in *Central Gulf S.S. Corp. v. Sambula*, 405 F.2d 291, 2068, A.M.C. 2521 (5th Cir. 1968), courtesy of Mandell & Wright, Houston, Texas.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM Nos. 3-234-3-244

Reserved

FORM Nos. 3-234Reserved



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RULE 30 DEPOSITIONS UPON ORAL EXAMINATION

4-III Benedict on Admiralty FORM No. 3-245

FORM No. 3-245 Notice of Deposition--General Form, Rule 30(b)

[Caption] n1

Please Take Notice that the defendant _____ will take the deposition upon oral examination of plaintiff, by an official or other person having knowledge of the facts, at Room _____, _____ [Street], _____, [City and State] on the _____ day of _____, 20____ at _____ a.m. of that day, and the same will be continued from day to day until completed.
Dated: _____

Attorney for Defendant

or

Please Take Notice that the undersigned will take the deposition of _____ at the office of _____ & _____ on _____, 20____ at _____ a.m. upon oral examination, pursuant to the Rules of Civil Procedure, before a Notary Public, or some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed. You are requested to have your client present at the aforesaid time and place. You are also invited to attend and participate in the examination if you so desire. n2
Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.

(n2)Footnote 2. Form adapted from papers used in *Mietla v. Warner Co.*, 387 F. Supp 937, 2075 A.M.C. 1491 (E.D. Pa. 1975) , courtesy of Freedman, Borowsky & Lorry, Philadelphia, Pa.



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4-III Benedict on Admiralty FORM No. 3-246

FORM No. 3-246 Notice of Deposition and To Produce--Cargo Damage, Rule 30(b)

[Caption] n1

Please Take Notice, that pursuant to *Rule 26, et seq. of the Federal Rules of Civil Procedure*, the undersigned will examine as a witness _____, before trial, by taking its deposition at _____ A.M. on the _____ day of _____, 20 _____, before a Notary Public, or before some other officer duly authorized by law to take depositions, at the offices of _____, Room _____, and

Please Take Further Notice that the above-named is required to produce, at the aforesaid time and place, the following:

[Itemize requested documents]

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-247

FORM No. 3-247 Notice of Deposition and To Produce--Cargo Damage, Rule 30(b)

[Caption] n1

Please Take Notice that pursuant to the Federal Rules of Civil Procedure relating to discovery, the undersigned will examine the plaintiff, as a party, before trial by an officer or employee familiar with the investigation, evaluation, adjustment and payment of a claim for damages to plaintiff's assignor having knowledge of and familiar with the facts involved in this matter, including the preparation for shipment, packaging, packing, transportation and shipment of the goods which are the subject of this action at the offices of _____, before a Notary Public or some other officer authorized to administer oaths, on the day of _____, 20____ at _____ and from day to day thereafter until said examination is completed.

Please Take Further Notice that you are required to produce at said examination all claim files, correspondence, memoranda, inspection reports, survey reports, photographs, invoices, purchase orders, and all other writings or documents relating to the shipment which is the subject of this action, including its preparation for shipment, packing, packaging, transportation and shipment and the investigation, evaluation, adjustment and payment of any claim by plaintiff's assignor assured.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-248

FORM No. 3-248 Notice of Deposition and To Produce--Collision, Rule 30(b)

[Caption] n1

Please Take Notice that the plaintiff will take the deposition of the defendant _____, by an officer, director or managing agent familiar with the collision, sinking and removal of the wreck of the Tug _____ as well as any members of the tug's crew familiar with said collision and sinking and wreck of the _____, pursuant to Rule 30 of the Rules of Federal Civil Procedure before a Notary Public or some other officer authorized by law to take depositions, upon oral examination, and the same will continue from day to day until completed at the offices of the _____ in Suite _____ at _____, in the City of _____ on the _____ day of _____, 20____ at _____ o'clock or as soon thereafter as counsel can be heard at which time and place you are hereby invited to attend and cross-examine.

Please Take Further Notice, that said defendant _____ is hereby required to produce upon the aforesaid deposition all records, documents and writings in its possession or control relating to the incidents occurring on or about _____, 20____ involving the vessel _____, and the vessel _____ and its tow including without limitation to the aforesaid request to produce:

1. All log books including rough and smooth and deck and engine logs of the vessel _____ for the month of _____, 20_____.
2. All trip sheets and other documents or records showing voyages and itinerary of the _____ for the month of _____, 20_____.
3. All radio, telephone, radio logs, messages and other records of communication to or from the vessel _____

4-III Benedict on Admiralty FORM No. 3-248

_____ for the month of _____, 20____.

4. All radio, telephone, radio log, messages and other records of communications received or sent by the defendant relating to the events on _____, 20 ____ invoking the vessel _____, and the vessel _____ and her tow.

5. All radio, telephone, radio logs or record of messages maintained or retained by the defendant _____ relating to the disposition of the _____ from the time that she was in collision with the _____ until she was finally cleared out of the _____ River.

6. All maintenance and repair records, if any, of the disposition made of the vessel _____ after _____, 20____.

7. All reports of surveys, inspections and investigations and photographs made pertaining to the _____ on the _____ day of _____, 20 ____.

8. All charts and publications that were carried on board the _____ on _____, 20 ____ pertaining to the area in question including, but not limited to Notices to Mariners, [*local, weekly, and radio*] Coast Pilots, Light Lists, Tide Tables and charts.

Dated: _____, 20 ____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-249

FORM No. 3-249 Notice of Deposition, With Statement of Future Unavailability of Deponent, Rule 30(b)n1

[Caption] n2

Please Take Notice that _____, Master of the vessel _____, and _____, and _____, Chief officer of the vessel _____, and _____, the Chief Engineer of the vessel _____ and _____, First Assistant Engineer of the vessel _____, all of whom have assigned duties in connection with the handling, stowage, custody and care of certain cargo aboard the said vessel and have assigned duties in connection with the management, inspection, maintenance and operation of her engines, and machinery, all of whom are witnesses and whose testimony is necessary in the above entitled cause and who now reside more than one hundred miles from the United States District Court House for the _____ District of _____, and without the jurisdiction of this Court and all of whom are citizens of foreign countries and who cannot be compelled to be in attendance and give testimony once they leave the jurisdiction as they are bound on a voyage to sea, and will be unavailable for deposition unless their depositions are taken immediately, will be examined pursuant to *Fed. R. Civ. P. 26, 27, 30, et seq.*, in the above entitled and numbered cause before _____, a notary public duly commissioned, sworn and qualified to act in and for the County of _____, State of _____, or before some other officer authorized by law to take depositions, at _____, on _____, 20_____, at _____ o'clock and from day to day thereafter until the examinations are completed, at which time and place you are hereby notified to be present, and put interrogatories, if you think fit.

Dated: _____

 Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Ferro Union v. S.S. Ionic Coast*, 43 F.R.D. 11, 2068 A.M.C. 2385 (S.D. Tex. 1968), courtesy of Stillwell & Brown, Houston, Texas.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-250

FORM No. 3-250 Notice To Take Depositions Under Subpoena Duces Tecum--Cargo Shortage

[Caption] n1

Please Take Notice that pursuant to the *Fed. R. Civ. P. 30*, the Plaintiff will take the depositions upon oral examination of the following officers of the vessel _____:

1. Master _____
2. Chief Engineer _____
3. Chief Engineer _____
4. Chief Officer, whose name is now unknown.

The depositions will take place before a Notary Public at the offices of _____, beginning on _____, 20____ at _____ a.m. and from day to day thereafter until the examination is completed, or on a lawfully adjourned day and from day to day thereafter until the examination is completed, at which time and place you are invited to attend and put interrogatories, if you think fit. The witnesses are to bring with them all documents set forth in Plaintiff's Request for Production of Documents.

Plaintiff avers, as required by aforesaid Rule 30(b)(2), that as the vessel _____ is to depart _____ within the week for a foreign jurisdiction, and as the above persons who are foreign nationals will be aboard aforesaid vessel when it departs, these persons will be unavailable for examination unless their depositions are taken as noticed herein.

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-251

FORM No. 3-251 Motion for Leave To Take Deposition and Enter and Obtain Production of Documents and Things on an Expedited Basis

[Caption] n1

Now Comes the Plaintiff _____, by and through its attorneys, _____ and hereby moves this Honorable Court, pursuant to *Fed. R. Civ. P. 30(b)* and *34(b)*, for an order granting claimant leave to take depositions, enter and inspect and obtain production of documents and things requested by claimant, all on an expedited basis hereinafter more fully set forth, and, as grounds therefor, says:

1. That this action was commenced on _____, 20____, by arrest of the vessel _____ in _____ in behalf of Plaintiff herein;
2. That Plaintiff is filing a request to enter and inspect on this date, which entry and inspection is sought onboard the vessel _____ in _____ on or about _____, 20____;
3. That Plaintiff is filing a request for production of documents and things, response to which is sought on or before _____, 20____;
4. That Plaintiff has filed notices to take depositions on this date, which depositions are sought at the offices of _____ in _____ on or about _____, 20____;
5. That, for reasons set forth in the aforementioned discovery requests and incorporated by reference herein, such discovery is necessary at the aforementioned times.

Wherefore, claimant respectfully prays for an order by this Honorable Court requiring Defendants to produce the

information and witnesses sought and permit the entry and inspection in accordance with Plaintiff's discovery requests, and for such other and further relief as to the Court may seem proper in the circumstances.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-252

FORM No. 3-252 Notice of Deposition--Cargo Shortage, Rule 30(b)(6)

[Caption] n1

_____, claimant to the vessel _____ [vessel], defendant *in rem*, by its attorneys, will take the deposition upon oral examination of the plaintiff, _____, on _____, 20____, at _____ a.m. in the offices of _____. The deposition will be taken before a person authorized by the State of _____ to administer oaths, will be for the purpose of discovery or use as evidence, or both, and will continue from day to day until completed.

The deponent shall bring with it to the deposition the documents listed in the Document Schedule attached hereto. The deponent also shall designate one or more persons to testify on its behalf and having personal knowledge with respect to the following matters:

1. All written and/or oral communications between plaintiff and _____, with regard to the Voyage of the _____ [vessel] in issue.
2. The use of _____, by plaintiff for the _____ years preceding _____, 20_____.
3. The relationship, if any, between plaintiff and _____, and the history of that relationship for the _____ years preceding _____, 20_____.
4. The relationship, if any, between plaintiff and _____ and the history of that relationship for the _____ years preceding _____, 20_____.

4-III Benedict on Admiralty FORM No. 3-252

5. All circumstances attendant to and communication with regard to the documents that you purport to be the bills of lading for the shipment at issue and the manner in which they came to be endorsed to the order of plaintiff.
6. The type, quality, and quantity of cargo you allege to have been loaded aboard the vessel at the loading ports in question, and the ownership thereof, at the time of loading.
7. The type, quality and quantity of cargo you allege to have been loaded aboard the vessel at the loading port in question, and the ownership thereof, at the time of discharge at _____.
8. All written and oral communications between plaintiff and its agents, if any, in _____ with regard to the voyage in question.
9. The value of the cargo upon discharge at _____.
10. The terms and conditions of the charter party which you allege governs the voyage in question.
11. The identity of the charterer of the vessel, if you allege that it was some party other than plaintiff.
12. All written and/or oral communication between plaintiff and any of the below-listed persons concerning the voyage in question:
- * * *
13. All charges and costs which plaintiff claims to have incurred with regard to barge hire at _____.
14. The shortages of cargo which you allege the vessel is responsible for, as claimed in paragraphs _____ and _____ of the Complaint.
15. All agreements and warranties, both express and implied, made to you by _____.
16. Any and all alleged failures by _____ to perform
in a workmanlike manner.
17. The identity of the shipper, consignee and owner of the oil in question at all times between _____, 20 _____, and _____, 20 _____.
18. The allegations contained in paragraph _____ of the Complaint, particularly with regard to your allegation that defendants converted a portion of said cargo.
19. All parties for whom plaintiff acted as agent and trustee with regard to said shipment.
20. The allegations contained in paragraph _____ of the Complaint that _____ chartered the vessel to plaintiff for the carriage of the cargo in question.
21. The later allegation of plaintiff that the vessel was not chartered to plaintiff but to _____.
22. The identity of all plaintiff's personnel who have knowledge of or were in any way involved with the voyage of the vessel in question, including the hiring and engagement of said vessel, purchasing of cargo therefore, hiring of agents

and barges, scheduling, and all other matters pertaining to the voyage.

23. All other allegations and averments contained in the various pleadings filed by and in behalf of plaintiff.

24. The business relationship between _____ and the following parties for the _____ years preceding _____, 20 ____:

25. All written and oral communications between _____ and the following parties with regard to the specific voyage of the vessel which was the subject of telex correspondence between you and _____ on _____, 20 ____:

*

26. All charter parties, draft charter parties, notes, telexes, memoranda, recapitulations, and any other documentation in any way connected with the voyage of the vessel at issue.

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-253

FORM No. 3-253 Schedule of Documents--Cargo Loss

1. All written communications between _____ and _____ in any way relating or pertaining to the charter of the vessel _____ or the voyage of the _____ at issue in this lawsuit.
2. All written communications between _____ and _____ in any way relating or pertaining to the charter of the vessel _____ or the voyage of the _____ at issue in this lawsuit.
3. All written communications between _____ and _____, in any way relating or pertaining to the charter of the vessel _____ or the voyage of the _____ at issue in this lawsuit.
4. Any other written communications in any way relating to the charter of the _____ in _____, 20 _____, the issuance of the bills of lading for the cargo at issue in the lawsuit, the circumstances surrounding the endorsement of the bills of lading, the voyage in question in this lawsuit and the cargo loss sustained by Plaintiff herein.
5. Any and all files kept by you in the ordinary course of your business in any way relating to the charter of the _____ in _____, 20 _____, the issuance of the bills of lading for the cargo at issue in the lawsuit, the circumstances surrounding the endorsement of the bills of lading, the voyage in question in this lawsuit and the cargo loss sustained by Plaintiff herein.



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4-III Benedict on Admiralty FORM No. 3-254

FORM No. 3-254 Order Authorizing Videotaped Depositions

[Caption]

Defendant, _____, ("_____"), having moved this Court, pursuant to *Rule 30 (b) (4) of the Federal Rules of Civil Procedure*, for an order authorizing recordation of deposition testimony of witnesses by videotape, in addition to conventional stenographic means,

It Is Hereby Ordered that videotaped depositions will be allowed subject to the following conditions:

1. The deposition of a witness who is beyond the subpoena power of this Court, who is not an employee or under the control of a party, and whose credibility is an issue may be recorded on videotape so long as the testimony of each witness is also simultaneously recorded, and later transcribed, by an independent certified court reporter. The written transcript prepared by the independent certified court reporter shall constitute the official record of the deposition.
2. The witness shall be first duly sworn on camera by an officer authorized to administer oaths.
3. The camera and all of the videotape equipment shall be utilized to record the depositions in a fair and objective manner and the videotape operator, who shall be independent of the parties, shall devote his or her time, skills and judgment to do so. At the deposition the operator shall use the following recording techniques:
 - (a) The video deposition shall be recorded in color;
 - (b) Only one camera shall be used and it shall be fixed solely on the witness from a frontal view except for scenes of all counsel taken for purposes of identifying those present at the deposition; all instances of attorney(s) conferring with the witness during the deposition shall be recorded although

_____ recording shall be made of any such conference.

(c) Zooming with the lens of the camera will not be permitted, however, readjustments of the camera to permit a full clear view of the witness' head and upper body shall be permitted.

(d) No "close-up" shots of the witness will be permitted;

(e) At least the head and upper body of the witness shall be visible whenever the witness is on camera;

(f) There shall be no unusual lighting in the deposition room solely for the video camera;

(g) During the deposition proceedings the camera shall not be moved other than as necessary to comply with the other provision of this order.

(h) Any party to the action may object to the videotape operator's handling of any of these matters. Such objections shall be considered by the Court in ruling on the admissibility of the video record. All such objections shall be deemed waived unless made promptly after the objector knows, or has reasonable grounds to know, of the basis of such objection.

(i) The video operator shall furnish a sufficient number of microphones to enable the witness and each attorney conducting direct or cross-examination to be heard. A suitable number of microphones shall also be made available to record objections by other counsel present.

(j) There shall be employed at the deposition a day/time generator to create on videotape a continuous record of the day and time.

(k) There may be available to counsel throughout the deposition a monitor on which they can view the video record as it is being made.

(l) No attorney or party shall give any instruction to the video operator during the course of the deposition as to the techniques to be employed.

4. The video operator shall certify under oath that the proceedings have been recorded accurately and that the videotape accurately reflects such recordation.

5. The cost of producing the original videotape of a witness' testimony shall be borne by the party requesting the videotape of that witness. The original videotape recording shall be preserved in the custody of the videotape operator in its original condition until further order of the court. Any party may order a copy of the original videotape from the videotape operator at its own expense.

6. The original videotape and any copy thereof shall be subject to the Protective Order entered by this Court on _____, _____.

7. Notice and subpoena for taking a video deposition shall contain the additional statement that the deposition shall be recorded by audio/visual means. In the case of depositions already noticed, reasonable advance notice of the intention to take a videotape deposition shall be adequate.

8. The provision of this order relate only to the procedure to be used in videotaping depositions in this cause and do not purport to authorize the use of such videotapes at the trial or to establish the conditions pursuant to which such videotapes can be used or the manner in which they may be used.

Magistrate _____
United States District Court



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4-III Benedict on Admiralty FORM Nos. 3-255-3-264

Reserved

FORM Nos. 3-255Reserved



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4-III Benedict on Admiralty FORM No. 3-265

**FORM No. 3-265 Notice of Deposition Upon Written Question in Foreign Country Before United States Consul,
Rule 31(a)n1**

[Caption] n2

Pursuant to *Fed. R. Civ. P. 31*, _____, plaintiff herein, requests _____ to answer the following questions on deposition before the United States Consul in the [Country], City of _____:

[Set forth written questions]

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Lipschutz v. Gordon Jewelry Corp.*, 367 F.Supp. 1086 (S.D. Tex. 1973), courtesy of Arthur I. Winard, Esq., New York, New York.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-266

FORM No. 3-266 Motion to Compel Answers to Interrogatories

[Caption] n1

Now Comes [plaintiff or defendant] by its attorneys _____ and for its motion to compel answers to its interrogatories states as follows:

1. Interrogatories were filed by [plaintiff or defendant] on _____, 20 _____, and served on counsel for [plaintiff or defendant].
2. Rule 33(a) of the Federal Rules of Civil Procedure requires that _____ a party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories _____.
3. Almost _____ months have elapsed since the filing of [plaintiff's or defendant's] interrogatories and _____ has failed to answer same.
4. Counsel for [plaintiff or defendant] has contacted counsel for _____ on several occasions in efforts to informally obtain compliance with the federal rules. These efforts include letters to _____'s counsel dated _____, 20 _____, and should _____ not receive _____'s Answers to Interrogatories by such time, its case would be severely prejudiced.

Wherefore [plaintiff or defendant] _____ moves this Court for an order compelling answers to interrogatories and further requests that should such answers not be filed, then the case filed on behalf of the [plaintiff or defendant] be dismissed with costs awarded in favor of this [plaintiff or defendant].

Attorney for [*plaintiff or defendant*]

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM Nos. 3-267-3-277

Reserved

FORM Nos. 3-267Reserved



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RULE 34 PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND
OTHER PURPOSES

4-III Benedict on Admiralty FORM No. 3-278

FORM No. 3-278 Request for Production--General Form, Rule 34

[Caption] n1

Pursuant to the provisions of *Rule 34 of the Federal Rules of Civil Procedure*, you are requested to produce and permit the plaintiff and his counsel to inspect and copy each of the following documents:

1. All reports made by the defendant of the accident which is the subject of this suit.
2. All statements or records made by the defendant concerning this accident.
3. Any statement made by any person, including all witnesses, having to do in any manner with the alleged occurrence out of which this lawsuit arose, whether such statements be handwritten, recorded, taken stenographically, or otherwise.
4. A summary of any oral statement made by any person, including all witnesses, having to do with the alleged occurrence of which this loss arose.
5. All photographs, charts and similar illustrative matter having to do with the alleged occurrence out of which this lawsuit arose.
6. All reports of examinations, tests, studies or any other documents that relate to *[state item in question]*, including the _____ necessary to perform safely the duty which the plaintiff was performing at the time of this accident.
7. All reports or records of training and instruction given to the plaintiff in the correct and proper manner to perform the

duty which he was doing at the time of this accident.

8. All records of all other [*state item in question*] for a period of ten years prior to the accident and from the accident up until the date of the filing of this Request for Production.

9. Plaintiff requests that the documents be made available for inspection and copying at the offices of _____, _____, _____, within 30 days from the date of the service hereof.

Dated this the _____ day of _____, 20 _____.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 34 PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND
OTHER PURPOSES

4-III Benedict on Admiralty FORM No. 3-279

FORM No. 3-279 Motion for Expedited Discovery--Inspection of Vessel Scheduled to Leave Port, Rule 34n1

[Caption] n2

Pursuant to *Rule 34 of the Federal Rules of Civil Procedure*, plaintiff, _____, by its attorneys, _____, hereby moves this Court for an order permitting it to commence discovery immediately in aid of preserving evidence for the trial of the merits of this action and to avoid loss of evidence which may be occasioned by the transitory nature of the defendant Vessel _____ (the "Vessel").

As is shown by the complaint in this action and the affidavit of _____, sworn to on _____, 20 _____, plaintiff's cargo of _____ placed onboard the Vessel at loadport of _____ has been _____ [*describe damage*] contaminated by excess water, which has caused or may cause plaintiff damages amounting to as much as \$ _____. The plaintiff has filed an action both *in rem* and *in personam* against the Vessel and its owner.

The defendant Vessel, by its Master, and through its owner, has refused to permit full inspection of the Vessel to determine the cause of the contamination. The defendant Vessel, an ocean-going tanker of foreign flag, will leave the jurisdictional waters of the United States after discharge and be immune from effective discovery. So that evidence can be obtained and so that the Court may have all of the relevant facts before it at the time the merits of this case are tried, plaintiff needs expedited immediate discovery of the defendant Vessel under *Rule 34 of the Federal Rules of Civil Procedure* to determine the cause of cargo contamination.

Plaintiff therefore requests an order permitting it and marine inspectors and surveyors to enter onto the Vessel, _____, and to inspect all tanks, storage spaces, void spaces, cargo areas, cargo and fuel piping arrangements, pump rooms, and engine rooms, to measure, survey, sample, and test all cargo, fuel oil, bunkers,

lubricants, and liquids onboard the Vessel, to examine and copy the logs and records of the Vessel relating to Vessel operations, cargo movement, fuel, and water supply, to take photographs, and to make such other inspection as may be reasonably calculated to lead to the discovery of admissible evidence.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Marc Rich & Co. International Ltd. v. M/T Nikos Kazantzakis*, Civ. No. 83-40 (E.D.N.Y. 1983). *See also* Form Nos. 3-116B, Affidavit in Support, and 3-116C, Order for Expedited Discovery *infra*.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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OTHER PURPOSES

4-III Benedict on Admiralty FORM No. 3-280

FORM No. 3-280 Affidavit in Support of Motion for Expedited Discovery, Cargo Plaintiff, Rule 34n1

[Caption] n2

STATE OF _____)
COUNTY OF _____) ss
)
)

_____, being duly sworn, deposes and says:

1. I am the _____ [state title] of plaintiff, _____. I am familiar with the facts stated in this affidavit based on my own knowledge, on the records of plaintiff, or information made available to me from other employees of plaintiff. I submit this affidavit in support of plaintiff's motion for leave to immediately take discovery of the defendant Vessel, _____ (the "Vessel"). Plaintiff has commenced this action against the Vessel and its Owner to recover damages up to \$ _____ arising from _____ of plaintiff's cargo of _____ while it was onboard the Vessel.

THE NEED FOR EXPEDITED DISCOVERY

2. Immediate discovery is sought to gather and preserve evidence for trial of this action. If the evidence is not obtained immediately, it will be impossible to obtain at a later time. This discovery is necessary to protect plaintiff's interests not only against the Vessel but also with respect to third parties.

3. The defendant is an ocean-going, foreign flag vessel which will surely leave the territorial waters of the United States

as soon as possible after it completes discharge of its cargo at _____ Terminal, perhaps as early as _____, 20 _____. At that time, there will be no effective means of determining the cause of water contamination of the cargo owned by plaintiff while it was onboard the Vessel.

4. Immediate discovery is both necessary and proper to discover the cause of _____ [*describe damage*]. Examination of the Vessel and its records and the measurement and survey of _____ onboard vessels is not unusual in the maritime industry and may well disclose the cause of contamination. Yet, the defendants and the Vessel master has refused to permit adequate inspection despite plaintiff's repeated requests to do so. We believe the defendants will attempt to prevent discovery of the cause of _____ until after the Vessel leaves U.S. waters.

THE PARTIES

5. Plaintiff is _____ which, among other commodities, purchases and sells _____. Plaintiff is qualified to do business in this State and has an office in this State at _____.

6. Upon information and belief the Defendant Vessel is registered in _____ and is owned by _____, a corporation organized under the laws of the _____. The company and the Vessel are operated from the City of _____ in _____.

THE NATURE OF THE DISPUTE

7. The Vessel loaded a cargo of approximately _____ at _____ in the period from _____ through _____, 20 _____. principal characteristics of the cargo are [*describe*]. This cargo was analyzed and found to have at the loadport by _____, [*describe findings*] issued its certificate of the cargo analysis, both tank by tank, and by ship's composite (Exhibit 1).

8. The master and Vessel's agents at loadport issued clean onboard bills of lading for this cargo. The negotiable bills of lading have been negotiated to plaintiff but are still in the banking channels. A facsimile copy of a non-negotiable copy of those bills of lading is attached as Exhibit 2.

9. When the Vessel arrived in _____, the cargo was again analyzed by independent inspectors. The cargo was found to have _____ [*describe contamination*] well above any permissible standard in the industry. (See Exhibit 3, copy of telex from _____ Inspectors Corp. giving analysis on arrival.) The increased _____ apparently consists of _____ introduced into the cargo tanks from unknown sources. We have been advised that the Vessel transferred cargo between tanks during the voyage and that the volume of cargo has not increased, although the _____ [*contamination*] increased almost _____%.

10. Plaintiff sought permission to board the Vessel and make reasonable inspections to determine the cause of the contamination including, in particular, the right to survey and sample the Vessel's bunkers, all of which is not unreasonable. The master and the owner have refused to allow plaintiff to do so.

11. Plaintiff ordered the Vessel to _____ Terminal at _____, where the Vessel will discharge commencing on _____, 20 _____. The cargo must be discharged into _____ where it can [*describe salvage efforts*].

12. Plaintiff will also suffer damages for the additional transportation costs to carry the cargo to _____ and back to _____ for sale after treatment, potential loss if the cargo has to be sold on a distress basis or if the market drops, the extensive cost of heating, storing, and treating the contaminated

cargo, and other damages which are not yet known. The total loss could equal as much as \$ _____.

THE RELIEF SOUGHT BY THIS MOTION

13. Plaintiff has commenced this action against the Vessel to secure its maritime lien for damages and will seek a warrant of arrest if adequate security for its claims is not produced. Usually, after a vessel is arrested, the Owner's Protection and Indemnity Association ("P & I club") posts a surety for any damages which may be awarded in the court proceeding. At that time, the arrest will be vacated, and the vessel will be free to leave, passing out of the jurisdictional waters of the United States.

14. Certain information can only be obtained now, and other information may be lost or altered if not examined immediately. For example, [*describe what needs to be done*].

15. The deck and engine logs kept on a daily basis and other records relating to _____ [*cargo operations*] are onboard the Vessel. Although theoretically available at a later time, however, the Vessel may well be any place in the world, and there will be scant opportunity to examine the documents first-hand. Thus, even though documents may be available at some later date, their production at a later time is not as useful or probative as inspection and copying now. The Vessel's plans showing piping arrangements, location of pump rooms, and original design are available onboard the Vessel and can be compared with the actual piping arrangements existing on the Vessel. Any later attempt to compare the Vessel's plans may be futile if not extremely expensive. As to photographs, obviously, only current photographs would have real evidentiary value as to the current condition of the Vessel. It will serve no purpose to take photographs at a later date.

16. Plaintiff believes that an immediate inspection of the Vessel prior to discharge and before it sails is necessary to afford a meaningful opportunity to determine why the cargo became contaminated. The Vessel owner even now maintains that no contamination exists in the cargo despite contrary findings by independent testers. If normal discovery processes were followed, not only would the Vessel be out of this country, but many sources of information may have been destroyed or changed.

17. In order to assure adequate and fair examination, plaintiff would have the inspection conducted by a representative of _____, the marine cargo inspectors who inspected and analyzed the cargo at loadport, by independent inspectors and surveyors representing plaintiff as cargo owners, and by inspectors representing the interests of the cargo insurance underwriters. Plaintiff intends to make an examination requested in the proposed order submitted with this motion, all of which is reasonable.

18. I am informed by my counsel that no previous application has been made for this or similar relief, and I am aware of none.

Deponent

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

[Seal]

Notary Public

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Marc Rich & Co. International Ltd. v. M/T Nikos Kazantzakis, Civ.

No. 83-40 (E.D.N.Y. 1983). *See also* Form Nos. 3-116A, Motion for Expedited Discovery *supra*, and 3-116C, Order for Expedited Discovery *infra*.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-281

FORM No. 3-281 Order for Expedited Discovery--Inspection of Vessel Scheduled to Leave Port, Rule 34n1

[Caption] n2

Plaintiff having moved ex parte for an Order pursuant to *Rule 34 Federal Rules of Civil Procedure*, permitting it to commence expedited discovery and to conduct the same on an immediate basis before the defendant Vessel leaves the jurisdiction of this Court, in order to determine the causes of cargo contamination, to preserve evidence for trial of this action, and to prepare for the trial of the merits, it is hereby

ORDERED that plaintiff may commence and have discovery pursuant to Rule 34 immediately following service of the Summons, the Complaint, this Order, and the papers upon which this Order is based; and it is further

ORDERED that plaintiff be and hereby is permitted to take immediate discovery under *Rule 34 of the Federal Rules of Civil Procedure* necessary to discover and preserve evidence for trial of this action and, in particular, to enter onto the Vessel _____, and to inspect all tanks, storage spaces, void spaces, cargo areas, cargo and fuel piping arrangements, pump rooms, and engine rooms, to measure, survey, sample, and test all cargo, fuel oil, bunkers, lubricants, and liquids on-board the Vessel, to examine and copy the logs and records of the Vessel relating to Vessel operations, cargo movement, fuel, and water supply, to take photographs, and to make such other inspection as is reasonably calculated to lead to the discovery of admissible evidence; and it is further

ORDERED that such discovery may be conducted by plaintiff's designated marine inspectors and surveyors, independent marine inspectors and surveyors, and representatives of cargo insurance underwriters.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Marc Rich & Co. International Ltd. v. M/T Nikos Kazantzakis*, Civ

No. 83-40 (E.D.N.Y. 1983). *See also* Form Nos. 3-116A, Motion for Expedited Discovery, and 3-116B, Affidavit in Support *supra*.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-282

FORM No. 3-282 Request for Production--General Form, Rule 34n1

[Caption] n2

Plaintiff _____ requests defendant _____ to respond within
_____ days to the following requests in accordance with the applicable rules.

(1) That defendant produce and permit plaintiff to inspect and to copy each of the following documents:

[List the documents either individually or by category and describe each of them.]

[State the time, place and manner of making the inspection and performance of any related acts.]

(2) That defendant produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:

[List the documents either individually or by category and describe each of them.]

[State the time, place, and manner of making the inspection and performance of any related acts.]

(3) That defendant permit plaintiff to enter *[here describe property to be entered]* and to inspect and to photograph, test or sample *[here describe the portion of the real property and the objects to be inspected]*.

[State the time, place, and manner of making the inspection and performance of any related acts.]

Dated: _____

Attorney for Plaintiff

Dated: _____

U.S. District Judge

FOOTNOTES:

(n1)Footnote 1. This is substantially Form 24 of the Official Forms attached to the Federal Rules of Civil Procedure.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-283

FORM No. 3-283 Request for Production--Prefatory Statement, Rule 34

[Caption] n1

Plaintiff [*Defendant*], by its attorneys, _____ & _____, hereby requests that the
defendant [*plaintiff*] produce for inspection and copying in accordance with *Rule 34 of the Federal Rules of Civil
Procedure*, at the offices of _____ & _____,
_____ at _____ A.M. on the _____ day of
_____, 20 _____, the documents listed below.

The term "Documents" has the same meaning herein as in *Rule 34(a) Federal Rules of Civil Procedure* and includes,
without limitation, whether in the immediate possession or control of plaintiff or its agents or employees, writings,
drawings, graphs, charts, maps, warrants, records, logs, photographs, books of account, books of record, bookkeeping
records, ledgers, stenographic or stenotype notes, and any other data compilations from which information can be
obtained, and, if necessary, translated into readable form.

The term "Writing" includes, without limitation, whether in the English language or otherwise, whether printed, typed
or handwritten, papers; correspondence; communications, inter and intra-office memos; letters; telegrams; cables;
telexes; summaries or records of telephone conversations or personal conversations; interviews; memos; reports,
including reports and/or summaries of investigations and surveys; contracts; drafts; diaries; logbooks; minutes; notes;
studies; surveys; chemical or metallurgical analyses; marginal comments appearing on any documents. For purposes of
this request, a copy of a document or writing is itself a document or writing.

The term "Communication" includes any form of communication including letters, memoranda, words, pictures,
telexes, cables, notes, reports and it further includes any oral communication later reduced to writing or confirmed in

writing.

The term "_____ or its agents, representatives and/or employees" includes within the meaning of "its agents, representatives and/or employees" such corporations or business entities, their sub-agents, and their officers and employees having to do with the operation, maintenance, repair and control of the vessel _____.

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-284

FORM No. 3-284 Request by Plaintiff for Production of Documents--Cargo Damage, Rule 34

[Caption] n1

Pursuant to the provisions of *Rule 34 of the Federal Rules of Civil Procedure*, you are requested to produce and to permit the plaintiff and its counsel to inspect the following:

1. The rough and smooth deck log for the vessel _____ for the voyage in question covering the period from the time the vessel arrived at _____ prior to taking the cargo aboard until the time the last cargo covered by the bills of lading described in the complaint was discharged.
2. Survey reports at port of loading and ports of discharge and at consignee's or connecting carrier's premises.
3. Discharge tallies and delivery receipts.
4. Pre-loading inspection reports of cargo in question.
5. Mate's receipts for all cargo carried aboard the vessel _____ on the subject voyage.
6. Delivery records at ports of discharge in respect to the cargo covered by the bills of lading set forth in the complaint herein.
7. Copies of statements obtained from the Master, officers, crew, stevedores, Terminal personnel, and any persons in respect to this voyage including statements taken by _____, _____, _____ & _____, Esqs.

8. Record of bilge soundings for this voyage.
9. Rough and smooth engine logs for the subject voyage.
10. Cargo and stowage plans for the subject voyage.
11. Ship's capacity plan.
12. Copy of instructions from P & I Club in respect to taking exceptions in bills of lading.
13. Copies of radio and cable messages sent to or from the vessel during the voyage and sent by or received by the Master and ship's officers before the voyage commenced or after the voyage was completed.
14. Insurance agreements and P & I agreements and club rules covering the vessel _____ during the subject voyage at port of loading and ports of discharge.
15. Port logs.
16. Defendant's long form bill of lading.
17. Defendant's booking notes for cargo in question.
18. Defendant's loading certificates for cargo in question.
19. Reports of hatch and discharge surveys of cargo conducted at defendant's behest.
20. Defendant's pier receipts for receipt of cargo in question.
21. Ventilation logs for voyage in question.
22. Pre-loading report of survey of cargo in question.
23. Delivery receipts.
24. Defendant's manifest for the cargo in question.
Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-285

FORM No. 3-285 Request by Plaintiff for Production of Documents--Contamination of Cargo of Oil, Rule 34n1

[Caption] n2

Plaintiff, _____, requests that defendant, [vessel owner], respond within 30 days and produce and permit plaintiff to inspect and copy the following documents:

DEFINITIONS AND INSTRUCTIONS

A. "Defendant" shall be defined to include [vessel owner], and all persons acting for or on behalf of defendant or under its authority and control including any and all agents and employees.

B. "Vessel" shall be defined to mean the vessel _____.

C. "Voyage" shall be defined to mean the voyage of the Vessel for the loading, transportation, and discharge of a cargo of _____ oil from _____ to the port of commencing on or about _____, 20____.

D. "Communications" and "communications" are defined as including, but not limited to, oral conversations (whether face-to-face, by telephone, or otherwise) and any transmittal or exchange of any document or written or electronic message.

E. Unless otherwise specified, the relevant time period of these requests is from _____, 20 _____, to the date of the response.

DOCUMENT SPECIFICATION

1. All documents reflecting, referring or relating to sailing messages to and from the Vessel.
2. All documents referring or relating to arrival messages to and from the Vessel.
3. All documents reflecting, referring, or relating to fuel on-board the Vessel, diesel oil, bunker consumption, Vessel speed, and the like.
4. All bunker tickets, bunker receipts, bunker invoices, and documents relating to bunkers consumed by the Vessel or supplied to the Vessel.
5. All documents reflecting, referring, or relating to the cargo carried on each voyage, cargo surveys, cargo analyses and certificates, bunker surveys and certificates, and ullage reports and surveys.
6. All documents reflecting, referring, or relating to the identity of the cargo owner for each voyage.
7. All documents reflecting, referring, or relating to free water and all documents reflecting, referring, or relating to any increase of free water in the cargo or cargo tanks during these voyages.
8. All documents reflecting, referring, or relating to BS&W content and all documents reflecting, referring, or relating to any increase in BS&W content of the cargoes on these voyages.
9. Regardless of date, all documents reflecting, referring, or relating to bunkering practices of the Vessel, the owners of the Vessel, and/or the managing agents of the Vessel.
10. Regardless of date, all documents reflecting, referring, or relating to owner's practices concerning reports, cables, and communications to be made by the Vessel and/or master as to the Vessel, the Voyage, the cargo, bunker consumption, bunker requirements, bunker supply, or any other aspects of the carriage of cargo and the operation of the Vessel.
11. All documents containing claims by cargo owners and by bill of lading holders against the Vessel or Vessel owners.
12. The deck and engine logs, smooth and rough, for all periods from _____, 20 _____, to the present.
13. The General Arrangement Plan, the Piping Plans, the Heating Coil Plans, and all plans showing pump arrangement for the Vessel.
14. Records of all repairs and modifications to the Vessel from _____, 20 _____, to the present.
15. The crew list of the Vessel on the relevant voyage.
16. Records maintained by the owners, their affiliates, or agents relating to any tests, surveys, analyses, investigations, or samples which were taken prior to, during, and after loading on the Voyage.
17. All documents maintained by the owners, their agents, and affiliates relating to any instructions to the master, agents, and officers concerning tests to be performed before, during, or after loading cargo.
18. Reports, notes, and communications from each surveyor relating to the Vessel, the Voyage, the cargo, the loading,

and the discharge.

19. All communications between owners and their agents, affiliates, and the Vessel relating to the Voyage, cargo, loading, and discharge.

20. The Master's voyage letter or other similar report forwarded upon completion of the discharge on this Voyage.

21. All documents which reflect repairs or modifications of the steam lines and other piping on the Vessel prior to the Voyage, during the Voyage, and subsequent to the Voyage, such records to reflect the date, time, and nature of repairs or modifications.

22. All results of samples and analyses of samples taken by or on behalf of the owner of the cargo on the Voyage before, during, and after discharge.

23. The piping diagram and arrangement of the Vessel.

24. The capacity plan and ullage tables for the Vessel.

25. Diagrams showing heating coils, with details to show distance from the center of the heating coils to bottom of tanks.

26. Engine room requests for repairs, spare parts, and supplies.

27. Deck department requests for repairs, spare parts, and supplies.

28. The chief engineer's and/or first assistant engineer's work book, recording the work performed by the vessel's engine department.

29. The chief officer's work book, recording the work performed by the Vessel's deck department.

30. Records of all repairs made to the Vessel's boilers, heating coils, cargo pipelines, stripping pipelines, and cargo and stripping pumps.

31. All documents identified in response to plaintiff's first interrogatories to defendants.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Marc Rich & Co. International Ltd. v. M/T Nikos Kazantzakis*, Civ. No. 83-40 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-286

**FORM No. 3-286 Request by Defendant for Physical Inspection of Cargo Sample Taken by
Plaintiff--Contamination of Cargo of Oil, Rule 34n1**

[Caption] n2

Defendants, pursuant to *Rule 34, Federal Rules of Civil Procedure*, hereby demand and request:

1. That plaintiff permit the physical inspection, prior to breaking seals, of all cargo, bunker, and other samples of any nature and description whatsoever taken from the Vessel _____, at _____ on _____, 20 _____, or at any other time (hereinafter the "Samples") by any and all surveyors engaged on behalf of or representing the plaintiff, including, but without limitation as to the identity or number of such surveyors, the following:

[set forth names of surveyors known to Defendant]

2. That plaintiff identify and describe, in writing, each and every of the Samples, including at the least with respect to each of said samples the following information:

(a) The substance or material that the sample purports to represent;

(b) Where aboard the vessel _____ the sample was taken and, if from a tank, specifying the location in the tank (fore and aft and where between top and bottom);

(c) By whom the sample was taken, specifying the name and home address of the individual and the name and business address of his employer;

- (d) The date the sample was taken;
- (e) The method of sampling employed;
- (f) The present location of the sample; and
- (g) The person or persons, specifying name and home address and his or their employers and business addresses, who have at any time had or retained custody of the sample since its removal from the Vessel,
_____.

3. That the analyses of the Samples be conducted by an independent petroleum laboratory to be agreed, and if the parties cannot agree, then as directed by the Court, in the presence of representatives of both plaintiff and defendants and that the written results of such analyses be made available to both plaintiff and defendants jointly, without limitation.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Marc Rich & Co. International Ltd. v. M/T Nikos Kazantzakis*, Civ. No. 83-40 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-287

**FORM No. 3-287 Request by Plaintiff for Production of Document Cargo Lost From Vessel's Sinking Enroute,
Rule 34n1**

[Caption] n2

Please Take Notice that plaintiffs herein request the defendant, _____ [vessel owner] ("Owner"), pursuant to *Rule 34 of the Federal Rules of Civil Procedure*, to produce at _____ A.M. on _____, 20 _____, at the office of _____ & _____, for the purpose of inspection and copying, the documents listed below:

1. Shell Expansion Plan of the vessel _____.
2. Trim and Stability Book and Hydrostatic Properties Table of the vessel _____.
3. General Arrangement and Capacity Plans of the vessel _____.
4. All blueprints, diagrams, drawings, sketches, and photographs of the stern tube, seal, keeper ring and stud bolts of the vessel _____.
5. All blueprints, diagrams, drawings, sketches and photographs of the engine room, the shaft alley, the bilges, the bilge pumps, piping, the boiler blow down valve, and the pumps of the vessel _____.
6. All rough and smooth deck log books and abstracts thereof of the vessel _____ for the period 20 _____, through _____.

4-III Benedict on Admiralty FORM No. 3-287

7. All rough and smooth engine room log books and abstracts thereof of the vessel _____ for the period _____, 20____, through _____, 20____.

8. All bell books of the vessel _____ for the period _____, 20____, through _____, 20____.

9. All engine room bilge records of the vessel _____ for the period _____, 20____, through _____, 20____.

10. All radio logs of the vessel _____ for the period _____, 20____, through _____, 20____.

11. Crew list of the vessel _____:

(a) Upon the vessel's arrival at _____ in _____, 20____.

(b) Upon the vessel's arrival at and departure from _____ in _____, 20____.

(c) Upon the vessel's arrival at _____ in _____, 20____.

(d) For the voyage in suit.

12. All licenses, certificates and/or waivers held by the Master, officers and crew in the deck and engine departments aboard the vessel at the time of its sinking.

13. All communications sent and received by _____ or its agents, representatives and/or employees to and from the Master, Chief Engineer or other officers of the vessel _____ between _____, 20____, up to and including the day of the vessel's sinking.

14. All statements of the prior Master, officers or crew from the preceding voyage of the vessel _____.

15. All statements of the prior Master, officers or crew who departed the vessel _____ at _____ in _____, 20____.

16. All communications sent and received by _____ its agents, representatives and/or employees to and from any divers engaged by _____, its agents, representatives and/or employees from the time _____ became the Owner of the vessel _____ up to the present.

17. All communications among any agents, representatives and/or employees of _____ relating to the vessel _____ from _____, _____, 20____, to the present.

18. All communications sent and received by _____ to and from any of its agents, representatives and/or employees from the date of the purchase of the vessel by _____ up to the present having to do with the crewing, maintenance, repair and operation of the vessel _____.

19. All agency and management or other agreements, understandings or arrangements between _____ and:

[List Persons or Firms]

4-III Benedict on Admiralty FORM No. 3-287

or between any of the above having to do with the operation and management of the vessel _____.

20. All reports, records and communications of any representative of _____, its agents, representatives and/or employees in attendance at _____ in connection with the vessel _____'s loading, maintenance repairs, crewing, labor difficulties, operations and expediting the voyage.

21. All certificates, stability calculations and communications between the National Cargo Bureau and _____ or any of its agents, representatives and/or employees in connection with the voyage in suit.

22. All communications sent and received by _____ its agents, representatives and/or employees to and from any of its underwriters and/or underwriters' representatives concerning the loss of the vessel _____ and its cargo.

23. All communications sent and received by _____ its agents, representatives and/or employees to and from the United States Coast Guard from _____, 20 _____, up to the present.

24. All investigation reports of the United States Coast Guard relating to the sinking of the vessel _____.

25. All communications sent and received by _____ its agents, representatives and/or employees to and from the American Bureau of Shipping or any representatives of the American Bureau of Shipping from the time _____ became the Owner of the vessel _____ up to the present.

26. All investigation reports of the American Bureau of Shipping including any studies or analyses inquiring into the sinking of the vessel _____.

27. All communications sent and received by _____ its agents, representatives and/or employees to and from the Maritime Authorities of the _____ [*country where flagged*].

28. All communications between the Liberian authorities and _____, its agents, representatives and/or employees and counsel concerning the loss of the vessel _____.

29. All survey reports, including those of American Bureau of Shipping, relating to the vessel _____ from the date of purchase by _____ up to and including the day it sailed from _____ in _____, 20 _____.

30. All survey reports, or reports of condition and survey status made of the vessel _____ by or for _____ its agents, representatives and/or employees prior to or for the purchase of the vessel _____.

31. All communications sent by or received by _____ its agents, representatives and/or employees as a prospective purchaser in connection with condition or survey status of the vessel _____.

32. All survey and inspection reports issued by the _____ authorities and communications between _____ its agents, representatives and/or employees concerning such surveys, and inspections and deficiencies.

4-III Benedict on Admiralty FORM No. 3-287

33. All off hire and on hire surveys of the vessel _____.
34. Repair list and engine department's spare parts orders for the _____ and for the voyage in suit and for the four (4) voyages preceding same.
35. All invoices denoting repairs to the vessel _____ from the time _____ became the Owner of the vessel up to and including the day it sailed from _____ in _____, 20____.
36. All communications sent and received by _____ its agents, representatives and/or employees to and from any repairmen, contractors, engineers or surveyors from the time the vessel _____ was purchased by _____ up to the present.
37. All photographs of repairs or damages to the vessel _____.
38. All communications, reports and records concerning the entry of water into the hull or engine room of the vessel _____ and the repairs, if any, in connection therewith, from the time of purchase by _____ until the present.
39. All specifications for repairs made by or for the owners of the vessel _____ and/or its underwriters.
40. All correspondence, reports, invoices and their supports from the vessel _____'s agents, port captains, port engineers, surveyors, owners' and managers' agents, representatives and/or employees at _____ [*list ports*] in connection with services, materials and repairs rendered to the vessel, her owners, operators, agents and representatives.
41. All reports, records and communications concerning cement boas or repairs with cement on the vessel _____.
42. All reports, records and communications concerning the operation, maintenance and repairs of water pumps on the vessel _____.
43. All statements of divers, repairmen, surveyors, agents, pilots, port captains relating to the vessel _____ from _____, 20 _____, to the present.
44. All reports and communications of casualties or damages to the vessel _____ and Master's Protests made for the vessel.
45. All reports, records and communications concerning the presence of water and pumping of the vessel's engine room, holds, bilges, compartments from _____, 20 _____, to the present.
46. All invoices for fuel oil, lube oil, water and stores purchased or deliveries for the vessel _____ at _____.
47. All invoices, reports, communications and records concerning pumps or other rental equipment for the vessel _____ at _____.
48. All drydocking reports of the vessel _____.

49. Load Line Certificate of the vessel _____ in effect at the time the vessel sailed from _____ and all communications concerning any inspection or endorsements entered thereon.

50. All Certificates of Class issued by the American Bureau of Shipping from the date of purchase of the vessel _____ by _____, up to and including those certificates in effect at the time the vessel sailed from _____.

51. All operations, maintenance, repair or safety instructions, manuals or procedures promulgated by _____, its agents, representatives and/or employees to or for the vessel _____, its Master or officers.

52. Vessel drawings, plans or manuals:

[List]

53. Hull insurance policy.

54. Increased value insurance policy.

55. P & I insurance policy.

56. Excess Liability Insurance Policy.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

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

(n2)Footnote 2. *See* Form Nos. 3-1 and 3-116.2



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OTHER PURPOSES

4-III Benedict on Admiralty FORM No. 3-288

FORM No. 3-288 Request by Defendant for Production of Documents--Cargo Damage, Rule 34

[Caption] n1

Please Take Notice that pursuant to *Rule 34 of the Federal Rules of Civil Procedure*, _____, as owner of the vessel _____, requests the plaintiffs to produce and permit said defendant, _____, to inspect, copy, test or sample each of the following:

1. Charter-party concerning the shipment and voyage in suit.
2. Bills of lading concerning the shipments in suit.
3. All specifications concerning the shipments in suit.
4. Subrogation or Loan Receipt concerning the shipments in suit.
5. All correspondence and documents submitted to cargo underwriters concerning the shipments in suit.
6. Reports issued by any surveyor or surveyors or representatives attending at the time of loading or discharging of the subject cargoes.
7. Any certificate or certificates and/or analyses regarding the quantity and/or quality of the subject cargoes issued at the loading and/or discharging port.
8. Delivery receipt or receipts for the subject shipments.

9. Reports of survey or surveys made in connection with the loading, carriage or discharge of the subject shipments.
10. Before loading, after loading or "empty" certificates issued in connection with the loading, carriage or discharge of the subject shipments.
11. Report or reports, analyses or other memoranda prepared by plaintiffs, the shipper and/or its agents, servants and/or employees in connection with the loading, carriage or discharging of the subject shipments.
12. A copy of instructions to the Master, relative to signing of Bills of Lading.
13. List of all samples of the shipments in question and the name and address of the present custodian of said samples.
14. All samples of the shipments taken at loading and at discharge.

The requested documents and items are to be produced on the _____th day of _____, 20____, at _____ Street, _____, _____, Room _____, at _____ p.m. at which time they will be inspected, copied, tested or sampled and then returned.
Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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OTHER PURPOSES

4-III Benedict on Admiralty FORM No. 3-289

FORM No. 3-289 Request by Plaintiff for Production of Documents--On-Deck Cargo Lost Overboard, Rule 34n1

[Caption] n2

Comes Now the plaintiff in the above-styled cause, and, pursuant to the provisions of *Rule 34 of the Federal Rules of Civil Procedure*, requests that the defendant produce, on or before a date thirty (30) days from the date of the filing of this request, at the offices of _____, _____ & _____, _____, _____, the following documents, for inspection or copying:

1. A true and correct copy of any policy of insurance covering, for whatever variety of peril, the vessel _____, the _____ on the voyage which is the basis of this case.
2. Any written report, survey or other document identified by you in your answer to interrogatory _____ filed this date.
3. Each and every document that is identified by you in your answer to question _____ the interrogatories filed this date.
4. Each and every document identified by you in your answer to interrogatory _____ filed this date.
5. Any written stability calculation or similar document covering the vessel and voyage which are the basis of this lawsuit.
6. Any written report identified by you in your answer to interrogatory _____ filed this date.

7. Any profile, capacity plan, stability booklet, trim booklet, or other similar document concerning the tug or vessel and the voyage which is the basis of this case.

8. Each and every survey identified by you in your answer to interrogatory _____ filed this date. n3

9. Each and every survey, certificate, or other document dealing with or concerning examination for, approval by, or consideration by and classification society.

10. Any written survey report resulting from a survey identified by you in your response to interrogatory _____ n4 filed this date.

11. Any photograph identified by you in your response to interrogatory _____ n5 filed this date.

12. Any repair request or recommendation identified by you in your response to interrogatory _____ n6 filed this date.

13. Any checker's receipt, mate's receipt, tabulation, compilation, notes, tally sheets, or other document of whatever variety indicating the number, amount, or bulk of cargo delivered to, loaded by or on behalf of, carried by, or unloaded by or on behalf of defendant on the voyage which is the basis of this case.

14. Any survey discussing, dealing with, considering, or concerning the cargo and voyage which are the basis of this case, other than the survey made by _____ and Company Surveyors in _____, at the conclusion of this voyage.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Commercial Adolfo S. Pagan, Inc. v. Alabama Puerto Rico Barge Lines, Civ. No. 75-111-T (S.D. Ala. 1975), courtesy of Hand, Arendall, Bedsole, Greaves & Johnston, Mobile, Alabama.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.

(n3)Footnote 3. *See* Form No. 4-10 *infra*.

(n4)Footnote 4. *See* Form No. 4-10 *infra*.

(n5)Footnote 5. *See* Form No. 4-10 *infra*.

(n6)Footnote 6. *See* Form No. 4-10 *infra*.



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4-III Benedict on Admiralty FORM No. 3-290

**FORM No. 3-290 Defendant Cargo Loader's Request for Production of Documents--Collapse of Container
Spilling Cargo Onto Deck**

[Caption] n1

_____, one of the defendants, by _____ and _____, its attorneys; pursuant to *Fed. R. Civ. P. 34*, moves that the plaintiff in this proceeding, _____, produce for inspection and copying, at the offices of _____, _____ (address), within thirty days after the date of service of this Request, or at a time sooner if mutually agreed upon by counsel, the following:

1. All documents, photographs, or other things identified in the Answers of _____ to the Interrogatories of _____.
2. Any and all bills of lading, dock receipts, warehouse receipts, tallies, exception sheets, memoranda, reports, survey reports, or other documents relating to the container and its contents that are the subject matter of this action.
3. Any and all agreements, invoices, orders, contracts, or other documents evidencing any contractual relationship between _____ and any of the other parties of this action.
4. Any and all survey reports, engineering reports, damage reports, or other reports prepared by you, or on your behalf, in connection with the accident that is the subject matter of this action.
5. Any and all insurance agreements under which any person, firm, corporation, or other entity carrying on an insurance business, may have an interest in or right to any proceeds of any judgment entered in your favor in this action.

6. Any and all photographs, drawings, sketches, plats, diagrams, or other graphic portrayals of the container and its contents or the scene of the accident.

7. Any and all hatch reports, stevedore's tallies, stowage plans, stevedore summaries, manifest, correspondence, memoranda, notes, telexes, or other documents or records relating to the loading of the container on or about _____, 20____.

8. All written statements taken from anyone with regard to this incident.

9. Copies of all written reports made by any marine surveyors or other experts whom you intend to call as witnesses in this case.

10. Any other document containing any other information relevant to this suit.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-291

FORM No. 3-291 Request by Plaintiff for Production of Documents--Collision, Rule 34n1

[Caption] n2

Plaintiff requests that defendant produce the following described documents at the offices of _____,
_____ & _____, _____, within _____ days,
pursuant to *Rule 34, F.R.C.P.*:

1. All log books of the vessel _____ for the period referred to in the complaint.
2. All maintenance and inspection records concerning the vessel _____, for the period commencing
_____ months prior to the casualty, and any and all survey reports for the same period.
3. All accident reports and/or reports of casualty covering or in any way relating to the casualty referred to in the
complaint.
4. All tow diagrams for _____, 20 _____.
5. All survey reports concerning the casualty referred to in the complaint.
6. The personnel files of all persons aboard the vessel _____ on _____, 20 _____.
7. All other documents known to plaintiff reporting or describing the casualty referred to in the complaint.

Dated this the _____ day of _____, 20 _____.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in In the Matter of Williamson Towing Co., Inc., Civ. No. GC-7320-K (N.D. Miss. 1973), and Williamson Towing Co., Inc. v. State of Illinois, 396 F. Supp. 431, 2076 A.M.C. 1203 (E.D. Ill. 1975), *aff'd*, 534 F.2d 758 (7th Cir. 1976), courtesy of the Office of the Attorney General, Chicago, Illinois.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-292

FORM No. 3-292 Request by Plaintiff for Production of Documents/Collision, Rule 34, Another Formn1

[Caption] n2

Plaintiff, _____, requests defendant, _____, to produce the following documents for inspection and copying at the offices of _____, _____ & _____, _____, on or before thirty days from receipt of this request:

1. All logs, notebooks, and other written records concerning the maneuvering and navigation of vessel _____ from the time she got underway to proceed down the _____ River on the evening of _____, 20 _____, or morning of _____, 20 _____, until twenty-four hours after the collision between _____ and _____, including, but not limited to:

(a) The rough deck log or other record showing contemporaneous entries of all changes in course and speed and the time thereof;

(b) The finished deck log;

(c) The navigator's notebook or other record showing all soundings, bearings, and ranges taken to fix the position of _____;

(d) The engineer's bell book or other record showing all orders concerning change of speed or reverse of engines and the time which such orders were received and carried out;

(e) The chart in use by _____ at the time of the collision showing any plotting of the

position of _____.

2. All reports and/or statements submitted and/or prepared by defendant and its agents or employees containing any information as to how, where, when and under what circumstances the collision occurred, including, but not limited to, reports and statements submitted to any insurance company, reports and statements submitted to the United States Coast Guard and internal reports and statements.

3. All reports, notes or other writings showing the current, weather and visibility conditions at the time and place of the collision.

4. All photographs taken of either vessel and of the scene of the collision within 30 minutes prior to the collision and all photographs taken at any time after the collision of the damage to either vessel caused by the collision.

5. All portions of the shipyard sea trial report of the sea trials of _____ conducted in early _____, 20 _____, as identified in the deposition of _____, which contain information concerning the maneuvering characteristics, deceleration characteristics and stopping distances and times of _____.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del. 1976), courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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OTHER PURPOSES

4-III Benedict on Admiralty FORM No. 3-293

**FORM No. 3-293 Request by Defendant for Production of Documents--Collision Involving Fishing Vessel, Rule
34n1**

[Caption] n2

Comes now defendant _____ Corporation in the above styled cause and requests that the plaintiffs produce for inspection and copying, on or before noon on a day thirty (30) days from the date of service of this request, at the offices of _____, _____ & _____, _____, _____, the following documents:

1. Each share sheet or other document showing the amount of the catch and distribution of same for each trip made by the vessel _____ during the years 20 ____ and 20 ____.
2. Each receipt or other document showing the amount of sales of shrimp or other fish caught by the vessel _____ during the years 20 ____ and 20 ____.
3. All Federal and State Income Tax Returns filed by the plaintiffs during the years 20 ____ and 20 ____.
4. Each and every survey or written estimate showing the damages to the vessel _____ alleged to have occurred as a result of the accident which is the basis of this lawsuit.
5. All fuel tickets or other receipts evidencing purchases of fuel for use by the vessel _____ during the years 20 ____ and 20 ____.
6. Each and every financial statement made up for the operation of the business of fishing from the vessel _____

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_____ by plaintiffs during the years 20 ____ and 20 ____.

7. Each and every grocery bill or similar receipt evidencing payment of money or incurring of liability of groceries, food, or similar items to be used aboard the _____, during the years 20 ____ and 20 ____.

8. Each and every bill, receipt, or invoice evidencing the expenditures on net repair for the equipment aboard the _____ during the years, 20 ____ and ____.

9. Each and every bill, invoice, or similar document evidencing expenditures for ice to be used aboard the _____ during the years 20 ____ and 20 ____.

10. Each and every bill, statement, invoice, or similar document evidencing payment for or the incurring of liability for repair work of any variety to be done to the _____ during the years 20 ____ and 20 ____.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Regan v. Southern Natural Gas Co.*, Civ. No 75-146-T (S.D. Ala.), courtesy of Hand, Arendall, Bedsole, Greaves & Johnston, Mobile, Alabama.

(n2)Footnote 2. *See* Form No.3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-294

**FORM No. 3-294 Request by Defendant (Charterer) to Vessel Owner for Production of Documents: General
Average, Rule 34n1**

[Caption] n2

Pursuant to the provisions of *Rule 34 of the Federal Rules of Civil Procedure*, you are requested to produce and to permit the plaintiff and its counsel to inspect and copy each of the following:

1. The certificate of incorporation of the plaintiff.
2. The dock and engine room logbooks, both rough and smooth of the vessel _____ for the period dating from two years prior to the date of the casualty in question, i.e., on or about _____, 20____, to _____, 20 ____.
3. All reports of surveys performed in connection with the casualty in question.
4. All repair records involving the engineering plant of the vessel _____ from _____, 20 _____, to 20 _____.
5. The standing engine room order of the vessel _____ effective on the date of the casualty in question.
6. All documents and writings between the plaintiff or its agents or employees with third parties concerning the casualty in question.

4-III Benedict on Admiralty FORM No. 3-294

7. The certificate of classification for hull and machinery of the vessel _____ effective at the date of the casualty in question.

8. The load line certificate for the vessel _____ effective on _____, 20____.

9. The crew list and officer list of the vessel _____ for the period from _____, 20____, to _____, 20____.

10. All reports of surveys performed at the period of drydocking of the vessel _____ immediately prior to the casualty in question.

11. All correspondence between the plaintiff or its agents and _____ (Average Adjusters), between 20____, to the present.

12. The General average bond or undertaking, if any, issued by cargo interests to the plaintiff for the casualty in question.

13. The document or writing of the plaintiff declaring the General Average for the casualty in question.

14. All reports of surveys of engineering plant or any part thereof issued from _____, 20____, to _____, 20____.

15. All repair invoices plaintiff received from _____ Dock for repairs performed at _____ to the _____ for the period _____, 20____ to _____, 20____.

16. All correspondence between the plaintiff or its agents and _____ Dock between _____, 20____, and _____, 20____, in regard to the casualty in question.

17. All agency agreements between the plaintiff and _____, Inc. in effect on _____, 20____.

18. The certificate of registry of the vessel _____.
Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Malmonides Transportation Corp. v. India Supply Mission*, 76 Civ. 5676 (LPG) (S.D.N.Y.).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-295

FORM No. 3-295 Request by Plaintiff for Production of Documents--Injury, Rule 34n1

[Caption] n2

Pursuant to *Rule 34 of the Federal Rules of Civil Procedure*, plaintiff hereby requests that defendant produce for inspection and copying the following tangible things, at the offices of _____ at _____ on the _____ day of _____, 20____, at _____ A.M.:

1. Any and all statements made by the plaintiff concerning the accident that you have in your possession, custody, or control.
2. Investigation report, if any, of plaintiff's accident.
3. Accident report, if any, relating to plaintiff's accident.
4. Crew list of the vessel for the voyage in question, including addresses and last known employer.
5. Master's or voyage letter, telegrams, telexes, memos, or other communications containing any reference to plaintiff.
6. Plaintiff's earnings records while in defendant's employ aboard the vessel _____.
7. Medical, deck, and official logbook entries, including but not limited to base wages, overtime, penalty time, vacation, and other fringe contributions relating to plaintiff for the voyage in question.

8. Master's Certificate issued to plaintiff, if any.
9. Copies of any pre-employment medical/physical examination report relating to plaintiff.
10. Copies of all diagrams and photographs taken of the equipment and/or area involved in plaintiff's accident.
11. All maintenance and repair records, if any, relating to the equipment and/or area of the scene of plaintiff's accident, whether made before or after plaintiff's discharge from the vessel.
12. All statements and recordings obtained by defendant and/or its agents relating to the circumstances of the plaintiff's injury aboard the subject vessel, including the condition of the equipment and/or the area in question.
13. Copies of all Marine Index Bureau (MIB) reports relating to plaintiff.
14. Copies of all other reports received from insurance, investigative, and other informational sources with regard to the following:
 - (a) Plaintiff's background;
 - (b) The facts and circumstances surrounding the occurrence in question; and
 - (c) Plaintiff's past and present physical and mental condition.
15. Copies of all medical records, reports, and other information regarding plaintiff's past and present physical condition, other than those supplied by plaintiff and his attorney.
16. All witness statements of any kind or character pertaining to plaintiff's accident, or the prevailing conditions relating thereto, whether signed or unsigned.
17. A copy of Coast Guard forms filed by defendant relating to plaintiff.
18. In addition to providing plaintiff with photocopies of log entries pertaining to plaintiff, as called for in request number _____, produce for inspection the original official log book, deck log book, medical log book, and all maintenance and repair log books for the vessel pertaining to the voyage in progress at the time the plaintiff became ill or was injured.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Singh v. Texaco, Inc.*, Civ. No. 83-4865 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-296

FORM No. 3-296 Request by Plaintiff for Production of Documents, Additional Request--Injury, Rule 34

[Caption] n1

Pursuant to the provisions of *Rule 34 of the Federal Rules of Civil Procedure*, you are requested to produce and to permit the plaintiff and its counsel to inspect the following:

1. The invoice for the purchase of rope involved in the accident on the date in question.

Plaintiff requests that documents be made available for inspection and copying at the offices of _____, Building, _____, within thirty days from the date of service thereof.

This is _____ day of _____, 20 _____.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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OTHER PURPOSES

4-III Benedict on Admiralty FORM No. 3-297

FORM No. 3-297 Request for Production, Inspection and Copying of Documents--Seaman's Personal Injury

[Caption] n1

Plaintiff, _____, by his attorneys, _____, requests the defendant, United States of America, to produce pursuant to *Fed. R. Civ. P. 34*, within forty-five days after service of this Request upon said defendant, the following documents:

1. A copy of the personal injury report rendered relative to this occurrence.
2. A copy of the medical log of the _____ relating to the voyage in question and any treatment and/or examinations to or of the plaintiff.
3. A copy of any rough logs which in any way refer to the plaintiff or his injury.
4. A copy of the plaintiff's overtime record while employed aboard the _____.
5. A copy of the pre-employment physical examination made of plaintiff.
6. A copy of any statements signed by the plaintiff.

Attorneys for Plaintiffs

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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OTHER PURPOSES

4-III Benedict on Admiralty FORM No. 3-298

FORM No. 3-298 Request by Defendant for Production of Documents--Personal Injury, Rule 34

[Caption] n1

Pursuant to the provisions of *Rule 34, Federal Rules of Civil Procedure*, you are requested to produce and to permit the defendant and its counsel to inspect and copy each of the following:

1. Income tax returns of the plaintiff for the years _____.
2. All medical records, reports of treating physicians and/or examining physicians, x-ray reports, hospital charges, drug charges, physicians charges or statements and any other documents regarding treatment, examination or hospitalization of the said plaintiff, _____, for the injuries allegedly sustained in the incident referred to in the complaint or regarding any other injuries wherever sustained.
3. Any statements or records made by plaintiff in connection with the incident or injuries alleged in the complaint.
4. Any statement made by any person and having to do in any manner with the alleged occurrence out of which this lawsuit arose, whether such statement be handwritten, recorded, taken stenographically, or otherwise.
5. A summary of any oral statement made by any person and having to do with the alleged occurrence of which this loss arose.
6. All photographs, charts, and similar illustrative matter having anything to do with the alleged occurrence out of which this lawsuit arose.

7. All x-rays, hospital records, and medical reports including doctors' reports, having to do with or in any way describing any injury alleged to have been received by the plaintiff in the alleged occurrence out of which this lawsuit arose.

Defendant requests that said documents be made available for inspection and copying at the offices of _____ Building _____, _____, within 30 days from the date of service thereof.

THIS, the _____ day of _____, 20 _____.

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-299

FORM No. 3-299 Request by Defendant for Production of Documents: Injury to Longshoreman, Rule 34n1

[Caption] n2

Please Take Notice that the defendant, _____ hereby requests, pursuant to Rule 34 of the Federal Rules of

Civil Procedure, the Plaintiff, _____, to produce at the offices of the undersigned, located at _____ on the _____ day of _____, 20 _____, at _____ o'clock, the following documents in his possession for the visual inspection by defendant's counsel and to permit counsel to obtain copies to be made thereof by means of duplication, copying, photostating, and/or other acceptable means:

1. Income tax returns for the years 20 _____ to the present and authorization directed to the Deputy Director, Internal Revenue Service, for the area where plaintiff files his returns.
2. Any and all statements taken by plaintiff or his representative from individuals alleged to be witnesses to the incident which is the subject of the instant lawsuit.
3. Any and all photographs of the area in which the subject incident occurred.
4. Any and all photographs allegedly depicting plaintiff's injury or injuries.
5. Plaintiff's Waterfront Commission Card.

6. Plaintiff's automobile license.

7. Certified copy of the entire U.S. Department of Labor Compensation file and an authorization directed to the U.S. Department of Labor.

8. Certified copy of the entire chart of any and all hospitals or clinics where plaintiff has received treatment for injuries arising from the subject incident and an authorization directed to the Medical Records Librarian at said hospitals or clinics.

9. Any and all medical reports submitted by treating physician or physicians who have examined plaintiff for purposes of evaluation and/or diagnosis in connection with the injuries allegedly sustained as a result of the incident which is the subject of the instant litigation.

10. The names, addresses, social security numbers, and Waterfront Commission numbers of all persons plaintiff claims were witnesses to the incident that is the subject of the instant litigation.

11. The W-2 forms given or mailed to plaintiff from all employers from 20 ____ to date.

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Woods v. Hellenic Lines, Ltd.*, Civ. No. 83-4347 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-300

FORM No. 3-300 Request by Plaintiff for Production of Documents--Injury Caused by Collision, Rule 34n1

[Caption] n2

Plaintiff, _____, requests defendant, _____, to produce the following documents for inspection and copying at the offices of _____, _____, on or before thirty days from receipt of this request:

1. All logs, notebooks, and other written records concerning the maneuvering and navigation of _____ from the time she got underway to proceed down the _____ River on the evening of _____, 20 _____, or morning of 20 _____, until twenty-four hours after the collision between _____ and _____, including, but not limited to:

- (a) The rough deck log or other record showing contemporaneous entries of all changes in course and speed and the time thereof;
- (b) The finished deck log;
- (c) The navigator's notebook or other record showing all - soundings, bearings and ranges taken to fix the position of _____;
- (d) The engineer's bell book or other record showing all orders concerning change of speed or reverse of engines and the time which such orders were received and carried out;
- (e) The chart in use by _____ at the time of the collision showing any plotting of the

position of _____.

2. All reports and/or statements submitted and/or prepared by defendant and its agents or employees containing any information as to how, where, when and under what circumstances the collision occurred, including, but not limited to, reports and statements submitted to any insurance company, reports and statements submitted to the United States Coast Guard and internal reports and statements.

3. All reports, notes or other writings showing the current, weather and visibility conditions at the time and place of the collision.

4. All photographs taken of either vessel and of the scene of the collision within _____ minutes prior to the collision and all photographs taken at any time after the collision of the damage to either vessel caused by the collision.

5. All portions of the shipyard sea trial report of the sea trials of _____ conducted in early _____, 20 _____, as identified in the deposition of _____, which contain information concerning the maneuvering characteristics, deceleration characteristics and stopping distances and times of _____

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del. 1976), *modified*, 559 F.2d 1208 (3d Cir. 1977) courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-301

FORM No. 3-301 Request by Plaintiff for Production of Documents: Injury to Harbor worker, Rule 34n1

[Caption] n2

Plaintiff, through his attorneys, _____, requests defendant to produce the following documents for inspection and copying pursuant to *Rule 34 of the Federal Rules of Civil Procedure*:

1. All plans, specifications, drawings, architectural designs, plats, brochures, and all other written memorandums or documents, writings, papers, records, and all other tangible things which relate to the rig and crane and boom involved in the casualty in question, as well as any surveys concerning said rig, crane, and boom.
2. All maintenance or repair logs and all other records relating to any maintenance or repairs which were performed on the rig in question, including the crane and boom, from the time the rig in question was first acquired by defendant to the present.
3. All contracts, agreements, understandings, memorandums, and indemnity agreements relating or referring to the existence, duration, and nature of the relationship between defendant and the person or organization having the work done at the time of the casualty in question.
4. All records, reports, statements, correspondence, memoranda, notes, summaries, and all other documents relating in any way to the occurrence in question.
5. Any investigation report(s) conducted by you or your representatives or insurers, including the exhibits thereto which were made in the ordinary course of business.

6. All records, reports, memorandums, evaluations, summary of treatment, medical records and reports, photographs, and all other written or tangible material or evidence relating or otherwise referring to plaintiff.

7. All wage records, including pay stubs and records of base pay, overtime pay, subsistence pay, holiday pay, and fringe benefits, for:

(a) Plaintiff, from _____, 20 _____, to 20 _____;

(b) The worker who replaced plaintiff after the incident in question, from _____, 20 _____, to 20 _____.

8. All photographs of the rig in question, its equipment, and the crane and boom involved in the occurrence in question taken at the following times:

(a) On the date of construction;

(b) On the date of first acquisition by defendant;

(c) At any time thereafter, including after the casualty in question.

9. Any and all insurance policies, including but not limited to hull insurance, P & I insurance, and liability insurance, relating to the rig in question, its equipment or appurtenances, in existence at the time of the occurrence.

10. Defendant's original personnel file, in its entirety, concerning plaintiff.

Dated: _____

Attorney for Plaintiff

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 & Mertle, Seattle, Washington.

(n2)Footnote 2. See Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-302

FORM No. 3-302 Request by Plaintiff for Production of Documents--Wrongful Death Action by Estate of Seaman, Rule 34n1

[Caption] n2

Comes Now the plaintiff, by and through counsel, and pursuant to *Rule 34 of the Federal Rules of Civil Procedure* requests that the following documents be produced within thirty days:

1. The Wheel House logs of the vessel _____ from _____, 20 _____ through _____, 20 _____.
2. The Engine Room logs of the vessel _____ from _____, 20 _____ through _____, 20 _____.
3. The entire personnel file of Seaman _____ [*plaintiff's decedent*], including but not limited to his application(s) for employment, W-2 Forms for the past five years, including 20 _____, and copies of all physical examination(s) reports completed at the direction of defendant.
4. Copies of the applicable sections of the defendant's P&I Insurance Policy reflecting all coverage of this claim.
5. Copies of all witnesses' statements taken at defendant's direction.
6. Copies of defendant's Medical Insurance Policy and Life Insurance Policy carried on plaintiff's decedent by Defendant.

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7. Copy of the report to the Coast Guard and/or OSHA regarding plaintiff's decedent's death.

8. For plaintiff's inspection, the original physical examination report as completed by _____ on 20 _____, on plaintiff's decedent.

9. A copy of the application for employment of each engineer and/or assistant engineer which was employed during _____, 20 _____ through and including _____, 20 _____.

10. A copy of the physical examination report of each engineer employed by defendant from _____, 20 _____ through and including _____, 20 _____.

11. A copy of the contract of employment between defendant and _____ [*the physical examination doctor*].

12. A copy of the cancelled checks which reflects payment for the physical examinations given to the engineers employed by defendant from _____, 20 _____ through 20 _____.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Carlton v. M/G Transport Services, Inc.*, 698 F.2d 846 (6th Cir. 1983), furnished through the courtesy of Miller and Miller, Louisville, Kentucky.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-303

**FORM No. 3-303 Motion To Shorten Time for Responding to Request for Production of Documents--Safety
Regulation, Rule 34n1**

[Caption] n2

Plaintiff, _____, by its attorneys, _____, moves for an Order shortening from thirty (30) to ten (10) the number of days within which _____, defendant, must respond to the Request for Production, Inspection and Copying of Documents propounded to it by _____ on _____, 20 _____. Undersigned counsel represents that plaintiff has been trying for several months to determine whether defendant had written safety regulations but _____ has resisted, even refusing to answer an interrogatory on the existence of such regulation after the court ordered it to fully answer, and it is necessary for plaintiff to have any such regulations for his preparation for the trial of this case, which is set for _____, 20_____.

Dated: _____

Attorney for Plaintiff

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 Joseph W. Thomas, Esq., New Orleans, Louisiana.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-304

FORM No. 3-304 Order for Inspection of Vessel, Rule 34n1

[Caption] n2

On _____, 20 _____, the Court held a telephonic conference at the request of counsel. Present at the telephonic conference were _____ for plaintiff, and _____ for defendant. Counsel requested the Court to resolve problems with regard to discovery disputes that have arisen. After statements of counsel and by their agreement, IT IS ORDERED:

1. Plaintiff and his expert may board the vessel _____ at _____, _____ on _____, 20 _____, for the purpose of making audiovisual inspection of the vessel.
2. Neither plaintiff's counsel nor expert shall communicate with members of the crew while aboard the vessel under this order.
3. The plaintiff and his expert shall be accompanied by a person to be designated by defendant or defendant's counsel.
4. The Court appoints _____ as Special Master to board the vessel for the purpose of assuring that the portion of this order regarding communication with crew members is observed. In the event disputes arise between the parties, the Special Master shall escort the representatives of the parties to separate places on the vessel. They shall remain there until they disembark.
5. The Special Master and plaintiff's representative shall disembark at _____ on the _____ River.

6. The Special Master shall in no event appear as a witness in the trial of this action.

Dated: _____

U.S. District Judge

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Carlton v. M/G Transport Services, Inc.*, 698 F.2d 846 (6th Cir. 1983), furnished through the courtesy of Miller and Miller, Louisville, Kentucky.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-305

FORM No. 3-305 Request for Production of Documents--Insurance Agreement, Rule 34

[Caption] n1

Please Take Notice, that pursuant to *Rule 26(b)(2) Federal Rules of Civil Procedure*, you are required to furnish to the plaintiff a copy of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the within action or to indemnify or reimburse for payments made to satisfy the said judgment.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-306

**FORM No. 3-306 Request by Intervening Materialman to Ship Mortgagee for Production of Documents--Sale of
Vessel, Rule 34n1**

[Caption] n2

_____ [Marine Service, Inc.], hereby requests, pursuant to *Rule 34 of the Federal Rules of Civil Procedure*, that _____, produce and permit _____ [Marine Service, Inc.], to inspect and copy each of the following documents:

1. All promissory notes and other loan documents and agreements made and delivered by _____ [Mortgagor] to _____ Bank [Mortgagee] any time during the period of _____, 20____, through _____, 20____, in respect of loans made to _____ by _____ [Bank] with or without the participation of any other bank or lender, and all documents in the possession, custody or control of _____ which in any way pertain to the negotiations for the loans evidenced thereby, participations of other banks in the loans evidenced thereby, disbursement of the proceeds of the loans evidenced thereby, security given for the repayment of the loans evidenced thereby and payment and discharge or partial payment or discharge of the indebtedness evidenced thereby.

2. All documents (including forms--including conformed copies, partially completed copies, true and accurate copies, partially inaccurate or partial completed copies, writings, instruments, U.S. Coast Guard forms, etc.) which were executed and delivered by _____ or otherwise transmitted all submitted to the U.S. Coast Guard, Port of _____, in connection with the documentation of the Vessel _____, Official No. _____, at the Port of _____, _____, on _____, 20____, under Permanent Enrollment No. _____, including originals or true copies of all correspondence and communication of _____ to the U.S. Coast Guard and all

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correspondence and communications of the U.S. Coast Guard to _____ in any way pertaining to such documentation.

3. The documents specified in Paragraph 2 hereof for and with reference to the documentation of the Vessel _____, at the Port of _____, on _____, 20_____, under Permanent Enrollment No. _____.

4. All certified copies of the purported mortgage appended to the Complaint of _____ herein as Exhibit _____ thereof which are presently in the possession, custody or control of _____ and all correspondence and communications and documents and instruments effecting or pertaining to any amendment of such mortgage.

It is requested that the aforesaid production be made on the _____ day of _____ at _____ a.m., _____ time, at the law offices of _____, _____, or, in the alternative, at such law offices on the _____ day of _____ at _____ a.m. _____ time.

The inspection will be made by _____ on behalf of _____ [*Marine Service, Inc.*]
Dated: _____

Attorney for Intervening Plaintiff

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. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-307

**FORM No. 3-307 Request by Plaintiff for Production of Documents--Action to Recover Unpaid Repair Charge,
Rule 34n1**

[Caption] n2

Please Take Notice that pursuant to *Rule 34 of the Federal Rules of Civil Procedure*, plaintiff requests that defendant, _____, produce and permit the plaintiff to inspect and to copy the following list of documents at the office of _____, attorneys for plaintiff, on the _____ day of _____, 20 _____, at _____ o'clock in the forenoon of that day:

1. All documents relating to the repairs on the vessel _____ at the yard of plaintiff in _____ performed in the months of _____ and _____, 20 _____.
2. All reports, letters, telexes, memoranda, or other writings exchanged among _____, the defendants, and any other persons related in any way to the repairs set forth in paragraph "1" above.
3. All invoices, letters, cables, reports, or other documents between the plaintiff, defendants, or others relating to the repairs referred to in paragraph "1" above.
4. All photographs, sketches, or drawings relating in any way to the repairs referred to in paragraph "1" above.
5. All letters, reports, survey reports, records, memoranda, or other documents relating to the repairs referred to in paragraph "1" above.
6. All classification society reports for the years 20 _____ to 20 _____ relating in any way to the vessel's hatches.

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7. All letters, records, or other documents relating to discussions or meetings among the plaintiff, defendants, and _____ relating to the repairs referred to in paragraph "1" above.

8. Crew list and addresses of all officers and crew aboard the vessel _____ in the months of _____ and _____, 20 ____.

9. All statements of officers, crew, or defendants' representatives relating in any way to the repair period of the vessel _____ in plaintiff's yard in the months of and _____, 20 ____.

10. All reports, records, memoranda, communications, and correspondence between defendants and their hull insurance underwriters relating in any way to the repairs performed in the months of _____ and _____, 20 ____, including but not limited to Notice of Claim, survey reports, average adjustment, etc.

11. All reports, memoranda, communications, and correspondence with any person or business organization pertaining to the repairs at the yard of plaintiff during the months of _____ and _____, 20 ____.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Todd Shipyards Corp. v. Panasia Grand Carriers Corp., Civ. No. 83-11 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-308

FORM No. 3-308 Request by Plaintiff for Production of Documents--Enforcement of Maritime Lien, Rule 34n1

[Caption] n2

Plaintiff requests that defendant _____ Company produce the following documents for inspection and copying pursuant to the Federal Rules of Civil Procedure at the offices of counsel for plaintiff, _____ [address], at _____. On _____, _____, 20 _____, or in lieu of such production of originals, provide counsel with photocopies thereof on or before such date:

1. Any agreement or set of documents comprising an agreement for the sale, charter, or transfer of any interest in the Vessel _____ to _____ or any amendment or modification thereto.
2. Any and all letters, telegrams, TWX or Telex messages, or other communications or any memoranda of oral communications concerning the rescission, cancellation, or termination of any agreement for the sale, charter, or transfer of any interest in the Vessel _____ to _____.
3. Any correspondence or other communication between defendant _____ or its agents, employees, representatives, attorneys, or any person acting on its behalf and plaintiff, _____, or memorandum of any oral communication between any such person and plaintiff.

Dated: _____

Attorney for Plaintiff

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, Haninen & Carle, Cleveland Ohio.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-309

FORM No. 3-309 Request by Plaintiff for Production of Documents--Action To Recover Damage for Cargo Shortage

[Caption]

Plaintiff, _____, by its attorneys, _____ requests Defendants to produce the following documents for immediate reproduction and coping prior to the taking of the depositions of the Master, Chief Engineer and Chief Officer of the vessel _____ [Production to be at _____ or on vessel]:

1. The vessel's Certificate of Registry.
2. The vessel's crew list.
3. The licenses of all officers of the vessel.
4. The vessel's capacity plan.
5. The vessel's International Load Line Certificate.
6. The vessel's charts which were used in its passage from _____ to _____.
7. All of the vessel's publications and tables used for celestial navigation.
8. The vessel's chronometer records book.

9. The vessel's compass deviation table or its equivalent.
10. The vessel's radar log.
11. The vessel's smooth and rough deck log.
12. The vessel's smooth and rough engine log.
13. The vessel's official log.
14. The vessel's bell books both engine and deck for the period of _____, 20 ____ to the present.
15. The vessel's radio log.
16. The vessel's night order book.
17. Copies of all the vessel's Standing Orders.
18. All of the vessel's work requests, repair requests, and requisitions for repairs or modifications to hull, cargo handling gear, pumps, tanks, heating elements and machinery from and including the time of the vessel's last drydocking up to and including the present.
19. All the vessel's hull and machinery certificates issued by any classification society from and including the time of the vessel's last drydocking up to and including the present.
20. All invoices pertaining to repairs or modifications to the vessel's hull, cargo handling gear, pumps, tanks, heating elements and machinery from and including the time of the vessel's last drydocking up to and including the present.
21. All the vessel's radar, navigation aids, H.O. publication 117A or equivalent publications.
22. The vessel's _____ calibration card or its equivalent.
23. All pamphlets, papers and books issued by the manufacturer relating to the vessel's hull, cargo handling gear, pumps, tanks, heating elements and machinery from and including the time of the vessel's last drydocking up to and including the present.
24. All letters and messages sent by the Master or other officers of the vessel to its owners or their agents pertaining to or in any relation to the condition of the vessel's hull, cargo handling gear, pumps, tanks, heating elements and machinery from and including the time of the vessel's last drydocking up to and including the present.
25. All letters and messages sent by the vessel owners or their agents to the Master or other officers of the vessel pertaining to or in any way related to the condition of the vessel's hull, cargo handling gear, pumps, tanks, heating elements and machinery from and including the time of the vessel's last drydocking up to and including the present.
26. All letters, messages and statements sent by the Master and/or officers of the vessel to owners or their agents pertaining to or in any way related to the vessel's manning efficiency or lack thereof of all officers and/or crew from and including the time of the vessel's last drydocking up to and including the present.
27. All letters, messages and statements sent by the vessel's owners or their agents to the Master and/or officers of the

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vessel pertaining to or in any way related to the vessel's manning efficiency or lack thereof of all officers and/or crew from and including the time of the vessel's last drydocking up to and including the present.

28. All messages sent by the Master and/or officers of the vessel to owners or agents pertaining to or in any way related to the vessel's breakdowns, stranding, salvage, emergency repairs and cargo damage from _____, 20 _____ up to the present.

29. All weather reports received by the vessel between _____, 20 _____ up to the present.

30. The vessel's electrician's notebook.

31. The Index Correction Card for the vessel's sextant.

32. All messages, letters and statements sent by the Master and/or officers of the vessel to owners or their agents pertaining to or in any way related to the condition of the vessel's cargo from the time immediately prior to its loading onto the ship up to the present.

33. All messages, letters and statements sent by the vessel's owners or their agents to the Master and/or officers of the vessel pertaining to or in any way related to the condition of the vessel's cargo from the time immediately prior to its loading onto the ship up to the present.

34. All copies of hull and cargo survey reports of the vessel from _____, 20 _____ through and including the present.

35. All messages, letters, documents, charts, logs, memoranda, etc. maintained on the vessel pertaining to or in any way related to the condition of the vessel as it might affect the condition, weight, volume, temperature and amount of the vessel's cargo from _____, 20 _____ up to and including the present.

36. All sounding books or other documentation reflecting the amount of cargo, bunkers, ballast, domestic water and all other liquids aboard the vessel from _____, 20 _____ to the present.

37. All charter parties or subcharter parties in force from _____, 20 _____ covering the vessel.

38. All drawings, photographs, schematics, plats, and all other documents depicting the heating elements, pumps, gauges, tanks, pipes and other apparatuses related to the loading, storage, discharge, heating, and transfer of Plaintiff's cargo of _____ in controversy in this lawsuit.

39. All manuals, standing orders, written instructions, placards, books, correspondence, notes and all other related documents in any way pertaining to the normal operation, maintenance, emergency repairs, routine repairs, and other such operations for the heating elements, pumps, gauges, tanks, pipes and other apparatuses related to the loading, storage, discharge, heating and transfer of Plaintiff's cargo on the vessel _____.

40. All notes, reports, memos, logs or any other documents showing the history, operation, functioning, breakdown, repair, modification and/or maintenance of the vessel's heating equipment or apparatus related to the heating of the vessel's cargo of _____ carried on the vessel _____ from _____ to the United States in February of this year of 20 _____; in other words, the cargo involved in this case.

41. All notes, reports, memos, logs, or any other documents in any way showing the history, operation, functioning, breakdown, repair, modification and/or maintenance of the vessel's cargo-tanks related to the carriage of the vessel's

cargo of _____ carried on the ship from _____ to the United States in February of this year of 20 ____; in other words, the cargo involved in this case. All records showing the discovery, reporting of and repair of cracks in any of the vessel's bulkheads or tank walls, including the exact method of repair and/or patching.

42. All notes, reports, memos, logs or any other documents showing the operation, functioning, history, use, repair or modification of the vessel's bunker tanks or its connected and/or related gauges, pipes, hoses, valves, intakes, outlines or other appurtenances from _____, 20 ____ to the present.

43. All notes, reports, memos, logs or any other documents showing the breakdown, damage, injury, fracture and/or repair and maintenance of the vessel's cargo pumping equipment (including but not exclusively so) pipes, lines, hoses, pumps, valves, gauges, dials, controls and/or other related gear from _____, 20 ____ to the present.

44. All notes, reports, memos, logs, notices of protest, letters or any other object and/or document referring to any event, occurrence, incident, happening and/or accident which in any way explains, discusses and/or relates information of the loss and/or damage to Plaintiff's cargo in this case.

45. All notes, logs, memos, correspondence and all other related records of valve openings and closings showing transfer of cargo, bunkers and ballast from time of loading at _____ to departure from _____ facilities of Plaintiff.

Attorney for Plaintiff



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4-III Benedict on Admiralty FORM No. 3-310

FORM No. 3-310 Request for Production of Documents--Fire Damage to Stored Vessel

[Caption] n1

Now comes the plaintiff, _____, by his attorneys, _____ and requests the defendants, _____ Corporation and _____ to produce the following documents pursuant to the applicable rules.

1. Any and all notices, advertisements, flyers, papers, publications or other documents which you published, distributed, mailed, posted or advertised concerning the lease, storage or rental of space at your facility for yachts in 20 ____ and 20 ____.
2. All financial records, income tax statements, annual reports, bank account statements, books of accounting, corporate minutes, cancelled checks, check stubs or any and all other documents reflecting or concerning the financial condition of _____ for 20 _____ through the present.
3. The income tax statements, cancelled checks, check stubs, bank account statements for checking and savings account, credit card monthly statements, bank loan statements, passbooks and any and all other financial records or other documents reflecting all of the assets and liabilities of _____ for the years 20 ____ through the present.
4. Any and all storage agreements for the vessel _____.
5. Any and all reports, investigations, surveys, inspections or other records prepared by you, police, governmental authorities, surveyors or private investigators of the fire occurring in _____, 20 ____.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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Reserved

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RULE 35 PHYSICAL AND MENTAL EXAMINATION OF PERSONS

4-III Benedict on Admiralty FORM No. 3-322

FORM No. 3-322 Stipulation for Physical Examination, Rule 35(a)

[Caption] n1

It is hereby stipulated between the parties hereto that the plaintiff may be examined on behalf of the defendant, _____, by a physician to be selected by said defendant or, _____ [*name physician*], such examination to be at such time, place, and in such manner and under such conditions and of such scope as the plaintiff and such physician shall agree upon [*or, specify time, place, manner, etc.*]; that defendant will bear the cost of such examination and that upon such examination having been made the rights of the parties shall be such as are prescribed by *Rule 35 of the Federal Rules of Civil Procedure* in like manner as though such examination had been pursuant to an order of Court under said Rule 35.

Dated: _____, 20 _____

Attorney for Plaintiff

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 35 PHYSICAL AND MENTAL EXAMINATION OF PERSONS

4-III Benedict on Admiralty FORM No. 3-323

FORM No. 3-323 Motion for Physical Examination, Rule 35(a)

[Caption] n1

Now comes the Defendant _____ by its attorneys _____ and moves the court for an order that plaintiff submit to a physical examination, including or together with an X-ray examination, before trial, by a physician or physicians to be appointed by this court, at such time or times as the court may direct, to determine the exact nature and extent of the injuries in controversy herein alleged to have been sustained by plaintiff on the _____ day of _____, 20 _____, as the result of the act or acts alleged in plaintiff's complaint.

Defendant is informed and believes that it is essential to the proper trial of this case that plaintiff should submit to such physical examination in advance of trial as is more fully shown in the affidavit hereto attached as Exhibit A.

Dated: _____

Attorney for Defendant

Exhibit A

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

_____, being duly sworn, says:

4-III Benedict on Admiralty FORM No. 3-323

1. That he resides at _____ and is the _____ of the defendant in the above-entitled cause; that the said cause is brought to recover damages alleged to have been sustained by the plaintiff as the result of the alleged negligence of the defendant, for a more detailed statement of which reference is hereby made to the amended complaint filed in said cause, and that the cause is now at issue and pending trial upon the calendar of this court.

2. That the complaint alleges that plaintiff has been seriously injured and disabled; and that the physical condition of the plaintiff is in controversy and as to the truth of the said allegations, the defendant has no means of knowing other than by examination by approved methods, the injuries complained of not being patent or clearly to be seen without such examination.

3. That he is informed by the attorneys for the defendant and verily believes that the defendant cannot fully prepare for trial unless an order is granted directing that plaintiff submit to a physical examination as requested, with leave to take X-ray photographs in conjunction with such physical examination.

4. That he has no reason to believe that the requested physical examination will be painful or dangerous to the plaintiff.

Wherefore affiant requests that an order be entered herein directing plaintiff to appear at such time and place as is convenient to him and to the physician or physicians to be designated by the court and to submit to a physical examination by one or more of the physicians to be designated by the court and in conjunction therewith to permit X-ray photographs to be taken of the parts of the body of the plaintiff alleged to have been injured.

[*Jurat*]

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-324

FORM No. 3-324 Order for Physical Examination, Rule 35(a)

[Caption] n1

This cause came on to be heard on motion of defendant for an order requiring plaintiff to submit to a physical examination, and it appearing to the court that the physical condition of the plaintiff is in controversy in this action,

It Is Ordered

(1) That plaintiff submit to a general physical examination by _____ in his office at _____ at o'clock _____ a.m. on _____, 20 _____, such examination to include, among other things, the furnishing _____ [List], and any and all other tests which are ordinarily deemed a part of a general physical examination.

(2) That plaintiff submit to an X-ray examination and the taking of such films as the said _____ deems advisable and necessary in making the proper diagnosis of plaintiff's condition and concerning the allegations of plaintiff's complaint as to the nature and extent of his injuries.

(3) That the plaintiff at the time of said examination answer all proper questions and inquiries submitted to him by the said doctors, including his occupational history and prior injuries and diseases, for the purpose of making a proper diagnosis of the plaintiff's condition.

(4) That plaintiff's personal physician may be present at such examination if plaintiff so desires.

(5) That defendant bear the costs of the examination.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-325

FORM No. 3-325 Motion To Require Production of Physician's Report, Rule 35(b)

[Caption] n1

Now comes the plaintiff _____ by his/her attorneys _____ and moves this court for an order requiring the defendant to produce the report of the physician who examined him/her on behalf of the defendant. In support of this motion, plaintiff states as follows.

1. The plaintiff represents to the Court that on _____, 20 ____, the plaintiff at the request of the defendants voluntarily (or, pursuant to the order of this Court dated _____, 20 _____) submitted to a physical examination, including the taking of X-rays, by _____ of _____, a physician selected by said defendants;

2. That said _____ wrote a letter-report of said examination;

3. That though request has been made by plaintiff's counsel to defendants' counsel for a copy of said letter-report, he refuses to furnish plaintiff with a copy thereof.

Wherefore, Plaintiff now moves the Court to enter an order requiring the defendants to furnish plaintiff's counsel with an exact copy of said letter-report of _____, and further that defendants be required to submit to _____ of, plaintiff's physician, for examination and inspection, the X-rays of plaintiff taken by said _____ as above recited.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-326

FORM No. 3-326 Order Requiring Production of Physician's Report, Rule 35(b)

[Caption] n1

This cause came on to be heard on motion of plaintiff for an order requiring defendant to deliver a copy of the report of a physical examination of plaintiff by Dr. _____ at _____ on _____, 20____, pursuant to order of this court dated _____, 20____ [*or, pursuant to stipulation between the partes*], and it appearing to the court that plaintiff is entitled to be furnished with a copy of said report, it is

Ordered, that defendant deliver to plaintiff a copy of the said report of Dr. _____ within _____ days after service upon defendant of a copy of this order.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM Nos. 3-327-3-337

Reserved

FORM Nos. 3-327Reserved



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4-III Benedict on Admiralty FORM No. 3-338

FORM No. 3-338 Request for Admissions--General Form, Rule 36(a)n1

[Caption] n2

Plaintiff _____ requests defendant _____ within _____ days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

[Here list the documents and describe each document,]

2. That each of the following statements is true.

[Here list the statements.]

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. This is substantially Form 25 of the Official Forms annexed to the Federal Rules of Civil Procedure.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-339

FORM No. 3-339 Plaintiff's Request for Admissions--Damage to Cargo During Shipment, Rule 36(a)

[Caption and Prefatory Statement] n1

1. On _____, 20 _____, at Port _____, Messrs. _____ and _____ inspected the shipment which is the subject of this suit and made the findings shown in the survey report (a copy of which is attached hereto as Exhibit A).
2. _____ was then acting as agent for the vessel _____ and her owner.
3. The chief officer of the vessel _____ subsequently made a report concerning the shipment in suit (a copy of which is attached hereto as Exhibit B).
4. The contents of the following documents are true and correct: _____
5. A spot check of the shipment in suit made prior to loading by the officers and/or agents of the vessel owner resulted in a finding that [Description of shipment].
6. As a result of the pre-shipment inspection by the officers and/or agents of the vessel owner, a clean bill of lading was issued to transport the goods in suit to _____.
7. Upon outturn at _____ of the shipment in suit, it was delivered to the consignee "subject to warehouse examination" because the receiver's agent declined to sign a clean receipt.
8. At a joint survey held at _____ on _____ and _____, 20 _____, an inspection of the shipment in suit revealed the following conditions:

(a) The cartons in general were bulging and stained and in some instances partially collapsing or disintegrating with part contents exposed.

(b) A representative number of cartons were opened and contents examined. The inner blocks were found to be soft and disfigured with snow condition in evidence. Also, the shrimp were discolored and odor was present.

9. Proper care of frozen shrimp on an ocean voyage requires that temperatures always be maintained well below the freezing point.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 and 3-126 *supra*.



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4-III Benedict on Admiralty FORM No. 3-340

FORM No. 3-340 Plaintiff's Request for Admissions--Damage to Cargo During Discharge, Rule 36(a)

[Caption and Prefatory Statement] n1

1. Defendant, _____, in _____, 20 _____, was a common carrier for hire.
2. Defendant issued a bill of lading for the shipment herein involved; Exhibit A attached hereto is a true copy of said bill of lading.
3. Defendant received the _____ number of bags identified in Exhibit A at the port of _____ and said cargo as loaded on board the vessel _____ on or about _____, 20 _____.
4. At the time of delivery of the shipment described in Exhibit A annexed to this request, the cargo showed no external signs of tearing, staining, wetting and/or mildew.
5. The vessel _____ is still engaged in defendant's employ and the Master or Chief Officer of the vessel during the voyage herein invoked is still employed on said vessel.
6. On _____, 20 _____, and on _____, 20 _____, the vessel discharged during rain.
7. During the course of discharge numerous _____ [cargo] were left unprotected on the pier and subject to rain and snow.
8. The vessel _____ was directed to discharge at Pier _____.

_____, by defendant's agent.

9. The survey annexed hereto as Exhibit B is a true copy of a survey report issued pursuant to defendant's request.

10. Exhibit C annexed hereto is a true copy of the Notice of Protest submitted by the Master of the vessel _____ for the voyage herein involved to the stevedores, _____, relative to the discharge of the vessel at the port of _____.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 and 3-126 *supra*.



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4-III Benedict on Admiralty FORM No. 3-341

FORM No. 3-341 Plaintiff's Request for Admissions--Damage to Cargo While Stored at Port, Rule 36(a)n1

[Caption and Prefatory Statement] n2

1. The defendant, as a common carrier, agreed to transport a shipment of _____ referred to in the attached bill of lading [Exhibit A] from the Port of _____ to the Port of _____ on or about _____, 20 ____.
2. The said shipment was received by said defendant in external good order and condition and no exceptions as to the condition of the said shipment was made on the bill of lading issued by the said defendant [Exhibit A].
3. The defendant loaded and stowed the said shipment on board the vessel _____ at the Port of _____ and discharged the same shipment at the Port of _____.
4. The said shipment was discharged from the vessel during the period _____, 20 ____ through _____, 20 ____.
5. The shipment was delivered to the consignee or the holder of the said bill of lading [Exhibit A] as follows:
_____ lifts on _____ and _____ lifts on _____, 20 ____.
6. At the time of delivery as aforesaid exceptions were made in the defendant's delivery records with respect to the said shipment as follows: *[Describe Damage]*
7. The said shipment was stored in the open from the time of discharge as aforesaid until the date of delivery as aforesaid.

8. The said shipment was not covered during the time it was stored in the open.

9. It rained during discharging operations.

10. It rained while the shipment was stored in the open.

11. The attached document marked Exhibit A is a true copy of the original bill of lading on which this action is founded and which was issued by or on behalf of the defendant.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Fabbri Co. v. Universal Shipping Co., 310 F. Supp. 964, 2069 A.M.C. 1615 (S.D.N.Y. 1969), furnished through the courtesy of Richard T. Graham, Esq., New York, New York.

(n2)Footnote 2. *See* Form No. 3-1 and 3-126 *supra*.



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4-III Benedict on Admiralty FORM No. 3-342

FORM No. 3-342 Defendants' Request for Admissions to Defendant Freight Forwarder--Failure to Safely Secure, Load, Stow and Care for Cargo

[Caption] n1

Defendant _____ [Vessel Owner], by and through their attorneys, _____ pursuant to Rule 36 of the Federal Rules of Civil Procedure, hereby request that Defendant, _____, [Freight Forwarder] admit the truth of the following matters for purposes of this action:

1. The cargo in this case consisted of a container with two separate lots of synthetic resin in drums.
2. At no time prior to this shipment did _____ inform any of these defendants of the freezing temperature of synthetic resin identified by the designation "_____."
3. At no time prior to this shipment did _____ inform any of these defendants of the freezing temperature of synthetic resin identified by the designation "_____."
4. At no time before shipment of the cargo in this case aboard the vessel _____ did _____ give any of these defendants any notification with regard to the specific shipment of synthetic resin in this case and referring to its alleged propensity to freeze.
5. Preparation of ocean shipping documents by _____ did not include a description of either lot of cargo sufficient to enable determination of the freezing temperature thereof without further information from the manufacturer of the cargo.
6. At no time did _____ supply any of these defendants with a copy of the Domestic Inland Bill of

Lading, covering the transportation of the cargo from _____ to _____.

7. On or about _____, 20 _____, _____ was advised by _____ that the cargo had not been shipped aboard the _____.

8. At no time after _____, 20 _____ and relevant to ocean carriage of this cargo did _____, advise any of these defendants regarding the alleged propensity of the cargo in this case to freeze.

9. At no time after _____, 20 _____ and relevant to ocean carriage of this cargo did _____ advise any of these defendant that the cargo could not safely remain outdoors until arrival of the vessel _____.

Attorney for Defendants

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-343

FORM No. 3-343 Defendants' Request for Admissions to Defendant Operating Company--Failure to Safely Secure, Load, Stow and Care for Cargo

[Caption] n1

Defendant, _____, by and through their attorneys, _____ and pursuant to *Rule 36 of the Federal Rules of Civil Procedure*, hereby request that Defendant, [Operating Company], admit the truth of the following matters for purposes of this action:

1. At no time before shipment of the cargo in this case aboard the vessel _____ did _____ [Operating Company] give any of the co-defendants any notification with regard to the specific shipment of synthetic resin in this case and referring to its alleged propensity to freeze.
2. At no time did _____ [Operating Company] supply any of the co-defendants with a copy of the Domestic Inland Bill of Lading, covering the transportation of the cargo from _____ to _____.
3. At no time after _____, 20 _____ and relevant to ocean carriage of this cargo did _____ [Operating Company] advise any of the co-defendants regarding the alleged propensity of the cargo in this case to freeze.
4. At no time after _____, 20 _____ and relevant to ocean carriage of this cargo did _____ [Operating Company] advise any of the co-defendants that the cargo could not safely remain outdoors until arrival of the vessel _____.

Attorney for Defendants

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-344

FORM No. 3-344 Defendants' Request for Admissions to Plaintiff Cargo Shipper--Failure to Safely Secure, Load, Stow and Care for Cargo

[Caption] n1

Defendants, _____, by and through their attorneys, _____ and pursuant to *Rule 36 of the Federal Rules of Civil Procedure*, hereby request that Plaintiff, _____, admit the truth of the following matters for purposes of this action:

1. The cargo in this case consisted of a container with two separate lots of synthetic resin in drums.
2. Designation numbers " _____ " and " _____ " were assigned by _____ to identify the cargo.
3. Designation numbers " _____ " and " _____ " are not universally recognized descriptions for the exact chemical compositions of the lots of synthetic resin to which they refer.
4. The cargo lots designated " _____ " and " _____ " in this shipment do not have identical chemical compositions.
5. _____ acted as _____ agent for the purpose, *inter alia*, of communications to and from these defendants regarding the shipment in this case.
6. At no time prior to this shipment did _____ inform any of these defendants of the freezing temperature of synthetic resin identified by the description " _____ ."

7. At no time prior to this shipment did _____ inform any of these defendants of the freezing temperature of synthetic resin identified by the designation "_____."

8. At no time before shipment of the cargo in this case aboard the vessel _____ did _____ give any of these defendants any notification with regard to the specific shipment of synthetic resin in this case referring to its alleged propensity to freeze.

9. Preparation of ocean shipping documents by _____ did not include a description of either lot of cargo sufficient to enable determination of the freezing temperature thereof without further information.

10. At no time did _____ supply any of these defendants with a copy of the Domestic Inland Bill of Lading, covering the transportation of the cargo from _____ to _____.

11. On or about _____, 20 _____, _____ was advised by the _____ that the cargo had not been shipped aboard the _____.

12. At no time after _____, 20 _____ and relevant to ocean carriage of this cargo did _____ advise any of these defendants regarding the alleged propensity of the cargo in this case to freeze.

13. At no time after _____, 20 _____ and relevant to ocean carriage of this cargo did _____ advise any of these defendants that the cargo could not safely remain outdoors until arrival of the vessel _____.

14. No joint survey of the cargo was had at the time of delivery in _____.

15. No written notification of damage to the cargo was tendered at the time of its delivery in _____.

16. No written notification of damage to the cargo was tendered within _____ days after its delivery in _____.

Attorney for Defendants

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-345

FORM No. 3-345 Plaintiff's Request for Admissions--Collision With Moored Barge, Rule 36(a)n1

[Caption and Prefatory Statement] n2

1. _____ [Shipping Company], is a _____ corporation and was on _____, 20 _____ the owner of the vessel _____.
2. _____ [Shipping Company] is a proper party plaintiff in this action and as such is entitled to bring same.
3. On or about _____ p.m. on _____, 20 _____, Barge _____, in tow of the Tug _____ struck the _____ of the vessel _____.
4. The collision between the Barge _____, in tow of _____ Tug _____, and the _____ of the vessel _____ resulted in damage to the structure of the vessel _____.
5. On _____, 20 _____, at or about _____ p.m., when Barge _____, in tow of the Tug _____ struck the _____ of the vessel _____, the vessel _____ was in all respects properly moored "dead in the water," port side to City Dock No. _____, near the turning basin on the _____ Ship Channel.
6. The vessel _____ and those in charge of her navigation committed no acts or faults which in any manner contributed to the aforementioned collision.

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7. As a result of the aforementioned collision, the following damages, as set out in _____ Survey Report No. _____, dated _____, 20 _____, a copy of which is attached hereto as Exhibit A, were sustained by the owner of the vessel _____.

8. As a result of the aforementioned collision, the following repairs; as set out in _____ Survey Report No. _____, dated _____, 20 _____, a copy of which is attached hereto as Exhibit A, will be necessary as a result of the aforementioned damages sustained by the vessel _____.

9. As a result of the subject collision made the basis of this complaint and as a result of the damages attendant thereto, repair costs for the above mentioned damages are \$ _____ same being reasonable and necessary.
Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Tug June S v. Bordagain Shipping Co.*, 418 F.2d 306, 2071 A.M.C. 1588 (5th Cir. 1969), furnished through the courtesy of Eikel & Galler, Houston, Texas.

(n2)Footnote 2. *See* Form Nos. 3-1 and 3-126 *supra*.



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4-III Benedict on Admiralty FORM No. 3-346

**FORM No. 3-346 Request by Plaintiff (Vessel Owner) to Marine Insurers for Admissions--General Average,
Rule 36(a)n1**

[Caption] n2

Please Take Notice that pursuant to *Rule 36 of the Federal Rules of Civil Procedure*, plaintiff hereby requests that defendants admit the following:

1. The terms and conditions of the contract of carriage, applicable to the cargo which is the subject of this suit, are contained in certain bills of lading in one of six different forms, samples of which are attached hereto marked Exhibits A1 through A6 [*Exhibits Omitted.*] All of the bills of lading contain or incorporate by reference the following clause:

"In the event of accident, danger or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract, or otherwise, the goods, Shippers, Consignees or Owners of the goods shall contribute with the Carrier in General Average to the payment of any sacrifices, losses, or expenses of a General Average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods."

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Containerschiffsreederei T.S. Columbus New Zealand v. Corporation of Lloyd's*, 2081 A.M.C. 60 (S.D.N.Y. 1980).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-347

FORM No. 3-347 Plaintiff's Request for Admissions--Maritime Lien for Fuel Oil, Rule 36(a)n1

[Caption and Prefatory Statement] n2

1. In _____, 20____ [Broker] was a bunker broker in _____, who acted as agent for shipowners and charterers ordering bunkers for their vessels.
2. On about _____, 20____, _____ requested _____ [Broker] to order bunkers for the vessel _____, _____ was an officer or managing employee of a _____ or of _____'s agent.
3. On about _____, 20____ [Broker] contacted _____ of plaintiff _____ at _____'s New York sales office and requested _____ to fill an order for bunkers for the vessel _____.
4. On about _____, 20____ [Broker] entered into an oral contract in _____ with plaintiff _____ for _____ to supply bunkers to the vessel _____.
5. At no time before the bunkers were fully delivered to the vessel _____ did _____ [Broker] inform _____ or anyone else at _____ that the vessel _____ was under time charter or that _____ [Broker] was acting for a charterer rather than the ship's owner.
6. On about _____, 20____ bunkers were purchased by _____ and delivered to the vessel _____ through _____, an _____

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company.

7. On about _____, 20 ____ about _____ metric tons of marine fuel oil and about _____ metric tons of marine gas oil supplied by _____ were delivered to the vessel _____ by _____ in _____.

8. Plaintiff _____ invoiced the "VESSEL _____ AND/OR OWNERS" in the amount \$ _____ for the bunkers provided in _____.

9. Plaintiff _____ relied upon the credit of the vessel _____ in agreeing to supply bunkers to her in _____, 20 ____.

10. Plaintiff _____'s invoice for the bunkers provided in _____ has not been paid despite demand for payment.

11. Prior to the delivery of the bunkers to the vessel _____ in _____, plaintiff was not aware that the vessel _____ was operating under a time charter.

12. Prior to the delivery of the bunkers to the vessel _____ in _____, plaintiff _____ was not aware that the charter parties under which the vessel _____ was operating contained a "no lien" provision.

13. The vessel _____ was time chartered on _____, 20 ____ from Claimant to [Steamship Company], which in turn chartered the ship on _____, 20 ____ to _____.

14. At _____, on about _____, 20 ____, the vessel _____ was so low on diesel oil that it could not leave its berth without additional diesel oil bunkers.

15. Claimant was informed before _____, 20 ____ that the _____ was short on bunkers and that the ship could not leave _____ without additional bunkers.

16. Before the bunkers supplied by _____ had all been put aboard the vessel _____ in _____ no ship's officer or crew member had informed _____ or _____ that the ship was under charter and that the charter party contained a "no lien" provision.

17. When the bunkers supplied by _____ were delivered to the vessel _____ in _____, there was no copy aboard the ship of the charter party from Claimant to _____ [Steamship Company].

18. After leaving _____ the vessel _____ went to _____, where Claimant in _____ [Month] assumed full control of the vessel from charterers.

19. When the owner assumed full control of the vessel from charterers there were bunkers aboard that had been supplied to the ship in _____ by plaintiff.

20. The reasonable value of the bunkers supplied by plaintiff to the vessel _____ in _____ was \$ _____.

21. Claimant owes plaintiff \$ _____ plus interest for bunkers delivered to the vessel
_____ in _____.

22. Admit that each of the following attached documents; (a) is an accurate copy of the original, (b) was made in the ordinary course of business, (c) was made at or about the time indicated on the document, and (d) is a record of regularly conducted activity under the *Federal Rules of Evidence, Rule 803(6)*:

[List Documents]

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used 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* Forms No. 3-1 and 3-126 *supra*.



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4-III *Benedict on Admiralty FORM No. 3-348*

FORM No. 3-348 Plaintiff's Request for Admissions--Maritime Lien for Canal Expenses, Rule 36(a)n1

[Caption and Prefatory Statement] n2

1. Plaintiff _____ [Shipping Company] is a division of _____, a corporation having its principal office in _____.
2. Plaintiff, _____, is a corporation that is part of the _____ [syndicate], based in _____.
3. _____ is a subsidiary corporation of _____ and has offices located in Port _____.
4. In late _____ of 20 _____, _____ requested Plaintiff _____ [Shipping Company] to advance about \$ _____ for the vessel _____'s _____ transit scheduled for early _____, 20 _____.
5. _____ was an officer or managing employee of _____ or of _____'s agent.
6. At the request of Plaintiff _____ [Shipping Company], _____ at Port _____ advanced \$ _____ for the vessel _____'s _____ transit to _____, who made the necessary payments to the _____ [Canal].
7. _____ also advanced \$ _____ for the expenses of two crew members of the

vessel _____.

8. Plaintiff _____ [*Shipping Company*] has reimbursed _____ in the amount of \$ _____.

9. Plaintiff [*Shipping Company*] has not been paid any part of the \$ _____ advanced in connection with the passage of the vessel _____ through the _____ [*Canal*] in early _____, 20____ despite demand for payment.

10. Before _____ made the advances in connection with the vessel _____'s passage through the _____ [*Canal*] in early _____, 20____, neither plaintiff nor _____ was aware that the vessel _____ was operating under a time charter.

11. Before _____ made the advances in connection with the vessel _____'s passage through the _____ [*Canal*] in early _____, 20____, neither plaintiff nor _____ was aware that the charter parties under which the vessel _____ was operating contained "no lien" provisions.

12. Claimant owes plaintiff \$ _____ plus interest for advances made in connection with the vessel _____'s passage through the _____ [*Canal*] in early _____, 20____.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Gulf Trading & Transportation Co. v. M/V Tinto*, 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 Nos. 3-1 and 3-126 *supra*.



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4-III Benedict on Admiralty FORM No. 3-349

FORM No. 3-349 Plaintiff Request for Admissions--Injury to Seaman While Descending Ladder From Barge to Crewboat, Rule 36(a)n1

[Caption and Prefatory Statement] n2

1. On _____, 20 ____, and at all times pertinent to this lawsuit, Barge No. _____ was owned by defendant, _____ *[Barge Owner]*.
2. On or about _____, 20 ____, a substantial part of plaintiff's work for defendant, _____ *[Contractors]*, was performed aboard the Barge No. _____.
3. On or about _____, 20 ____, and at all times pertinent to this lawsuit, Barge No. _____ was being used by _____ *[Company]* and _____ *[Contractors]*, in connection with pipe line construction work.
4. The capacity in which plaintiff was employed by _____ *[Contractors]*, and the duties which he performed contributed to the function of the Barge No. _____ and the accomplishment of the mission of the Barge No. _____.
5. On or about _____, 20 ____, and at all times pertinent to this lawsuit, the relationship of employer and employee existed between _____ *[Contractors]* and plaintiff.
6. On or about _____, 20 ____, plaintiff performed duties aboard Barge No. _____, which was located in navigable waters in _____.
7. On and before _____, 20 ____, the owner and operator of the Barge No. _____

provided a number of ladders made of rubber tires which were used to provide access between the vessel and crewboats.

8. The ladders made of rubber tires were also used as bumpers for the Barge No. _____.

9. On and before _____, 20 _____, the only means provided for access between the Barge No. _____ and crewboats was by means of the ladders made of rubber tires.

10. If other means of access were provided, the customary method involved using the ladders made of rubber tires.

11. The photograph attached hereto, marked Exhibit A, is a fair and accurate representation or picture of the Barge No. _____ before _____, 20 _____, and fairly reflects the ladders and bumpers made of rubber tires on said barge.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Davis v. Associated Pipe Line Contractors, Inc.*, 305 F. Supp. 1345 (W.D. La. 1968), *aff'd*, 418 F.2d 920 (5th Cir. 1969), *cert. denied*, 397 U.S. 988 (1970), furnished through the courtesy of Baggett, Hawsey & McClain, Lake Charles, Louisiana.

(n2)Footnote 2. *See* Form Nos. 3-1 and 3-126 *supra*.



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4-III Benedict on Admiralty FORM No. 3-350

FORM No. 3-350 Plaintiff's Request for Admissions--Injury to Jones Act Seaman, Rule 36(a)n1

[Caption and Prefatory Statement] n2

1. That on _____, 20 _____, the vessel, _____, was owned by the defendant, _____.

2. That on _____, 20 _____, the vessel, _____, was being operated exclusively by the defendant, _____.

3. That on _____, 20 _____, the plaintiff, was a member of the crew of the vessel, _____.

4. That at the time of the accident that serves as the basis of this lawsuit the vessel, _____, was a vessel in navigation.

5. That on _____, 20 _____, the vessel _____, was not under bareboat charter, time charter, or any other sort of agreement to any entity other than the defendant, _____.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *De Oliveira 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. 3-1 and 3-126 *supra*.



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4-III Benedict on Admiralty FORM No. 3-351

FORM No. 3-351 Plaintiff's Request for Admissions--Injury to Seaman Struck by Falling Port Scallop Drag Assembly, Rule 36(a)n1

[Caption and Prefatory Statement] n2

1. Plaintiff was employed by the defendant as Master of the vessel _____ on _____, 20 ____.
2. Plaintiff was injured onboard the vessel _____ on the morning of _____, 20 ____ when he was struck by the port scallop drag assembly.
3. Plaintiff was performing his duties as a crewmember at the time of his injury on _____, 20 ____ and is, therefore, a Jones Act, 46 U.S.C. §(EN)688, seaman for purposes of this action.
4. On _____, 20 ____, prior to the incident which caused the injury to the plaintiff, the port scallop drag assembly was raised above the port rail of the vessel _____, and maintained in that position by the use of the vessel's tackle and winch.
5. The tackle used to raise the port scallop drag assembly on the vessel _____ is positioned by the operation of a _____ cargo winch located forward of the pilot house, amidships.
6. The position of the port scallop drag assembly on the vessel _____, when raised, is maintained by a mechanically operated friction brake located on the _____ cargo winch.

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7. On the morning of _____, 20 ____ the cargo winch friction brake failed to retain the port scallop drag assembly in a position above the port rail of the vessel _____ and allowed it to drop rapidly to the deck of the vessel.

8. Plaintiff was struck by the falling port scallop drag assembly on the morning of _____, 20 ____ and was forced against the corner of the after hatch on the deck of the vessel _____.

9. Plaintiff suffered _____ as a result of his contact with the after hatch on the deck of the vessel _____ on the morning of _____, 20 ____.

10. Plaintiff was discharged as Master of the vessel _____ by the defendant on or about _____, 20 ____.

11. Plaintiff was seen for an injury in the emergency room of _____ Hospital, _____ on _____, 20 ____ and again on _____, 20 ____, and the enclosed records are a true and accurate copy of the applicable out patient treatment forms. [*Hospital Records Enclosed*].

12. Plaintiff was treated by Dr. _____ of _____ for injuries to _____ received on board the vessel _____ on _____, 20 ____ [*Doctor's Statement Attached*].

13. Plaintiff was disabled at the time of his evaluation by Dr. _____ of _____ on _____, 20 ____ [*Doctor's Statement Attached*].

14. The cause of plaintiff's disability observed by Dr. _____ on _____, 20 ____ was [*Doctor's Statement Attached*].

15. Plaintiff's gross taxable earnings for the year 20 ____ were \$ _____. [*Income Tax Form Attached*].

16. Plaintiff's gross taxable earnings for the year 20 ____ were \$ _____ [*Form W-2 Attached*].
Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Valm v. Hercules Fish Products, Inc.*, 701 F.2d 235 (1st Cir. 1983), furnished through the courtesy of Glynn & Dempsey, Boston, Massachusetts.

(n2)Footnote 2. *See* Form Nos. 3-1 and 3-126 *supra*.



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4-III Benedict on Admiralty FORM No. 3-352

FORM No. 3-352 Plaintiff Request for Admissions--Wrongful Death Action by Estate of Jones Act Seaman, Rule 36(a)n1

[Caption and Prefatory Statement] n2

1. That the plaintiff's decedent, _____, was at all times pertinent to this litigation an American Seaman.
2. That the plaintiff's decedent was found lying on the floor of his quarters shortly before _____
[a.m./p.m.] on _____, 20 ____ on the vessel _____.
3. That the plaintiff's decedent's body was void of life signs when checked by the vessel's captain,
_____.
4. That plaintiff's decedent reported directly to the vessel _____ on _____, 20
_____ and did not undergo a visual examination nor a visual inspection by either the port Captain or
the port engineer of Defendant.
5. That plaintiff's decedent was summoned to return to the vessel _____ before the passing of the
usual thirty (30) days off time.
6. That prior to _____, 20 _____, plaintiff's decedent's health was acceptable to the defendant's
minimum health requirements and thus qualified plaintiff's decedent to work on defendant's vessel.
7. That to the knowledge of the defendant, plaintiff's decedent has no serious health problems prior to
_____, 20 _____.

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8. That prior to _____, 20 _____, the defendant had no knowledge of any health condition of plaintiff's decedent which would disqualify plaintiff's decedent from performing regular duties as an engineer aboard defendant's vessel.
9. That the defendant made no investigation into the medical history of plaintiff's decedent prior to assigning plaintiff's decedent to a regular work schedule in the _____ of the vessel _____.
10. That the defendant does not actively participate in a system commonly called a "buddy system" wherein two men are assigned to work together at all times.
11. That the vessel _____ was not equipped on _____, 20 _____, with an arm band used for checking blood pressure and/or pulse.
12. That the vessel _____ was not equipped nor did it have aboard any instruments such as a stethoscope for the detection of a heartbeat of ill or injured seamen.
13. That the defendant did not prior to _____, 20 _____ instruct nor train its crew members aboard the vessel _____ as to first-aid measures that should be taken in case of heart attack or other cardiac disorders.
14. That the crew members of the vessel _____ had no training nor instruction insofar as what to do or not to do for a fellow crew member suffering from cardiac arrest.
15. That in the engine room of the vessel _____, there exists fumes from the exhaust systems of the diesel engine.
16. That plaintiff's decedent was ordered to return to the vessel _____ with less than 24 hours notice.
17. That plaintiff's decedent at no time received a physical examination at the direction of Dr. _____.
18. That at no time the plaintiff's decedent was instructed by the defendant to obtain a physical examination from Dr. _____.
19. That the defendant employs no one to check into the medical background of potential employees and specifically plaintiff's decedent.
20. That defendant employs no one to visually examine seamen who are returning to their vessels to report for duty.
21. That the defendant employs no one to discuss with the examining physician the ability of the defendant's employees or potential employees to work at certain jobs and in particular the ability of plaintiff's decedent to work as an engineer.
22. That no one in the employ of the defendant advised the plaintiff's decedent's examining physician of the type work which he was required to do while employed by defendant.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Carlton v. M/G Services, Inc.*, 698 F.2d 846 (6th Cir. 1983), furnished through the courtesy of Miller and Miller, Louisville, Kentucky.

(n2)Footnote 2. *See* Form No. 3-1 and 3-338 *supra*.



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4-III Benedict on Admiralty FORM No. 3-353

FORM No. 3-353 Request for Admissions--Marine Insurance Policy, Claim for Loss of Vessels, Rule 36(a)

[Caption and Prefatory Statement] n1

1. In consideration of the premium paid to the defendant, the defendant issued, in favor of the plaintiffs, the insureds therein named, its policy No. _____ insuring the vessel _____ for a term from _____, 20____ to _____, 20____, a true copy of said policy being attached to the complaint as Exhibit "_____."

2. On _____, 20____, the vessel _____ while in _____, was damaged as a consequence of a _____ [Describe Incident].

3. Subsequent to damage the defendant employed the firm of _____, Marine Surveyors, to survey said damage and said Marine Surveyors did in fact make a survey thereof.

4. On _____, 20____, the vessel sank, resulting in a total loss of such vessel.

5. The defendant declined to pay under policy No. _____ plaintiffs' claim for damages to the vessel _____ resulting from the _____ [Describe Incident] occurring on _____, 20____.

6. The reason for the defendant's declination of paying said claim above referred to was on the ground that the vessel _____ sank and became a total loss on 20____, and therefore "no claim for any losses prior to this date can be honored unless proof is given that the loss-related repairs were completed prior to the date of the total loss sinking."

7. Attached is a true and correct copy of a survey made by _____, in connection with the damages to the vessel _____ as a consequence of the explosion aboard said vessel on _____, 20 ____.

8. A copy of said survey was furnished to the defendant.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form Nos. 3-1 and 3-338 *supra*.



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4-III Benedict on Admiralty FORM No. 3-354

FORM No. 3-354 Motion To Shorten Time for Answers to Request for Admissions, Rule 36(a)

[Caption] n1

Now comes the Plaintiff, _____, by its attorneys _____ and moves pursuant to *F.R.C.P. 36* for an order shortening the time for defendant to respond to Request for Admissions. A copy of the Request for Admissions dated _____, 20 _____, is on file herein.

Trial on damages in this action has been set by this Court for _____, 20 _____. Plaintiff has served Request for Admissions on defendant, and must receive the answers thereto, in sufficient time before trial to narrow the issues presented on that date. The majority of the information defendant will be asked to admit is already in the hands of attorneys for defendant, having been provided informally by plaintiff.

Wherefore, it is respectfully requested that by this court order the defendant answer the Request for Admission by or before _____.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-355

FORM No. 3-355 Order To Shorten Time for Answer to Request for Admissions, Rule 36(a)

[Caption] n1

The motion of the plaintiff for reduction of time within which to answer request for admissions, a copy of which is on file herein, coming on this day to be heard, and the court being duly advised in the premises, it is

Ordered that the time within which defendant is to answer the request for admissions is reduced from 30 to 10 days from the date of this order. The answers to the request are to be served on counsel and be on file with this Court by

_____, 20 ____.

Dated this _____ day of _____, 20 ____.

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-356

FORM No. 3-356 Motion for Order That Matter Be Taken as Admitted, Rule 36(a)

[Caption] n1

Now comes the plaintiff _____ by its attorneys _____ and moves this court for an order that certain matters be taken as admitted. In support of this motion, the plaintiff states as follows.

(1) On _____, 20 _____, plaintiff served on defendant a request to admit the truth of the following matters under *Rule 36 of the Federal Rules of Civil Procedure*:

(a) _____

(b) _____

A copy of said request is attached hereto as Exhibit A.

(2) On _____, 20 _____, defendant served on plaintiff his written answer in reply to the said request, in which he stated: _____. Said answer, a copy of which is attached hereto as Exhibit B, contains no specific denial of the matters of which an admission was requested of the defendant nor does it set forth the reasons which defendant cannot truthfully admit or deny those matters.

Wherefore, plaintiff moves this court for an order establishing as admitted the said matters set forth in paragraph (1) above and for an award of expenses pursuant to *Rule 37(a) (4) of the Federal Rules of Civil Procedure* and for such other further relief as the court deems proper.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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Reserved

FORM Nos. 3-357Reserved



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4-III Benedict on Admiralty FORM No. 3-368

FORM No. 3-368 Motion To Require Responsive Answers to Interrogatories, Rule 37(a)

[Caption] n1

Now comes the Plaintiff _____ by its attorneys, and moves this Honorable Court for an order compelling Defendant, _____, to give full, complete and responsive answers to interrogatories numbered _____, inclusive, _____ inclusive, and _____ heretofore served on the Defendant and partially answered on, to-wit, _____ 20 _____, and for such other relief to which _____ Plaintiff may be entitled under the Federal Rules of Civil Procedure. In support of this motion, plaintiff states as follows.

1. Plaintiff propounded interrogatories on the defendant on _____.
2. Defendant served answers to the interrogatories on _____ but its answers to interrogatories numbers _____ and _____ were non-responsive or incomplete for the following reasons.

[State Reasons with Specificity]

3. Plaintiff is entitled to responsive and complete answers to its interrogatories.

Wherefore, plaintiff _____ moves this court for an order compelling the defendant to give full, complete and responsive answers to interrogatories _____ and _____ and for such other further relief as the court deems appropriate.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-369

FORM No. 3-369 Motion To Compel Answers to Interrogatories, Rule 37(a)n1

[Caption] n2

Now comes the Plaintiff _____, by his attorneys, _____ and respectfully moves this court for an order compelling the defendant to answer interrogatories. In support of this motion, the plaintiff states as follows.

1. This is an action to recover damages for personal injuries sustained by the plaintiff.
2. Interrogatories were propounded on behalf of the plaintiff to be answered by the defendant under oath, and served on or about _____, 20____.
3. Answers thereto were due, under the Rules of Court, on _____, 20 ____.
4. Defendant has failed and neglected to answer the said Interrogatories, and said answers remain unfiled as of this date.
5. No objections have been filed to the Interrogatories, nor has any reason been advanced for the delay in filing the said answers, and there is no justification for the failure to file same.
6. The information requested in the Interrogatories is necessary in order to properly prepare the plaintiff's case for trial.
7. Counsel have been unable to resolve this matter amicably by consultation.

Wherefore, plaintiff prays Your Honorable Court for an Order compelling defendant to answer the said interrogatories and for such other further relief as the court deems appropriate.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Meitla v. Warner Co.*, 387 F. Supp. 937, 2075 A.M.C. 1491 (E.D. Pa. 1975), furnished through the courtesy of Freedman, Borowsky & Lorry, Philadelphia, Pa.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-370

FORM No. 3-370 Motion To Require Third-Party Defendant To Answer Interrogatories, Rule 37(a)

[Caption] n1

Now comes the Defendant/Third-Party Plaintiff _____ by its attorneys _____ and moves the Court for an order compelling Third-Party Defendant to answer the interrogatories heretofore served on Third-Party Defendant on, _____, which Third-Party Defendant has refused to answer. Defendant and Third-Party Plaintiff would further move the Court to order Third-Party Defendant to pay to Defendant/Third-Party Plaintiff the sum of _____ as a reasonable expense incurred in obtaining such order on the ground that said refusal was without substantial justification.

In support of this motion, the Defendant/Third-Party plaintiff states as follows:

1. Defendant/Third Party Plaintiff served interrogatories on the Third Party Defendant on _____. A copy of the interrogatories is attached hereto as Exhibit 1.
2. The Third Party Defendant has refused to answer the interrogatories without substantial justification.
3. The Defendant/Third Party Plaintiff has incurred expenses for the motion of _____.

Wherefore, the Defendant/Third Party Plaintiff moves this court for the requested relief and such other further relief as the court deems appropriate.

Dated: _____

Attorney for Third Party Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-371

FORM No. 3-371 Order Requiring Party To Answer Interrogatories, Rule 37(a)

[Caption] n1

Upon hearing argument by counsel on plaintiff's motion that the defendant be required to answer certain interrogatories,

It Is Ordered that the defendant shall, on or before _____, 20 _____, serve its answer to the interrogatories as enumerated in plaintiff's motion on file in this cause.

or

This cause having come on to be heard on motion of plaintiff for an order compelling defendant to answer certain interrogatories served on him by plaintiff on _____, 20 _____, it is

Ordered that defendant answer Interrogatories Nos. _____ and _____ within _____ days after service of this order.

It appearing to the court that the refusal of defendant to answer the said questions was without substantial justification, it is further

Ordered, that the defendant pay to plaintiff the sum of \$ _____ as reasonable expenses incurred in obtaining this order.

Dated: _____

District Court Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-372

FORM No. 3-372 Motion To Compel Production of Witnesses for Deposition, Rule 37(a)n1

[Caption] n2

Now comes the Plaintiff, _____, by its attorneys, _____, and moves this court for an order compelling defendant, _____, to produce for deposition on a date certain in _____ the captain of vessel _____ and the mate on watch on the vessel _____ at the time of the collision between the vessel _____ and the vessel _____ on _____, 20 _____, on the following grounds:

1. The above described individuals are managing agents of defendant, _____, within the meaning of *Rule 30(b)(6) of the Federal Rules of Civil Procedure*.

2. Plaintiff has heretofore filed two notices of depositions of the above described individuals and defendant, _____, has failed to produce said individuals for deposition.

3. After defendant, _____, failed to produce the aforesaid witnesses in response to the aforesaid notices of deposition, counsel for moving plaintiff requested counsel for said defendant to suggest, prior to _____, 20 _____, a date certain for the taking of the depositions of the above described individuals. Counsel for defendant _____, has failed to suggest a date for the taking of said depositions.

Wherefore, the plaintiff _____ moves this court for an order compelling the defendant _____ to produce _____ and _____ for deposition and for such other further relief as the court deems proper.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del 1976), furnished through the courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-373

FORM No. 3-373 Order To Compel Production of Witnesses for Deposition, Rule 37(a)n1

[Caption] n2

It Is Hereby Ordered this _____ day of _____, 20____, that defendant, _____, shall produce for deposition in _____, the master or former master of the vessel _____, and the vessel _____, second officer or former second officer of the vessel _____, on a date certain to be agreed upon by the parties, which date shall not be later than _____, 20____.

It Is Further Ordered that defendant, _____, shall pay plaintiff, _____, the sum of \$ _____ as counsel fees incurred in connection with preparation and presentation of said plaintiff motion to compel production of witnesses for deposition. Such payment shall be made within ten days of the date of this order.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del. 1976), furnished through the courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-374

FORM No. 3-374 Motion To Compel Answer to Questions Upon Oral Examination, Rule 37(a)n1

[Caption] n2

Now comes the plaintiff (or *defendant*) _____ by its attorneys _____ and moves this court for an order compelling the _____ to answer questions upon oral examination. In support of this motion, the plaintiff (or *defendant*) states as follows.

1. Pursuant to stipulation, plaintiff (or *defendant*) commenced taking defendant's (or *plaintiff's*) oral deposition on _____, 20 _____. During the deposition, defendant (or *plaintiff*) refused to answer questions concerning the grounds on which he asserts his counterclaim (or *claim*) in this action.

2. Plaintiff, (or *defendant*) pursuant to *Rule 37, F.R.C.P.*, respectfully applies for an order compelling the defendant (or *plaintiff*) to produce any records relating to these subjects and to answer orally, at a continuation of his deposition, each of such questions and any others which plaintiff (or *defendant*) may reasonably ask based upon defendant's (or *plaintiff's*) answers and any additional records produced.

3. The questions asked and defendant's (or *plaintiff's*) refusals are the following (page references are to the deposition transcript):

[Set forth the questions to which answer is sought, and any response made by deponent or his counsel]

4. The testimony sought in each case is either itself relevant to the subject matters involved in this action or is reasonably calculated to lead to the discovery of admissible evidence.

Wherefore, Defendant (or *plaintiff*) _____ pursuant to *Rule 37(a)(2) of the Federal Rules of Civil*

Procedure, respectfully moves the Court for an Order compelling plaintiff (or *defendant*) _____ to answer in deposition certain questions to which plaintiff's (or *defendant's*) counsel improperly directed plaintiff (or *defendant*) not to respond in previous depositions.

Defendant (or *plaintiff*) _____ further moves, pursuant to *Rule 37(a)(4) of the Federal Rules of Civil Procedure*, that it be awarded its costs incurred in seeking this discovery.

The relevant areas of discovery to which defendant (or *plaintiff*) seeks responses, and the grounds therefor, are set forth in the attached memorandum. n3

Attorney for Plaintiff
(or Defendant)

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers sued in *Pasternak v. Pan American Petroleum Corp.* (D. Colo. 1968), furnished through the courtesy of Holme, Roberts & Owen, Denver, Colorado.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.

(n3)Footnote 3. Form adapted from papers in *Jarrell v. Eastern Air Lines, Inc.*, 430 F. Supp. 884 (E.D. Va. 1977), furnished through the courtesy of Hunton & Williams, Richmond, Virginia



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4-III Benedict on Admiralty FORM No. 3-375

FORM No. 3-375 Order Compelling Answer to Question Upon Oral Examination, Rule 37(a)

[Caption] n1

The defendant (or *plaintiff*) having moved this court for an order requiring the plaintiff (or *defendant*) to answer certain questions propounded to him upon his oral examination; and the court having heard the argument of counsel and due deliberation having been had thereon, it is

Ordered, that the said motion be, and the same hereby is, granted as to Items Nos. 1, 2, 5, 6, 7, 8, 11 and 20, set forth in Exhibit B to the affidavit of _____ attached to defendant's (or *plaintiff's*) motion, and that said motion be, and the same hereby is, denied as to all other items set forth in said Exhibit B; and it is further

Ordered, that the examination of the plaintiff (or *defendant*) be resumed at a time and place to be filed by stipulation of the attorneys for the respective parties, with the provision that if they are unable to agree, either party may apply to the court on two days' notice for an order fixing such time and place.

or

This cause came on to be heard on motion of plaintiff (or *defendant*) for an order compelling _____ to answer certain questions propounded to him on the taking of his deposition on oral examination (or, *written questions*) on _____, 20 _____, and it appearing to the court that the said questions should be answered, it is

Ordered, that _____ appear before the officer taking the deposition at such time and place as plaintiff (or *defendant*) may designate on _____ days' written notice to the defendant (or *plaintiff*), and answer

under oath the following questions:

1. _____

2. _____

It further appearing to the court that the failure of the witness to answer the said questions was without substantial justification, it is further

Ordered, that _____ pay to plaintiff (or *defendant*) the sum of \$ _____ as reasonable expenses and attorney's fees incurred in obtaining this order.

or

This Matter being heard upon plaintiff's (or *defendant's*) Motion to Require Defendant to Answer Deposition Questions, and the Court being fully advised in the premises,

It Is Ordered, that defendant's (or *plaintiff's*) oral deposition shall be resumed at any time after _____, 20 _____, upon reasonable written notice from plaintiff (or *defendant*), and defendant (or *plaintiff*) shall answer each of the unanswered questions listed in plaintiff's (or *defendant's*) motion and all others which plaintiff's counsel may reasonably ask based upon defendant's (or *plaintiff's*) answers and any additional records produced.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-376

FORM No. 3-376 Motion To Compel Production of Documents, Rule 37(a)n1

[Caption] n2

Now comes the Plaintiff, _____, by his attorneys, _____ and hereby moves the Court, pursuant to *Rule 37 of the Federal Rules of Civil Procedure*, for an Order compelling defendant, _____, to produce the following documents which were identified, but not produced, in defendant's response to plaintiff's motion for production and/or in defendant's response to plaintiff's interrogatories upon the grounds set forth herein.

1. The rough deck log of vessel _____ covering the period from midnight on _____, 20 _____, until 24 hours after the collision between vessel _____ and vessel _____. Said document was requested in plaintiff's request for production No. _____ and was identified as a document maintained on board vessel _____ in an entry on _____, 20 _____, in the finished deck log of that vessel which has been produced by defendant.
2. The engine log book of the vessel _____ requested in plaintiff's request for production No. _____ and identified as a document maintained on the vessel _____ in defendant's answer to plaintiff's interrogatory No. _____.
3. The vessel _____'s course recorder requested in plaintiff's request for production No. _____ and identified in defendant's answer to plaintiff's interrogatory No. _____.
4. Such portions of statements obtained from witnesses by counsel for defendant identified and objected to in defendant's response to plaintiff's request for production No. _____ with the exception of such

portion of said statements which contain the legal theories or mental impressions of defendant's counsel.

5. All reports and statements requested in plaintiff's request for production No. _____ which were not prepared by counsel for defendant.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del. 1976), furnished through the courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-377

FORM No. 3-377 Order To Compel Production of Document, Rule 37(a)n1

[Caption] n2

It Is Hereby Ordered this _____ of _____, 20 _____, that defendant, _____, shall produce the documents identified in plaintiff _____'s motion to compel production within ten days of the date of this order.

It Is Further Ordered that defendant, _____, shall pay plaintiff, _____, the sum of \$ _____ as counsel fees incurred in connection with preparation and presentation of said plaintiff's motion to compel production. Such payment shall be made within ten days of the date of this order.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del. 1976), furnished through the courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-378

FORM No. 3-378 Motion for Default for Failure to Comply With an Order Compelling Discovery, Rule 37(b)n1

[Caption] n2

Now comes the plaintiff _____ by its attorneys _____ in the above entitled action and moves, pursuant to Rule of Civil Procedure 37(b) that the Court enter the default of the defendant _____, for failure to comply with an order compelling discovery entered by this Court on _____, 20 _____, a copy of which is attached as exhibit A.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Valm v. Hercules Fish Products, Inc., 701 F.2d 235 (1st Cir. 1983), furnished through the courtesy of Glynn & Dempsey, Boston, Massachusetts.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-379

FORM No. 3-379 Motion To Impose Sanction for Failure To Comply With an Order Compelling Discovery, Rule 37(b)n1

[Caption] n2

Now comes the plaintiff, _____, by its attorneys _____, and moves this court for sanctions against the defendant for failure to comply with an order compelling discovery. In support of this motion, plaintiff states as follows.

1. Counsel for the plaintiff contacted counsel for _____ for the purpose of selecting a date to inspect the vessel involved in this action at _____, as ordered by the court.

2. Defendant refused to provide any such date.

3. Defendant's counsel informed plaintiff's counsel that defendant would not provide any person to show plaintiff and his expert the location on the vessel where the vessel was fractured and where the fire started, in relation to where plaintiff was working.

4. Plaintiff has been informed that the vessel has been in the _____ area several times since the court ordered _____ to give plaintiff advance notice of when the vessel would be in the _____ area. Wherefore plaintiff moves the court to dismiss all of _____

Company's defenses, or impose such other sanctions as the court may deem reasonable.

Dated: _____

Attorney for Plaintiff

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 & Kessennich, New Orleans, Louisiana.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-380

FORM No. 3-380 Order That Fact Be Taken a Established, Rule 37(b)

[Caption] n1

This cause came on to be heard on plaintiff's motion for an order that certain facts be taken as established for failure and refusal of the defendant to comply with this court's order of _____, 20 ____ that defendant _____; and the court having heard the argument of counsel and being fully advised, it is

Ordered that the following facts be taken as established for the purposes of this action, that plaintiff need introduce no further proof with respect to said facts, and that defendant will not be permitted to introduce evidence controverting said facts:

1. _____

2. _____

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-381

FORM No. 3-381 Motion for Expenses on Failure To Admit, Rule 37(c)

[Caption] n1

Now comes the plaintiff, _____, by its attorneys and moves this court for an order awarding it reasonable expenses against the defendant for defendant's failure to admit certain facts in support of this motion, represents to the court as follows:

1. On _____, 20____, plaintiff served on defendant a request to admit the truth of matters and the genuineness of documents under *Rule 36 of the Federal Rules of Civil Procedure*. Among the matters which defendant was requested to admit were the following:

(a) _____

(b) _____

2. On _____, 20____, defendant served on plaintiff his written and signed answers in reply to the said request, in which he stated in part:

(a) _____

(b) _____

3. As a consequence of defendant's denial of the said matters of substantial importance plaintiff was required to prove said matters at the trial of this action by the testimony of _____ and _____ and by introducing in evidence a certified copy of _____ Plaintiff's reasonable expenses in making such

proof amounted to \$ _____, as more particularly appears from the affidavit of
_____ attached hereto as Exhibit A.

Wherefore, plaintiff moves the court for an order requiring defendant to pay plaintiff the sum of \$
_____ as reasonable expenses in making such proof and the sum of \$ _____ as a
reasonable attorney's fee.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-382

FORM No. 3-382 Order for Expenses on Failure To Admit, Rule 37(c)

[Caption] n1

This cause came on to be heard on plaintiff's motion for an order requiring defendant to pay plaintiff the reasonable expenses incurred in proving certain matters, and it appearing to the court that plaintiff on _____, 20____, served on defendant a request to admit the truth of certain matters; that defendant on _____, 20____, served a written and signed answer denying the truth of said matters; that plaintiff thereafter proved the said matters at the trial of this action by the testimony of _____ and _____ and the introduction in evidence of a certified copy of _____; that the said matters were material and relevant and of substantial importance to the trial of this action; that the request was not held objectionable pursuant to Rule 36(a); that there were no good reasons for the denial; and there was no reasonable ground for defendant to believe that he might prevail in the matter,

It Is Ordered that defendant pay to plaintiff the sum of \$ _____ as reasonable expenses of proving said facts and \$ _____ as a reasonable attorney's fee.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-383

FORM No. 3-383 Notice of Motion To Dismiss--Failure To Answer Interrogatories, Rule 37(d)

[Caption] n1

Please Take Notice, that upon all the pleadings and proceedings heretofore had herein, upon the annexed affidavit of _____, sworn to on the _____ day of _____, 20 _____, and upon a copy of the proposed interrogatories attached hereto, a motion will be made in Room _____ of the United States Courthouse, _____, City of _____, on the _____ day of _____, 20 _____, at _____ o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, pursuant to *Rule 37(d) of the Federal Rules of Civil Procedure*, for an order dismissing this action, and for such other and further relief as to this court may seem just and proper.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-384

FORM No. 3-384 Motion To Dismiss--Failure To Answer Interrogatories, Rule 37(d)

[Caption] n1

Now comes the Defendant, _____, a corporation, by and through its undersigned attorneys and hereby moves the Court for an order striking the complaint of the plaintiffs and dismissing the action with prejudice and with costs to defendant. In support of this motion the defendant states as follows.

1. On _____, 20 _____, defendant served on plaintiffs interrogatories pursuant to *Rule 33 of the Federal Rules of Civil Procedure*, which interrogatories are now on file in the office of the Clerk of this Court;

2. More than _____ days have elapsed and plaintiffs have wilfully failed to answer or object to said interrogatories.

Wherefore defendant respectfully submits that in accordance with Rule 37(d) of the Rules of Federal Practice it is entitled to relief herein requested.

At _____ this _____ day of _____, 20 _____.

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-385

FORM No. 3-385 Notice of Motion to Strike Pleadings and for Judgment by Default--Failure to Answer Interrogatories, Rule 37(d)n1

[Caption] n2

Please Take Notice that upon the attached affidavit of _____, sworn to the _____ day of 20 _____, and upon all the prior proceedings heretofore had herein, the undersigned will make a motion before the Honorable _____ of the United States District Court for the _____ District of _____ at the Courthouse, _____, on the _____ day of _____, 20 _____, at _____ o'clock in the forenoon in Room _____, for an order pursuant to *Rule 37(d) of the Federal Rules of Civil Procedure* to strike defendants' Answer and render judgment by default against defendants because of their failure to answer Interrogatories or, in the alternative, for an Order compelling the service of the Answers to Interrogatories within 15 days, and for such other relief as the Court deems just in the premises.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Sea-Land Service, Inc. v. Aetna Insurance Co.*, Civ. No. 72-1170 (S.D.N.Y. 1972), furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-386

FORM No. 3-386 Affidavit in Support of Motion To Strike Pleadings and for Judgment by Default--Failure To Answer Interrogatories, Rule 37(d)n1

[Caption] n2

STATE OF _____)
COUNTY OF _____) SS.:
)
)

_____, being duly sworn, deposes and says:

1. He is a member of the firm of _____, attorneys for plaintiff, and is familiar with all the pleadings and proceedings heretofore had herein, and makes this affidavit in support of a motion pursuant to *Rule 37(d) of the Federal Rules of Civil Procedure* to strike defendants' Answer for failure to answer interrogatories.
2. On _____, 20____, and in accordance with a previous agreement between counsel, plaintiff served by mail interrogatories upon the defendants. To date, defendants have failed to answer said interrogatories.
3. The default of defendants in answering the interrogatories is seriously hampering plaintiff in its investigation and preparation of the case. The interrogatories are designed to obtain information within the knowledge of defendants necessary to plaintiff's preparation for trial.

Wherefore, it is respectfully requested that the defendants' answer be stricken, and/or judgment be entered against defendants, or that defendants be compelled to answer the interrogatories within 15 days, and that plaintiff have such other and further relief as to the Court seems just in the premises.

Attorney for Plaintiff

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

[Seal]

Notary Public

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Sea-Land Service, Inc. v. Aetna Insurance Co.*, Civ. No. 72-1170 (S.D.N.Y. 1972), furnished through the courtesy of De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-387

FORM No. 3-387 Order To Dismiss--Failure To Answer Interrogatories, Rule 37(d)

[Caption] n1

Defendant having moved for an order striking the plaintiffs' complaint with prejudice because of plaintiffs' willful failure to answer interrogatories served on plaintiffs pursuant to *Rule 33 of the Federal Rules of Civil Procedure*; the Court having heard the argument of counsel; and upon due deliberation, the Court having concluded that the plaintiffs have wilfully and deliberately defaulted in failing to answer the duly-served interrogatories, it is

Ordered, Adjudged And Decreed that the defendant's motion be and the same is hereby granted; and it is further

Ordered, Adjudged And Decreed that the plaintiffs' complaint herein be and the same is hereby dismissed with prejudice against another action upon the same grounds, and that defendant recover his costs.

_____, this _____ day of _____, 20 _____.

District Court Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM Nos. 3-388-3-399

Reserved

FORM Nos. 3-388Reserved



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4-III Benedict on Admiralty FORM No. 3-400

FORM No. 3-400 Motion for Voluntary Dismissal, Rule 41(a)

[Caption] n1

Now comes the Plaintiff _____ by its attorneys _____ and moves the court for an order dismissing this action without prejudice on the ground that defendant has not pleaded any counterclaim against plaintiff (or, *that defendant's counterclaim can remain pending for independent adjudication by the court*) and that such dismissal will not inconvenience or prejudice the defendant, as more particularly shown by the affidavit of _____ attached hereto as Exhibit A.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-401

FORM No. 3-401 Order of Dismissal--General Form, Rule 41(a)

[Caption] n1

This action came on for trial before the Court, the Honorable _____, District Judge, presiding, and the issues having been duly tried, and a decision having been duly rendered,

It Is Ordered And Adjudged that as to _____ the plaintiff take nothing and that the action be dismissed on the merits,

It Is Further Ordered And Adjudged that as to _____ that the plaintiff, _____ recover of the third party defendant, _____, the sum of \$ _____, with interest thereon as provided by law, and the costs of this action, and that the action in rem against the defendant, the _____ be dismissed on the merits, and that the third party complaint against the third party defendant, _____, be dismissed on the merits.

Dated: _____

District Court Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-402

FORM No. 3-402 Stipulation of Voluntary Dismissal, Rule 41(a)

[Caption] n1

It Is Hereby Stipulated And Agreed by and between the undersigned, the attorneys for the respective parties herein, that the Intervening Complaint against the proceeds of the sale of the vessel _____ is hereby withdrawn and dismissed, without prejudice, and without costs as to one party as against the other.

Dated: _____

Attorney for Intervenor

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-403

FORM No. 3-403 Stipulation and Order of Dismissal

[Caption] n1

It Is Hereby Stipulated And Agreed by and between the counsel for the parties to this action that, pursuant to *Fed. R. Civ. P. 41(a)(1)*, said action is hereby dismissed as to plaintiffs _____ and _____, with prejudice and without costs.

Date: _____

Attorneys for Plaintiff

So Ordered:

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-404

FORM No. 3-404 Stipulation and Order of Dismissal With Prejudice

[Caption] n1

It Is Hereby Stipulated And Agreed pursuant to *Fed. R. Civ. P. 41* that the Intervening Complaint of _____ filed herein be dismissed, with prejudice and without costs.

Dated: _____

Attorney for Intervenor

Attorney for Plaintiff
Banks

So Ordered:

This _____ day of _____, 20____,

United States District Court

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-405

FORM No. 3-405 Stipulation of Discontinuance, Rule 41(a)

[Caption] n1

It Is Hereby Stipulated And Agreed, by and between the undersigned, attorneys for all parties hereto, that the above entitled matter be and same hereby is discontinued, with prejudice, and without costs to any party as against the other.
Dated: _____

Attorney for Plaintiff

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-406

FORM No. 3-406 Order of Discontinuance, Rule 41(a)

[Caption] n1

It having been reported to the Court that the above action has been settled,

It is, on this _____ day of _____, 20 _____

Ordered, that this action is hereby discontinued, without costs, and without prejudice to the right to reopen the action if the settlement is not consummated.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-407

FORM No. 3-407 Motion for Order of Voluntary Dismissal of Intervening Complaint

[Caption] n1

Now comes _____, one of the intervening plaintiffs, by its attorneys, _____, pursuant to *Fed. R. Civ. P. 41(a)(2)*, and moves this Court for an Order permitting it to voluntarily dismiss its Intervening Complaint filed in this case and says:

1. On _____, 20____, this Court granted the Motion of _____ to intervene as a plaintiff. Paper No. _____. The Intervening Complaint of _____ was filed on _____, 20_____.

2. _____ was the local agent for the _____. Its Intervening Complaint claimed a maritime lien on the vessel _____, or the proceeds of its sale, in the amount of \$_____, representing unpaid agency fees.

3. _____ has ceased operations. Counsel has been instructed by the principals of the corporation to seek a voluntary dismissal of this Intervening Complaint so that _____ will have no further involvement with this litigation.

4. _____ relies for support of this Motion on *Fed. R. Civ. P. 41(a)(2)* and the Verification of Counsel, below.

Wherefore _____ prays that this Court enter an Order pursuant to *Fed. R. Civ. P. 41(a)(2)* permitting it to voluntarily dismiss its Intervening Complaint.

Attorneys for Intervening Plaintiffs

VERIFICATION

I Hereby Certify, under penalties of perjury, that I am over eighteen years of age and competent to testify, that I have personal knowledge of the facts set forth herein, that I am the attorney for _____, that _____ has ceased operations and that the principals of the corporation have given instructions that its Intervening Complaint in this case be voluntarily dismissed so that the corporation will have no further involvement in this litigation.

(Name)

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-408

FORM No. 3-408 Dismissal of Intervening Complaints With Prejudice and Motion for Cancellation of Stipulation for Value

[Caption] n1

In consideration of the settlement of the shipper claims and the Motion for Release of Funds Pursuant to Settlement, _____, _____ and _____, Intervenor, dismiss with prejudice their intervening complaints. The dismissal with prejudice is conditioned upon the release of funds in the amount and manner set forth in the Motion for Release of Funds Pursuant to Settlement and shall take effect when the Order proposed with that Motion is entered. Intervenor posted bonds or Stipulation for Value ("Stipulations") in this action in order to obtain release of their cargo from aboard the _____. Intervenor request this Court to enter an order cancelling these Stipulations upon notification to this Court by either _____, Esquire or _____, Esquire, agents for distribution of the funds released by this Court pursuant to settlement, stating that Intervenor have fulfilled their obligations regarding contributions to the settlement fund established by the Motion for Release of Funds Pursuant To Settlement.

Attorneys for
Above-Identified Shippers

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 41 DISMISSAL OF ACTIONS

4-III Benedict on Admiralty FORM No. 3-409

FORM No. 3-409 Order to Show Cause--Involuntary Dismissal of Complaint for Lack of Prosecution, Rule 41(b)n1

[Caption] n2

It Is Hereby Ordered that plaintiff show cause before this Court at the United States Courthouse,
_____, Courtroom # _____, on _____, 20 _____, at
_____ a.m., why an Order should not be entered pursuant to *Fed. R. Civ. P. 41(b)* dismissing the
Complaint for want of prosecution.

So Ordered:

Dated: _____

U.S. District Judge

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Thomas v. Atlantic Marine Lines, Inc.*, Civ. No. 83-3907 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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RULE 41 DISMISSAL OF ACTIONS

4-III Benedict on Admiralty FORM Nos. 3-410-3-420

Reserved

FORM Nos. 3-410Reserved



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 42 CONSOLIDATION; SEPARATE TRIALS

4-III Benedict on Admiralty FORM No. 3-421

FORM No. 3-421 Motion for Consolidation for Trial, Rule 42(a)n1

[Caption] n2

Please Take notice that upon the annexed affidavit of _____, attached hereto, the undersigned will move this court, at _____ A.M. on _____, 20 _____, or as soon thereafter as counsel can be heard, for an order that both of the above styled causes be consolidated for trial, on the ground that they involve common questions of law and fact and that consolidation will thus avoid expense and delay.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Empire Aluminum Corp. v. S.S. Korendijk*, 391 F. Supp. 402, 2074 A.M.C. 2213 (S.D. Ga. 1973), courtesy of Hunter, Houlihan, Maclean, Exley, Dunn & Connerat, Savannah, Georgia.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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CHAPTER III MOTIONS AND REMEDIES
RULE 42 CONSOLIDATION; SEPARATE TRIALS

4-III Benedict on Admiralty FORM No. 3-422

FORM No. 3-422 Motion for Consolidation for Trial, Rule 42(a)n1

[Caption] n2

Now come the plaintiffs, _____, and the defendants, _____, by their respective counsel and join in moving this Court to consolidate the above entitled actions, for all purposes including trial, under the provisions of Rule 42(a) on the grounds that both actions involve common questions of law and fact and, in support of this motion, respectfully represent to the Court that:

(1) Both actions arise out of the same occurrence, that is, a collision between vessel _____, a freighter, and vessel _____, a sailing vessel, on _____, 20____, in the _____ River.

(2) Common questions of law and fact are pending before the Court in both actions.

(3) Consolidation of the two actions would further the convenience of and be conducive to expedition and economy of the witnesses, parties, attorneys and the Court.

(4) Consolidation would not prejudice the defendants in these actions.

Dated: _____

Attorney for Plaintiff

Attorney for Plaintiff

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del. 1976), courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 42 CONSOLIDATION; SEPARATE TRIALS

4-III Benedict on Admiralty FORM No. 3-423

FORM No. 3-423 Affidavit in Support of Motion for Consolidation for Trial--Action Against Vessel Owner and Inland Carrier for Water Damage to Cargo, Rule 42(a)n1

I, _____, personally before the undersigned Notary Public duly authorized by law to administer oaths appeared, with knowledge of the facts stated herein having first been duly sworn on oath deposes and says that:

1. I am a practicing attorney and of counsel for plaintiff in the above styled causes.
2. The cause first named hereinabove is an action by the owner of certain goods against the ocean carrier and her owners for alleged water damage while said cargo was in the custody of said vessel.
3. A continuing investigation by the attorneys for the plaintiffs reveals a substantial possibility that liability lies also with the inland carrier of said cargo after it was offloaded from _____ and delivered to said carrier, _____, for which reason the other cause named hereinabove was brought.
4. I sincerely believe that to allow both actions to proceed independently would be an imposition on the time of the court and of the parties and attorneys involved, inasmuch as both actions arise out of alleged damage to one cargo at some point in its carriage from the manufacturer through the Port of _____ and delivery to the ultimate consignee in _____, _____, and substantially the same proof would have to be offered on each separate trial. In order to avoid two separate trials, consolidation for trial would minimize the expense to all concerned and the time and procedure of this court.

Dated: _____

Attorney for Plaintiff

Notary Public

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Empire Aluminum Corp. v. S.S. Korendijk, 391 F. Supp. 402, 2074 A.M.C. 2213 (S.D. Ga. 1973), courtesy of Hunter, Houlihan, MacLean, Exley, Dunn & Connerat, Savannah, Georgia.



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CHAPTER III MOTIONS AND REMEDIES
RULE 42 CONSOLIDATION; SEPARATE TRIALS

4-III Benedict on Admiralty FORM No. 3-424

FORM No. 3-424 Order For Consolidation for Trial, Rule 42(a)

[Caption] n1

These causes coming on to be heard on motion of the plaintiffs and defendants for an order consolidating them, and it appearing that they involve common questions of law and fact and that consolidation will reduce costs and delay, it is

Ordered, that the above entitled actions be and they are hereby consolidated, and that they be tried together before the Court.

Dated: _____

United States District

Judge n2

or

The within Motion to Consolidate the above entitled civil actions has been read and considered by the Court and stipulated to by all parties in both of said actions,

It Is Hereby Ordered that the above entitled civil actions be and they hereby are consolidated for all purposes, including trial, and that all papers, other than answers, cross-claims, counter-claims and answers thereto shall henceforth be captioned:

"A _____ and B)
) Consolidated Civil

4-III Benedict on Admiralty FORM No. 3-424

_____ Plaintiffs, v. C) Action No. _____
 _____ Defendant B)
 _____, Plaintiff, v. A
 _____ and C
 _____, Defendants."

Dated: _____

 United States District Judge n3

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.

(n2)Footnote 2. Form adapted from papers used in *Empire Aluminum Corp. v. S.S. Korendijk*, 391 F. Supp. 402, 2074 A.M.C. 2213 (S.D. Ga. 1973) , courtesy of Hunter, Houlihan, MacLean, Exley, Dunn & Connerat, Savannah, Georgia.

(n3)Footnote 3. Form adapted from papers used in *Linehan v. United States Lines, Inc.*, 417 F. Supp. 678 (D. Del. 1976) , courtesy of Potter, Anderson & Corroon, Wilmington, Delaware.



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RULE 42 CONSOLIDATION; SEPARATE TRIALS

4-III Benedict on Admiralty FORM Nos. 3-425-3-435

Reserved

FORM Nos. 3-425Reserved



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 44.1 DETERMINATION OF FOREIGN LAW

4-III Benedict on Admiralty FORM No. 3-436

FORM No. 3-436 Notice of Motion--Determination of Foreign Law, Rule 44.1

[Caption] n1

Please Take Notice that under Rule 44.1, the plaintiff, _____, intends to establish that the "Confidential Agreement" herein is valid and enforceable under German law and would be enforced in German courts. The "Confidential Agreement" was signed in Hamburg, Germany on _____, 20 ____ as it relates to the _____.

Please Take Further Notice that plaintiff will establish that under German law plaintiff stands in the shoes of any person possessing a maritime lien for which an assignment of that lien has been made upon advancing moneys to that lienor. Plaintiff then succeeds by advancement to the rank of priority of such lienor.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 44.1 DETERMINATION OF FOREIGN LAW

4-III Benedict on Admiralty FORM No. 3-437

FORM No. 3-437 Notice of Intent To Rely Upon Foreign Law

[Caption] n1

_____, Plaintiff, by _____, its attorneys, hereby gives notice pursuant to *Fed. R. Civ. P. 44.1*, that it intends to rely upon the law of _____ in opposing Defendant's Motion to Stay Proceedings Pending Arbitration.

Attorneys for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 44.1 DETERMINATION OF FOREIGN LAW

4-III Benedict on Admiralty FORM Nos. 3-438-3-448

Reserved

FORM Nos. 3-438Reserved



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CHAPTER III MOTIONS AND REMEDIES
RULE 49 SPECIAL VERDICTS AND INTERROGATORIES

4-III Benedict on Admiralty FORM No. 3-449

FORM No. 3-449 Defendant's Request for Special Jury Questions--Seaman's Injury Action With Jones Act and Unseaworthiness Claims, Rule 49n1

[Caption] n2

Defendant respectfully requests that the Court submit to the jury the following questions:

1. Did the defendant exercise the duty of care that it owed to the plaintiff?

Yes _____ No _____

2. Was the vessel _____ seaworthy?

Yes _____ No _____

3. What was the proportion of negligence that the plaintiff contributed to the accident?

4. What are plaintiff's damages, if any?

\$ _____

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Valm v. Hercules Fish Products, Inc.*, 701 F.2d 235 (1st Cir. 1983), furnished through the courtesy of Leo F. Glynn, Esq., Glynn & Dempsey, Boston, Massachusetts.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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CHAPTER III MOTIONS AND REMEDIES
RULE 49 SPECIAL VERDICTS AND INTERROGATORIES

4-III Benedict on Admiralty FORM No. 3-450

**FORM No. 3-450 Special Verdict Interrogatories--Injury to Seaman Allegedly Caused by Unseaworthy Ship,
Rule 49(a)n1**

[Caption] n2

Verdict

1. Do you find from a preponderance of the evidence that defendant was negligent and that such negligence was a cause of injury to the plaintiff on _____, 20 _____? Answer YES or NO.

2. Do you find from a preponderance of the evidence that the vessel _____ was unseaworthy and that such unseaworthy condition was a cause of injury to the plaintiff on _____, 20 _____? Answer YES or NO.

If you have answered both of the above questions NO, you need not answer the other questions. If you have answered either or both of the above questions YES, please answer the other questions below.

3. Do you find from a preponderance of the evidence that plaintiff was negligent and that such negligence contributed to his own injury? Answer YES or NO.

4. If you have answered YES to Question 3, state in a percentage the extent to which plaintiff's negligence contributed to his own injury.

_____ %

5. What do you find from a preponderance of the evidence to be the amount, if any, that is required to compensate fairly

4-III Benedict on Admiralty FORM No. 3-450

and reasonably for plaintiff's damages (In answering this question, do not make any reduction on account of any negligence of the plaintiff that you might find in answering Questions 3 and 4.)

\$ _____

Dated: _____

Foreperson

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Valm v. Hercules Fish Products, Inc.*, 701 F.2d 235 (1st Cir. 1983), furnished through the courtesy of Leo F. Glynn, Esq., Glynn & Dempsey, Boston, Massachusetts.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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RULE 49 SPECIAL VERDICTS AND INTERROGATORIES

4-III Benedict on Admiralty FORM Nos. 3-451-3-461

Reserved

FORM Nos. 3-451Reserved



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 50 MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE
VERDICT

4-III Benedict on Admiralty FORM No. 3-462

FORM No. 3-462 Motion on Behalf of Defendant for Directed Verdict--Head Injury Due to Collapsing Hatch

[Caption] n1

Now comes the defendant, _____, by _____ and _____, its attorneys, moves for a directed verdict and for cause therefore, respectfully represents:

1. The plaintiff has failed to show that the vessel owner breached any duty owed her.
2. The plaintiff has failed to prove any negligent act on the part of the vessel owner or any defects, latent or otherwise, in the vessel _____.
3. The vessel owner is not liable in damages for acts or omissions of visitors aboard the ship, whose acts proximately caused the accident.
4. It is the duty of the plaintiff to take reasonable steps for her own safety and to refrain from unnecessarily placing herself in a place of potential danger.
5. The hatch cover which struck plaintiff was open and obvious to all visitors, and the only persons in the vicinity of the ventilation hatches at the time of the accident to plaintiff were members of her party.
6. _____ admits to being the instrumentality that set the hatch covers in motion.
7. And for additional reasons to be advanced at the hearing hereon.

Attorneys for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 50 MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE
VERDICT

4-III Benedict on Admiralty FORM Nos. 3-463-3-473

Reserved

FORM Nos. 3-463Reserved



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 51 INSTRUCTIONS TO JURY: OBJECTION

4-III Benedict on Admiralty FORM No. 3-474

FORM No. 3-474 Defendant's Request for Instructions to the Jury--Seaman's Injury Action With Jones Act and Unseaworthiness Claims, Rule 51n1

[Caption] n2

Defendant submits the following as its proposed instructions to the jury in the above-entitled action:

1. The burden is on the plaintiff, _____, to prove his case for negligence and unseaworthiness by a fair preponderance of credible testimony and, if the evidence is equally divided, the plaintiff has not sustained his burden and your verdict must be for the defendant on the cause of action for negligence.
2. If you find by a fair preponderance of the evidence that the plaintiff was injured by reason of a normal condition, the fact would not of itself warrant a finding for the plaintiff, as the shipowner is not an insurer.
3. If you find that the condition, appurtenances, and arrangement of the vessel and its winch were normal and that the sole and proximate cause of the plaintiff's injury was due to a normal condition that he knew or should have known the nature of, then your verdict must be for the defendant on the cause of action for negligence.
4. The burden is on the plaintiff to show that the defendant failed to use reasonable care under all the circumstances and that such failure to use such care was a proximate cause of the accident.
5. Mere proof that plaintiff was injured raises no presumption of negligence on the part of the defendant.
6. Defendant's duty was to use reasonable care in providing a reasonably safe vessel and winch for the plaintiff to use. The defendant is not an insurer of the plaintiff's safety. *Tate v. A/B Svenska Amerika Line*, 435 F.2d 172 (5th Cir. 1970).

7. The plaintiff cannot recover for injury caused solely by his own negligence. *Schlichter v. Port Arthur Towing Co.*, 288 F.2d 801 (5th Cir. 1961) , *cert. denied*, 368 U.S. 828 (1961) .

8. The shipowner is not required to furnish an accident-free ship under the warranty of seaworthiness. The duty is absolute, but it is a duty only to furnish a ship and, in this instance, a winch reasonably fit for its intended purpose. The standard is not perfection but reasonable fitness. If you find that the condition, appurtenance, and arrangement of the winch was reasonably fit for its intended purpose, you will find for the defendant, since the defendant was not obliged to furnish the best or most convenient winch. *Mitchell v. The Trawler Racer*, 362 U.S. 539 (1960) . *Shenker v. United States*, 322 F.2d 622 (2d Cir. 1964) , *cert. denied*, 376 U.S. 907 (1964) .

9. The mere happening of an accident on the vessel does not establish that the vessel or winch were unseaworthy. *Logan v. Empresa Lineas*, 353 F.2d 373 (1st Cir. 1965) , *cert. denied*, 383 U.S. 970 (1966) .

10. The employer is not liable merely because a seaman has been injured. The employer is liable only if he has been negligent or has failed to provide a seaworthy vessel. If a seaman is injured as a result of the normal hazards or risks of the business in which he is engaged, without fault on the part of any one else and despite the fact that the ship and its equipment were seaworthy, he is not entitled to recover damages from his employer. *Massey v. Williams-McWilliams*, 414 F.2d 675 (5th Cir. 1965) , *cert. denied*, 396 U.S. 1037 (1970) .

11. If you find that the negligence of the defendant or the unseaworthiness of the vessel was simply a condition without which the plaintiff would not have been injured and if you further find that the proximate cause of the plaintiff's injuries was the fact that the plaintiff failed to proceed in a proper and workmanlike manner, you must find for the defendant.

12. The plaintiff is not unemployable. He is able to work and you will consider his ability to earn in computing any lost wages.

13. The Court is obliged to tell you that any verdict you might award the plaintiff is not subject to taxes under the federal or state income tax laws and you will not consider taxes in fixing any award. *Norfolk & Western Railroad Co. v. Liepelt*, 62 L. Ed. 2d 689 (1979) .

14. If you find that the plaintiff will lose future wages, any award for future wages must be discounted to present value.

15. If the pre-existing disease or condition is latent, the recovery by the plaintiff is confined to those injuries due to its enhancement or aggravation. However, if you find the condition was bound to worsen by its very nature, an appropriate discount should be made for damage that would have been suffered in the absence of defendant's negligence. *Evans v. S. J. Groves and Sons Co.*, 315 F.2d 335 (2d Cir. 1963) .

16. You are not to award damages for any injury or condition from which the plaintiff may have suffered or may now be suffering, unless it has been established by a preponderance of the evidence that such injury or condition was proximately caused by the accident in question.

17. In considering loss of future earning power, if any, the award shall include such reasonable compensation which you find the evidence that plaintiff is reasonably certain to suffer in the future. In determining this amount, you should consider what plaintiff's health, physical ability, and earning power were before the accident and what they are now, the nature and extent of his injuries, whether or not they are reasonably certain to be permanent, or, if not permanent, the extent of their duration, all to the end of determining, first, the effect, if any, upon his future earning power, which you may find was a proximate result of the injury in question.

18. Custom or practice is not an excuse or justification for unreasonable conduct. If the jury finds that the conduct of the

plaintiff in standing under the bale while it was aloft was unreasonable conduct for a master of his skill and experience and that the conduct of the plaintiff, however customary, was the proximate cause of his own injury, then the jury's verdict will be for the defendant. *The T. J. Hooper*, 60 F.2d 737 (2d Cir. 1932) , *cert. denied*, 287 U.S. 662 (1932) . Restatement (Second) of Torts, Section 295A, Illustration 2.

20. If the jury finds that the plaintiff failed to exercise the care and skill of a reasonable master by failing to ensure that the brake was tested and to make sure the brake drums were clear before using it and if the jury finds that plaintiff's injury was proximately caused by the plaintiff's failure to perform his contractual obligation as master to his employer, then the jury's verdict will be for the defendant. *Walker v. Lykes Bros. S.S. Co.*, 193 F.2d 772 (2d Cir. 1952) .

20. The plaintiff, as master of the vessel, owed a specific contractual duty to his employer to supervise his own conduct in accordance with the standards of a skilled and knowledgeable master. If the jury finds that the plaintiff failed to supervise his own conduct by failing to stand out from under and keep clear of the bale of the drag while it was hoisted aloft and the plaintiff's injury was proximately caused by that breach of the plaintiff's required conduct as master, then the jury's verdict will be for the defendant. *Walker v. Lykes Bros. S.S. Co.*, 193 F.2d 772 (2d Cir. 1952) .

21. If you find that the duty of operating this gear in a proper manner was solely a duty which the plaintiff owed to his employer to perform, and if you find that the condition of unseaworthiness which was the cause of the plaintiff's accident was due solely to the failure of the plaintiff to carry out his duty to his employer to properly operate the gear, then you must find for the defendant in this case.

In short, the plaintiff cannot recover on the basis of an unseaworthy condition which is due wholly and solely to a failure on his part to perform the responsibilities that were assigned to him. That is one of the aspects of the case that it is the burden of the defendant to establish, that it was solely the plaintiff's duty to operate the gear in a proper manner.

22. Any finding for the plaintiff must be limited solely to the proximate consequences of the plaintiff's actual injury at the time and place alleged in his complaint. The defendant is not liable for the consequences of any physical conditions of the plaintiff or for physical conditions caused by the normal progression of the aging factor. The defendant is not liable for the consequences of any physical conditions caused by the plaintiff's failure to act as a reasonable patient.
Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Valm v. Hercules Fish Products, Inc.*, 701 F.2d 235 (1st Cir. 1983), furnished through the courtesy of Leo F. Glynn, Esq., Glynn & Dempsey, Boston, Massachusetts.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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RULE 51 INSTRUCTIONS TO JURY: OBJECTION

4-III Benedict on Admiralty FORM Nos. 3-475-3-485

Reserved

FORM Nos. 3-475Reserved



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 52 FINDINGS BY THE COURT

4-III Benedict on Admiralty FORM No. 3-486

FORM No. 3-486 Additional Findings of Fact and Conclusions of Law Suggested by Plaintiff--Action for Damage to Ship, Rule 52(b)n1

Plaintiff, _____, at the conclusion of the trial of this case, requests the court to make the following additional findings of fact and conclusions of law as a part of the decision in this case:

FINDINGS OF FACT

1. The winds of Hurricane _____ blew from the northwest prior to the passage of the eye of the storm, then from the southeast after the passage of the eye.
2. Had the vessel _____ been permitted to remain berthed at the alumina dock, the winds would have been along her beam, first on her stern, and, after the eye passed, on her bow. At the bauxite dock to which the vessel _____ was shifted on the morning of _____, 20 _____, prior to the passage of Hurricane _____, the winds were on her breast, first pushing her into the dock, then pushing her away.
3. The negligence of the defendant _____ Company in failing to advise the Master of the vessel _____ of the change in the predicted landfall of Hurricane _____ was a proximate cause of the grounding of the vessel _____.
4. Defendant _____ [vessel owner] warranted "One Safe Berth, _____, State of _____" in the charter party in effect.
5. Defendant _____ [vessel owner] breached the covenant of a safe berth in the charter party.
Paragon Oil Co. vs. Republic Tankers, S.A., 310 F.2d 169 (2d Cir. 1962) , cert. denied sub nom. Petrolíferos Fiscates v. Paragon Oil Co., 372 U.S. 967 (1963) .

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers in *Trade & Transport, Inc. v. Caribbean Steamship Company* (S.D. Tex. 1974), furnished through the courtesy of Kleberg, Mobley, Lockett, and Weil, Corpus Christi, Texas.



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 52 FINDINGS BY THE COURT

4-III Benedict on Admiralty FORM No. 3-487

**FORM No. 3-487 Motion for Reconsideration of Memorandum and Order Confirming Arbitration Award,
Rules 52(b) and 59(a), (e)**

[Caption] n1

_____ and _____ and _____ ("Owners"), defendants herein, by
_____, their attorneys, move this Court to reconsider its Memorandum and Order entered on
_____, 20 ____, and in support thereof say:

1. Plaintiff never argued before the Arbitrators or in this Court that Owners should receive less than \$
_____ in demurrage.

2. The legislation implementing the Arbitration Convention does not require that a certified copy of an award be
furnished to the Court when confirmation of it is sought.

3. The Court's own errors, correctable on reargument, point up the desirability of remanding portions of the final award
to the arbitrators for reconsideration.

Wherefore, defendants move this Court to reconsider its Memorandum and Order entered on _____,
20 ____.

Attorneys for Defendants

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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CHAPTER III MOTIONS AND REMEDIES
RULE 52 FINDINGS BY THE COURT

4-III Benedict on Admiralty FORM Nos. 3-488-3-498

Reserved

FORM Nos. 3-488Reserved



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 54 JUDGMENTS; COSTS

4-III Benedict on Admiralty FORM No. 3-499

FORM No. 3-499 Interlocutory Decree on a Complaint *In Rem* and *In Personam*, With Reference to Master, Rule 54(b)

[Caption] n1

The above-entitled cause having come on for final hearing on the pleadings and proofs of the respective parties, and having been argued by the respective attorneys, and the Court, after due deliberation, having handed down its opinion in writing holding that the collision referred to in the pleadings was due solely to the fault of the defendants _____ and the vessel _____, and directing a decree for the plaintiff herein with costs.

Now, on motion of _____, attorneys for the plaintiff herein, it is

Ordered that the opinion of the Court. heretofore filed herein on the _____ day of _____, 20 _____, be and hereby is adopted as the Court's findings of fact and conclusions of law, pursuant to *Fed. R. Civ. P. 52*; and it is further

Ordered, Adjudged And Decreed that the plaintiff herein recover of and from _____ and the vessel _____, her engines, boilers, etc., the damages sustained by plaintiff in consequence of the matter referred to in the complaint, together with interest and costs; and it is further

Ordered that the matter be hereby referred to _____, Master, to hear proofs as to the plaintiff's damages herein, and to report to this Court his conclusions thereon with all convenient speed.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 54 JUDGMENTS; COSTS

4-III Benedict on Admiralty FORM No. 3-500

FORM No. 3-500 Interlocutory Decree in Action for General Average Adjustment, With Reference to Adjuster, Rule 54(b)

[Caption] n1

This cause, having come on to be heard on the pleadings and proofs adduced by the respective parties, and having been argued and submitted by attorneys for the respective parties, and due deliberation having been had, and the court having handed down its written opinion that the plaintiffs are entitled to a recovery of contribution in general average, if any such contributions should appear to be due to them upon a proper statement, in accordance with York-Antwerp Rules, of a general average adjustment of any and all extraordinary expenses and sacrifices incurred or arising out of the disaster and fire referred to in the complaint herein, it is now by the Court

Ordered that the opinion of the Court heretofore filed herein on the _____ day of _____, 20____, be and hereby is adopted as the Court's findings of fact and conclusions of law, pursuant to *Fed. R. Civ. P. 52*; and it is further

Ordered, Adjudged And Decreed that the plaintiffs recover such contributions in general average, if any, as may be shown to be due to them upon a proper statement of general average herein, and it is further

Ordered that the matter be referred to _____ [*adjusters*], Masters, to prepare a general average statement covering any extraordinary expenses and sacrifices which may have been incurred or may have arisen by reason of the disaster and fire referred to in the complaint herein, and to determine the rights, if any, of the plaintiffs herein to a recovery of contribution in general average, and to report the same to this Court with all convenient speed.
Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-501

FORM No. 3-501 Judgment--Negligence and Unseaworthiness

[Caption] n1

This action came on for trial before the Honorable _____, United States District Judge, presiding, and the issues having been duly tried, and the Court having rendered a Memorandum Opinion on _____, 20____.

It Is Ordered And Adjudged that Judgment be and it hereby is entered in favor of _____, plaintiff, against _____, defendant, in the amount of _____ Dollars (\$ _____), and

It Is Further Ordered And Adjudged that the plaintiff be and hereby is entitled to pre-judgment interest at the rate of _____ percent (_____ %) from _____, 20____, until paid, the defendant, _____, to pay the costs of this proceedings as taxed by the Clerk of the Court.

It Is Further Ordered And Adjudged that the Clerk of the Court mail copies of this Judgment to counsel for the parties. Dated this _____ day of _____, 20____.

United States District Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-502

FORM No. 3-502 Motion for Amendment of Judgment

[Caption] n1

Now comes the defendant, _____, by and through its attorneys, _____, and moves that the Court amend the judgment entered in the above referenced case to eliminate the award of prejudgment interest. The reasons supporting this Motion are set forth in the accompanying Memorandum.

Respectfully submitted

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM Nos. 3-503-3-513

Reserved

FORM Nos. 3-503Reserved



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RULE 55 Default

4-III Benedict on Admiralty FORM No. 3-514

FORM No. 3-514 Request to Enter Default, Rule 55(a)n1

[Caption] n2

To: _____, Clerk of the United States District Court for the _____ District of

You will please enter the default of the defendant for failure to plead or otherwise defend as provided by the Federal Rules of Civil Procedure, as appears from the affidavit of

_____ hereto attached.

Dated: _____

Attorney for Plaintiff

The default of the defendant is hereby noted.

Clerk of Court

Dated: _____

By: _____

Deputy Clerk

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Thomas v. Atlantic Marine Lines, Inc., Civ. No. 83-3907 (E.D.N.Y.

1983).

(n2)Footnote 2. *See* Form No.3-1 *supra*.



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RULE 55 Default

4-III Benedict on Admiralty FORM No. 3-515

FORM No. 3-515 Affidavit in Support of Request to Enter Default, Rule 55(a)n1

[Caption] n2

STATE OF _____)
COUNTY OF _____) ss
)
)

_____, being duly sworn, deposes and says that he is associated with _____, counsel for plaintiff in the above-entitled action; that the Summons and Complaint were served on the defendant on _____, 20____, as appears from the written acceptance of the Summons and Complaint endorsed on the basis of the Complaint by _____; that the time within which the defendant may answer or otherwise move within respect to the Complaint has expired; and that defendant has not answered or otherwise moved and that the extension of time for defendant to answer or otherwise move expired on _____, 20____.

Attorney for Plaintiff

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

[Seal]

Notary Public

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Thomas V. Atlantic Marine Lines, Inc.*, Civ. No. 83-3907 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*



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RULE 55 Default

4-III Benedict on Admiralty FORM No. 3-516

FORM No. 3-516 Default Judgment With Order for Hearing on Damages, Rule 55(b)n1

[Caption] n2

The plaintiff in this action having requested the Clerk of this Court to enter the default of defendant, _____, and the Clerk having noted such default on _____, 20 _____, now on motion of the plaintiff it is hereby

Ordered, that in view of defendant's default, the only issues in this action remaining to be determined are:

(a) the amount of plaintiff's damages, and

(b) the amount of plaintiff's interest, costs, and counsel fees, and it is further

Ordered, that this matter be and is referred to Magistrate _____ for the sole purpose of conducting a hearing to determine the amount of plaintiff's damages and claims for interest, costs and counsel fees.

The Clerk of the Court is directed to serve a copy of this Default Judgment and Order on all parties.

So Ordered.

Dated: _____

United States District Judge

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Thomas v. Atlantic Marine Lines, Inc., Civ. No. 83-3907 (E.D.N.Y.

1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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RULE 55 Default

4-III Benedict on Admiralty FORM No. 3-517

FORM No. 3-517 Default Judgment--Possessory Action, Rule 55(b)n1

[Caption] n2

This action having been commenced by the filing of a Complaint within the admiralty and maritime jurisdiction, and the issuance of a Summons thereon, on _____, 20 _____, and a Warrant for the arrest of the vessel _____ having issued thereunder, and copies of all the foregoing papers having been personally served on defendants _____ and _____ on _____, 20 _____, and the said yacht having been duly taken into the Marshal's possession for safe custody on _____, 20 _____, and said defendants' time within which to plead or otherwise proceed in this action having expired, pursuant to *F.R.C.P. Rule 12(a)*, on _____, 20 _____, and said defendants having failed to plead, request an extension of time in which to do so, or in any other way proceed in this action.

Be It Hereby Now That This Honorable Court, having pursuant to *F.R.C.P. Rule 54(b)* expressly determined and directed that there is no just reason for delay in handing down this judgment, and that it must accordingly be entered, does hereby

Order, Adjudge, And Decree that plaintiff, _____, is the sole and only lawful, true, and right owner of the _____ and as such is entitled to an exclusive exercise of all proper and lawful rights, interests, and incidents of ownership in the said yacht; and does hereby further

Order, Adjudge, And Decree that, save as may be expressly permitted and authorized by said plaintiff, _____, said defendants, _____ and _____, shall cease and desist from entering, going upon, or in any other way exercising or attempting to exercise dominion over or control over the said vessel _____ upon pain of contempt.

Dated: _____

United States District Judge

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 De Orchis & Partners, New York, New York.

(n2)Footnote 2. *See* Form No.3-1 *supra*.



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RULE 55 Default

4-III Benedict on Admiralty Form 3-518

Form 3-518 Request to Enter Default, Rule 55(a)

TO THE CLERK OF THE COURT, UNITED STATES DISTRICT COURT FOR THE [DISTRICT COURT]:

Defendant, *in rem*, the vessel M/Y [VESSEL NAME], and Defendants, [VESSEL OWNERS], *in personam*, having failed to answer or otherwise appear in the above-entitled action, and the time for appearance having expired, you are requested to enter their default pursuant to *Rule 55 (a) of the Federal Rules of Civil Procedure*.

This request is based upon the Declaration of [ATTORNEY NAME] attached hereto and the pleadings and the papers filed in the within action.

DECLARATION OF [ATTORNEY NAME]

I, [ATTORNEY NAME], declare as follows:

1. I am an attorney at law duly licensed to practice in all courts in the state of [STATE], including this Honorable Court and am a member of the firm of [FIRM NAME], attorneys for [FINANCIAL INSTITUTION] (hereinafter referred to as "Plaintiff").
2. I make this declaration in support of Plaintiff's Request to Clerk to Enter Default. I am personally familiar with the facts stated herein, and if called to testify, could and would competently testify thereto.
3. On [DATE], Plaintiff filed its Verified Complaint for Foreclosure of First Preferred Ship Mortgage (the "Verified Complaint") against M/Y [VESSEL NAME], *in rem*, and its registered owners, [VESSEL OWNERS], *in personam*. To date, no party other than Plaintiff has appeared in this action.
4. Pursuant to *Rule 55 (a) of the Federal Rules of Civil Procedure*, the Clerk may enter default against a defendant when

the defendant "has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise."

5. Pursuant to Rule [No.] of the Local Rules of this Court, a default may be entered in an action *in rem* where -

A. Notice of the arrest and action has been given under Local Rules [No.'s];

B. The time for answer has expired; and

C. No one has appeared to claim the Vessel.

6. The notice required under Local Rules [No.'s] is the same as that required under 46 U.S.C. § 31325 (d).

7. Notice of the arrest and of this action was duly given under 46 U.S.C. § 31325 (d), as established by the Order of this Court entered on [DATE]. A true and correct copy of the Order is attached hereto as Exhibit "A".

8. On [DATE], the United States Marshal for the [DISTRICT] arrested the M/Y [VESSEL NAME].

9. I am informed that on [DATE], the Marshal caused the Notice of Arrest of the Vessel to be published in the [NEWSPAPER].

10. The time for any person having a claim to the Vessel to file a claim with the Court expired on [DATE], ten (10) days after such publication, and the time for any such person to file an answer expired on [DATE], twenty (20) days after such publication. [Cite] No such claim or answer has been filed, and the Vessel is currently in default under Rule C of the Federal Rules of Civil Procedure and Rule [No.] of the Local Rules of this Court.

11. On [DATE], process was personally served on Defendants [VESSEL OWNERS] (hereinafter collectively referred to as the "Owners"). Proof of such service was originally filed with the Court on [DATE], as Exhibit "A" to Plaintiff's *Ex Parte* Application for Order Approving Notice of Suit. True and correct copies of said proofs of service are attached hereto as Exhibits "B" and "C".

12. Pursuant to *Rule 12(a) of the Federal Rules of Civil Procedure*, the time for the Owners to answer or otherwise plead to the Complaint expired on [DATE], twenty (20) days after service of such process.

13. The Owners have failed to answer or otherwise plead to the Complaint, and are presently in default under *Rule 12(a) of the Federal Rules of Civil Procedure*.

14. In view of the forgoing, Plaintiff requests the Clerk to enter default against Defendants [VESSEL OWNERS], *in personam*, and against the Defendant Vessel, M/Y [VESSEL NAME], *in rem*, pursuant to *Rule 55(a) of the Federal Rules of Civil Procedure*.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on [DATE] at [PLACE]

ATTORNEY NAME



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4-III Benedict on Admiralty Form 3-519

Form 3-519 Ex Parte Application for Entry of Default Judgment, Rule 55(a)

TO THE HONORABLE [DISTRICT JUDGE], UNITED STATES DISTRICT JUDGE FOR THE [DISTRICT COURT]:

COMES NOW Plaintiff [FINANCIAL INSTITUTION] (hereinafter referred to as "Plaintiff"), by and through its undersigned counsel of record, and hereby applies *ex parte* to this Court for entry of judgment in default against Defendants [VESSEL OWNERS], *in personam*, and the Defendant vessel, M/Y [VESSEL NAME], Official No. [OFFICIAL NUMBER], her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining, pursuant to *Rule 55 (a) of the Federal Rules of Civil Procedure*, and Rule [No.] of the Local Rules of this Court as follows:

I. STATEMENT OF FACTS

This is an admiralty action *in rem* for foreclosure of a preferred mortgage pursuant to the Ship Mortgage Act of 1920, as amended, Chapter 313, Subchapter II of Title 46 of the United States Code brought by Plaintiff against the M/Y [VESSEL NAME], *in rem* (hereinafter referred to as the "Vessel") and [VESSEL OWNERS], *in personam*.

The facts of this action are stated in the Verified Complaint filed concurrently herewith, and may be briefly summarized as follows:

A First Preferred Ship Mortgage dated [DATE], (hereinafter referred to as the "Mortgage") was given by Defendant [VESSEL OWNERS] (hereinafter collectively referred to as the Owners") in favor of Plaintiff on the vessel, M/Y [VESSEL NAME], Official No. [OFFICIAL NUMBER], her engines, masts, etc. (hereinafter collectively referred to as the "VESSEL").

As stated in the Verified Complaint, the Mortgage meets all the requirements of the Ship Mortgage Act, 46 U.S.C.,

Chapter 313, Subchapter II, and is a first preferred ship mortgage.

The Mortgage secures a Promissory Note dated [DATE] (hereinafter referred to as the "Note"), under which Plaintiff extended credit to the [VESSEL OWNERS] and the [VESSEL OWNERS] agreed to pay Plaintiff the total sum of [MORTGAGE AMOUNT], together with interest and expenses.

The [VESSEL OWNERS] have failed to repay the amounts due and owing to Plaintiff under the Note and Mortgage, and are therefore in default of the Note and Mortgage.

As established by the records of this action, on [DATE], Plaintiff commenced this action by filing a Verified Complaint pursuant to Supplemental Rule C of the Federal Rules of Civil Procedure. On [DATE], process was executed against the Vessel by the United States Marshal for the [DISTRICT COURT], pursuant to the Order of this Court filed on [DATE]. Notice of the arrest of the Vessel was published by the Marshal in the [NEWSPAPER] on [DATE]. On [DATE], notice of the arrest was also served by Plaintiff upon the [VESSEL OWNERS] under 46 U.S.C. § 31325 and Local Rule [No.], by service of process of the summons and complaint and service of the orders of this Court.

The records of this action establish that: (1) no one has filed a claim to the Defendant Vessel within ten (10) days after publication of the Notice of Arrest by the U.S. Marshal; (2) no claimant has filed an answer to the Complaint within twenty (20) days after publication of the Notice of Arrest by the U.S. Marshal; and (3) Defendants, the [VESSEL OWNERS], have not answered or otherwise appeared in this action within 20 days of service of process upon them. Accordingly, on [DATE] upon Plaintiff's request, the Clerk entered default against the Vessel, *in rem*, and against the [VESSEL OWNERS], *in personam*, pursuant to Rule 55 (a) of the Federal Rules of Civil Procedure.

Further, no bond has been filed within the almost [AMOUNT] months that this matter has been in litigation. *See U.S. v. F/V FORTUNE*, 1987 A.M.C. 2351, 2352 (D. Alaska 1987).

Plaintiff now applies to the Court for a default judgment to be entered against Defendants, the [VESSEL OWNERS], *in personam*, and against the Defendant Vessel, *in rem*, for all amounts due and owing under the Note and Mortgage and for foreclosure of the Mortgage.

II. PLAINTIFF HAS A VALID FIRST PREFERRED SHIP MORTGAGE ON THE VESSEL

The Mortgage was recorded with the United States Coast Guard and endorsed on the documents of the Vessel on [DATE]. The validity of the Mortgage is determined by the provisions of the Ship Mortgage Act, as amended, 46 U.S.C. Chapter 313.

Each of these requirements has been satisfied by the Mortgage in this action. As confirmed by the Certificate of Ownership of the Vessel issued by the United States Coast Guard (Exhibit "C"), the Mortgage was duly recorded and endorsed on the Vessel's documents. The Mortgage (Exhibit "B") includes an affidavit of good faith in compliance with the Ship Mortgage Act of 1920, and the Mortgage does not stipulate that the Mortgagee, Plaintiff, has not waived its preferred status under the Act.

Plaintiff is a federally insured depository bank with its principal place of business in [STATE], and is a "citizen" within the definition of 46 U.S.C. § 802 and the regulations thereunder. *See* Declaration of [BANK EMPLOYEE] filed concurrently herewith. The Mortgage is therefore a "preferred mortgage," and is entitled to the benefits and priorities provided in the Ship Mortgage Act.

As further established by the Coast Guard Certificate of Ownership, there are no other mortgages or liens recorded against the Vessel. The Mortgage is therefore a first preferred ship mortgage, and has priority over all other claims

against the Vessel, except for administrative expenses of this Court allowed by the Court. *46 U.S.C. § 31326*.

III. PLAINTIFF IS ENTITLED TO FORECLOSE ITS MORTGAGE
ON THE VESSEL AND TO A JUDGMENT IN THE AMOUNT OF
INDEBTEDNESS OUTSTANDING UNDER THE MORTGAGE AND COSTS

A preferred mortgage constitutes a lien on the mortgaged vessel, in the amount of the outstanding mortgage indebtedness secured by the vessel, which may be enforced after default of any term of the mortgage by a civil action *in rem* against the vessel, and (or) a civil action *in personam* in admiralty against the mortgagor. *46 U.S.C. § 31325(a), (b)*. Original jurisdiction of all such suits, and exclusive jurisdiction of all such suits *in rem*, are granted to the district courts of the United States. *46 U.S.C. § 31325 (c)*.

As established by the Declaration of [BANK EMPLOYEE], Defendants, the [VESSEL OWNERS], failed to make payments in accordance with the terms of the Note and Mortgage, and are in default thereof. Accordingly, Plaintiff is entitled to foreclose the Mortgage and to a judgment in the amount of the indebtedness outstanding under the Mortgage.

Under the terms of the Note and Mortgage, such outstanding indebtedness includes the outstanding principal amount under the Note, all accrued interest on the principal amount, late charges, insurance premiums, attorneys' fees and costs incurred in foreclosing the Note and Mortgage.

Further, by Order of this Court filed on [DATE], Plaintiff is entitled to recover as costs the administrative expenses of the U.S. Marshal and substitute custodian incurred in keeping the Vessel *in custodia legis*. Costs of publication of the Notice of Arrest and Notice of Sale of the Vessel are also taxable as administrative expenses. See *Boeing Co. v. M/V SPIRIT OF DISCOVERY*, 654 F.Supp. 740, 742 (W.D. Wash. 1986) .

As of [DATE], there was due, owing and unpaid for the [VESSEL OWNERS] under the Note and Mortgage the following amounts:

A. Principal on Note	\$ [AMOUNT]
B. Accrued interest on Principal from [DATE] through and including [DATE].....	\$ [AMOUNT]
C. Late Charges	\$ [AMOUNT]
D. Insurance Premiums Paid by Plaintiff from [DATE] through [DATE]	\$ [AMOUNT]
TOTAL OF ABOVE:	\$ [AMOUNT]

Interest continues to accrue on the principal at the per diem rate of \$ [AMOUNT] per day.

Plaintiff has, and will continue to incur attorneys' fees and costs in collection of the Note and Mortgage up to the date of confirmation of sale of the Vessel, and is entitled to recover such fees and costs pursuant to Paragraph [X] of the Note and Section [Y] of the Mortgage. Plaintiff seeks leave to supplement the default judgment accordingly after confirmation of the sale of the Vessel.

Plaintiff has also incurred, and will continue to incur administrative expenses including maintenance and repairs to the Vessel, Marshal's fees and expenses, substitute custodian fees, and other expenses *in custodia legis*, up to the date of confirmation of sale of the Vessel, and seeks leave to supplement the judgment prayed for herein accordingly after confirmation of the sale of the Vessel.

IV. PLAINTIFF IS ENTITLED TO JUDGMENT

AGAINST THE VESSEL, IN REM, AND
AGAINST THE [VESSEL OWNERS], IN PERSONAM

Under *Rule 55 of the Federal Rules of Civil Procedure* and Local Admiralty Rule [No.], the Court may enter default judgment against the Defendants, the [VESSEL OWNERS], *in personam*, and the Vessel, *in rem*, after due notice and after the time to answer has expired, and no answer or exceptions have been filed. As set forth above, Defendants, the [VESSEL OWNERS], have been personally served with the Summons and Complaint and have received due notice of the arrest of the Vessel. Plaintiff has also given notice of the arrest in accordance with Local Rule [No.] and the Order of this Court filed on [DATE], to:

- (1) the Master or other person having custody of the Vessel;
- (2) any person that recorded a notice of claim of undischarged lien on the Vessel;
- (3) all persons named in the United States Coast Guard Certificate of Ownership; and
- (4) all persons known to have an interest in the Vessel.

Despite such notice, Defendants, the [VESSEL OWNERS], have failed to answer the Complaint or otherwise appear in this action, and no party has filed a claim to the Vessel as required by Rule C (6), Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure.

Entry of Default having been entered by the Clerk against Defendants, the [VESSEL OWNERS], *in personam*, and the Vessel, *in rem*, Plaintiff now requests that the Court enter default judgment *in rem* against the Vessel, and *in personam* against Defendants, the [VESSEL OWNERS], for the amount currently outstanding under the Note and Mortgage and fees and costs as set forth above. Plaintiff further requests that the Court allow Plaintiff to supplement its judgment after sale of the Vessel, to include additional accrued interest, reasonable attorneys' fees and costs and administrative expenses incurred prior to confirmation of the sale of the Vessel, all of which costs and administrative expenses and attorneys' fees are recoverable by Plaintiff in this action. *See Boeing Co. v. M/V SPIRIT OF DISCOVERY*, 654 F.Supp. 740, 742 (W.D. Wash. 1986) .

V. CONCLUSION

Based upon the foregoing, Plaintiff respectfully requests that default judgment *in rem* be entered against the vessel M/Y [VESSEL NAME] and *in personam* against Defendants, [VESSEL OWNERS].

DECLARATION OF [ATTORNEY NAME]

I, [ATTORNEY NAME], declare as follows:

1. I am an attorney at law duly licensed to practice in all courts in the state of [STATE], including this Honorable Court and am a member of the firm of [FIRM NAME], attorneys for [FINANCIAL INSTITUTION] (hereinafter referred to as "Plaintiff").
2. On [DATE], Plaintiff filed its Verified Complaint for Foreclosure of First Preferred Ship Mortgage (the "Verified Complaint") against M/Y [VESSEL NAME], *in rem*, and its registered owners, [VESSEL OWNERS], *in personam*. To date, no party other than Plaintiff has appeared in this action.
3. On [DATE], process was personally served on Defendants [VESSEL OWNERS] (hereinafter collectively referred to as the "[VESSEL OWNERS]").

4. On [DATE], upon application of Plaintiff, the Clerk entered default against Defendants, the [VESSEL OWNERS], pursuant to *Rule 55 (a), of the Federal Rules of Civil Procedure*. A true and correct copy of the original Request to Clerk to Enter Default and Entry of Default against the [VESSEL OWNERS] is attached hereto as Exhibits "D" and "E".
5. On [DATE], the warrant of arrest was served on the Vessel by the United States Marshal.
6. On [DATE], the Marshal caused the Notice of Arrest of the Vessel to be published in the [NEWSPAPER].
7. Notice of the arrest and service of the pleadings was also given to [CORPORATION] on [DATE] by the United States Marshal as established by the Marshal's Return of Process on file herein.
8. Notice of the arrest of the Vessel was thus given to (1) the master or other person having custody of the property (i.e., the marina owner); (2) all persons that recorded notice of claim of undischarged lien on the Vessel (i.e., none); (3) all persons named in the United States Coast Guard's Certificate of Ownership (i.e., none) and (4) all persons known to have an interest in the property (i.e., none), in compliance with the Order of this Court filed on [DATE].
9. Plaintiff has incurred moving, maintenance and substitute custodian expenses while the Vessel has been in the custody of the Court. Plaintiff has also incurred attorneys' fees and costs in enforcing the terms of the Note and in foreclosing its Mortgage on the M/Y [VESSEL NAME] which are reasonable under the Note and Mortgage. Plaintiff has requested leave of court to amend any judgment entered against the Vessel following the confirmation of the sale of the Vessel and release of the Vessel from arrest to include in such judgment additional future accrued interest, expenses, costs and fees it will incur before the Vessel is released from arrest and the custody of the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on [DATE] at [PLACE]

ATTORNEY NAME



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RULE 55 Default

4-III Benedict on Admiralty Form 3-520

Form 3-520 Default Judgment [Proposed]

This matter is before the Court on Plaintiff's *Ex Parte* Application for Entry of Default Judgment. Based upon the pleadings and papers on file herein, it appears that personal service was duly made upon all Defendants against whom judgment is sought at this time; that notice of the arrest of the Defendant vessel, M/Y [NAME], Official No. [NUMBER], her engines, masts, anchors, cables, chains, rigging, tackle, apparel, furniture, and all necessities thereto appertaining (hereinafter referred to as the "Vessel") has been duly given; and that no answer or other appearance, and no claim under Supplemental Rule C of the Federal Rules of Civil Procedure has been filed in this action. Good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The application of Plaintiff [FINANCIAL INSTITUTION] for Entry of Default Judgment against the vessel M/Y [NAME], *in rem*, and Defendant, [VESSEL OWNER] (hereinafter collectively referred to as the "Owner"), *in personam*, is hereby granted and judgment is entered, as follows:
2. Plaintiff [FINANCIAL INSTITUTION] is the holder of a valid and subsisting First Preferred Ship Mortgage, dated [DATE], (the "Mortgage") against M/Y [NAME], *in rem*, and its registered owner, [VESSEL OWNER], *in personam*. To date, no party other than Plaintiff has appeared in this action;
3. The Mortgage satisfies all of the requirements of the Ship Mortgage Act, as amended, 46 U.S.C. § 911, *et seq.* and § 31321 *et seq.*, necessary for the Mortgage to constitute a "preferred mortgage lien" on the Vessel within the meaning of the said Act, and is entitled to the benefits and priority provided for therein;
4. The Mortgage is senior, prior and superior to any and all other interests, liens, or claims of whatsoever nature in the Vessel;

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5. The Mortgage secures certain indebtedness of Defendant to Plaintiff, evidenced by a Note and Security Agreement dated [DATE], executed and delivered by the [VESSEL OWNER], in favor of Plaintiff;

6. Defendants defaulted under the Note by failing to make principal and interest payments when due, which failure constituted an "event of default" under the terms of the Mortgage;

7. The following amounts are due and owing to Plaintiff under the Mortgage and Note secured thereunder:

A. Principal on Note \$ [AMOUNT]

B. Accrued interest on Principal from [DATE], \$ [AMOUNT]
 ,through and including [DATE].....

C. Late Charges \$ [AMOUNT]

D. Insurance Premiums Paid by Plaintiff from \$ [AMOUNT]
 [DATE] through [DATE]

TOTAL OF ABOVE: \$ [AMOUNT]

8. Interest continues to accrue on the principal at the rate of \$ [AMOUNT] per day;

9. The Mortgage is hereby foreclosed and Plaintiff is granted judgment *in rem* against the Vessel and *in personam* against Defendants, in the amount of \$ [AMOUNT];

10. Plaintiff has incurred, and will continue to incur attorneys' fees and costs in the collection of the Note and Mortgage, which fees and costs are recoverable under the Note and Mortgage. Plaintiff has also incurred, and will continue to incur expenses relating to the foreclosure action, including substitute custodian fees, repairs and maintenance expenses, Marshal's fees and expenses, and publication expenses relating to the arrest and sale, all of which shall be deemed administrative expenses of this action;

11. Plaintiff may apply to amend the judgment herein to include any costs, administrative expenses, reasonable attorneys' fees or other expenses incurred prior to and including confirmation of the sale of the Vessel and release of the Vessel from the custody of the Court, by filing an application within ten (10) days after its receipt of the U.S. Marshal's final statement of account for services and disbursements; and

12. Plaintiff is further entitled to interest on the sum of judgment entered herein, and any amended judgment, from the date of entry of judgment until paid as provided by 28 U.S.C. § 1961.

Dated: _____

 U.S. DISTRICT JUDGE/MAGISTRATE JUDGE

Presented by:

[ATTORNEY NAME]



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RULE 55 Default

4-III Benedict on Admiralty Form 3-521

Form 3-521 Declaration of Employee in Support of Default Judgment and Sale (With Reference to First Preferred Ship Mortgage)

I, [NAME], do hereby declare and state as follows:

1. I am over eighteen (18) years of age, and am the Recovery Manager in the Specialty Finance Division for Plaintiff [FINANCIAL INSTITUTION] (hereinafter referred to as "Plaintiff"), and am authorized to make this declaration on its behalf. As Recovery Manager in the Specialty Finance Division, I am one of the custodians of the business records for Plaintiff, and am fully familiar with the loan to [VESSEL OWNER] (hereinafter collectively referred to as the "Owner"), the mortgage on the vessel M/Y [VESSEL NAME], and the records pertaining to the loan mortgage, and am fully familiar with the matters described in this Declaration. If called as a witness, I could and would competently testify regarding these matters.

2. The vessel, M/Y [VESSEL NAME], is [VESSEL PARTICULARS], identified by Hull Identification Number [HULL IDENTIFICATION NUMBER], equipped with two marine engines, identified by serial numbers [NUMBERS] and [ENGINE NUMBERS], and is registered with the United States Coast Guard, Official Number [OFFICIAL NUMBER] (hereinafter collectively referred to as the "Vessel"). Defendant [VESSEL OWNER] is the sole owner of the Vessel.

3. On or about [DATE], the Owner executed a Promissory Note (the "Note") under which Plaintiff extended credit to the Owner, and the Owner 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".

4. To induce Plaintiff to fund the loan reflected by the Note and the indebtedness and obligation of the Owner to Plaintiff, a First Preferred Ship Mortgage, dated [DATE], on the Vessel was executed in favor of Plaintiff (hereinafter referred to as the "Mortgage"), which Mortgage was duly recorded by the United States Coast Guard at the Vessel's home port and duly recorded on the Vessel's document. A true and correct copy of the Mortgage is attached hereto as

Exhibit "B". A true and correct copy of the Certificate of Ownership of the Vessel, confirming recordation and endorsement of the Mortgage is attached as Exhibit "C".

5. The Owner has breached the terms of the Note and Mortgage in that it has failed to make payments of principal and interest when due, and continues to fail to make such payments. As of [DATE], there was due, owing and unpaid for the Owner under the Note and Mortgage the following amounts:

A. Principal on Note	\$ [AMOUNT]
B. Accrued interest on Principal from [DATE] through and including [DATE].....	\$ [AMOUNT]
C. Late Charges	\$ [AMOUNT]
D. Insurance Premiums Paid by Plaintiff from [DATE] through [DATE]	\$ [AMOUNT]
TOTAL OF ABOVE:	\$ [AMOUNT]

6. Interest continues to accrue on the principal at the rate of \$ [AMOUNT] per day.

7. Plaintiff has incurred, and will continue to incur, attorneys' fees and costs in bringing this foreclosure action, and in pursuing its remedies under the Note and Mortgage, which are secured by the Note and Mortgage. Plaintiff seeks leave to, and will file, a supplemental declaration setting forth its attorneys' fees and costs following the sale of the M/Y [VESSEL NAME], and the release of the Vessel from the custody of this Court.

8. Plaintiff has also incurred and will continue to incur certain administrative expenses relating to this foreclosure action, including substitute custodian fees, Marshal's fees and expenses, and vessel maintenance and repair costs. Plaintiff seeks leave to, and will, file one or more supplemental declarations to set forth these administrative expenses following the sale of the M/Y [VESSEL NAME], and the release of the Vessel from the custody of this Court.

9. I am informed and believe and based thereon state that the Owner is neither an infant nor an incompetent person, and that the "Soldiers' and Sailors' Civil Relief Act of 1940" does not apply.

10. No party other than the Plaintiff has appeared in this action, and no notice of this application is therefore required under Local Rule [No.].

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on [DATE] at [PLACE].

NAME



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Reserved

FORM Nos. 3-522
Reserved



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RULE 56 -- SUMMARY JUDGMENT

4-III Benedict on Admiralty FORM No. 3-529

FORM No. 3-529 Notice of Motion for Summary Judgment, Rule 56(a)

[Caption] n1

Please Take Notice, that upon the annexed affidavit of _____, sworn to _____, 20 _____, the undersigned will move this Court pursuant to *Fed. R. Civ. P. 56(a)*, in Room _____, United States Courthouse, _____ State of _____ on the _____ day of _____, 20 _____, at _____ o'clock in the afternoon, or as soon thereafter as counsel can be heard, for an order for summary judgment on the first cause of action in the above suit, and for such other and further relief as to the Court may seem just and proper in the premises.
Dated: _____

Attorney for Claimant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 56 -- SUMMARY JUDGMENT

4-III Benedict on Admiralty FORM No. 3-530

FORM No. 3-530 Motion for Summary Judgment by Co-Defendant Vessel Owner--Action for Negligence Involving Bareboat Charter Party

[Caption] n1

Now comes the _____ [co-defendant vessel owner] by _____ its attorneys, and moves pursuant to *Fed. R. Civ. P. 56* for summary judgment as to the causes of action stated against defendant _____ Company on the grounds that there is no genuine dispute between _____ and the plaintiff as to any material fact and that _____ is entitled to judgment as a matter of law and for grounds states:

1. Plaintiffs have sued defendants _____ and _____ for personal injuries which resulted due to the alleged negligence of both defendants.
2. The allegations of negligence include an alleged failure by defendants to provide proper lighting on the _____ stern ramp and an alleged failure by defendants to cover a hole on the stern ramp.
3. _____ is the owner of the vessel _____ and built the vessel in _____ [Affidavit of _____, attached hereto as Exhibit _____ and incorporated by reference herein, at paragraph _____]
4. After building the vessel, _____ entered into a _____ year bareboat charter party with _____ whereby _____ maintains exclusive control over day-to-day operations of the _____, including maintenance, insurance and crew of the vessel. (Exhibit _____, at paragraphs _____ and _____)

5. Under admiralty law, a bareboat charterer is considered owner *pro hac vice* and is liable instead of the actual vessel owner for damages occurring, the causes of which were under his control. (case citation)

Wherefore, because a bareboat charter party existed under which _____ maintained exclusive control over day-to-day operations of the vessel and under which _____ maintained no control over vessel operational details, and the negligence alleged by plaintiff concerns such day-to-day vessel operations, defendant _____ is entitled to judgment as a matter of law. The grounds for defendant's Motion for Summary Judgment are more fully set forth in the Memorandum of Law attached hereto and incorporated by reference herein.

Attorney for Defendants

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-531

FORM No. 3-531 Motion for Summary Judgment and/or to Dismiss, Rule 56(b)

[Caption] n1

Now comes _____ by and through its attorneys _____, and moves the court for summary judgment in accordance with the provisions of *Fed. R. Civ. P. 56* and/or alternatively to dismiss the complaint of _____ against it on the grounds that as the accident complained of occurred outside of the territorial limits of the State of _____ plaintiff neither has nor can have any right or cause of action against defendant _____ and that _____ is entitled to judgment dismissing the complaint as a matter of law. Defendant's supporting memorandum is filed along with this motion in support.
Dated: _____

Attorney for Claimant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 56 -- SUMMARY JUDGMENT

4-III Benedict on Admiralty FORM No. 3-532

FORM No. 3-532 Affidavit in Support of Motion for Summary Judgment Action for Repairs, Rule 56(b)n1

[Caption] n2

Comes Now plaintiff, being first duly sworn, and on oath deposes and states as follows:

1. I am a resident of _____ County, _____, and do business as a sole proprietor under the name and style of _____ Marine Service, whose principal place of business is _____. I am in the marine repair business and have been so for many years.
2. In _____, 20 _____, at the request of the owner of the vessel _____, _____, and also at the request of _____, which was agent for the owner in the sale of the vessel, I performed certain repair work specified by a marine survey of the vessel. This work was performed under my order No. _____ and the work is described in detail on the work order attached to this affidavit.
3. The work was carefully and competently performed and was completed on the _____ day of _____, 20 _____. The reasonable value and cost of the work performed by me or my employees on the vessel _____ is \$ _____, which sum has been due, owing and unpaid since _____, 20 _____.
4. In spite of frequent and repeated demand for payment of this sum upon _____ [owner] and upon _____ [agent], no payment at all has been made on this account.
5. All work performed was at the specific request of the owner of the vessel and was pursuant to owner's survey instructions.

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Dated this _____ day of _____, 20 _____.

Plaintiff

Notary Public

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Shaw v. 46-Foot Chris-Craft Camelot, 391 F. Supp. 1026, 2075 A.M.C. 1474 (W.D. Wash. 1975), courtesy of Charles E. Watts, Esq., Seattle, Washington.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-533

**FORM No. 3-533 Order for Summary Judgment and Directing Payment of Security Deposit--Action for Repairs,
Rule 56(b)n1**

[Caption] n2

This Matter having come on upon the motion of plaintiff for summary judgment against the vessel _____ enforcing plaintiff's claimed maritime lien against the vessel for repairs; the court having reviewed and considered in making its decision upon plaintiff's motion the following fact submittals:

1. Affidavit in Support of Summary Judgment (Affidavit of plaintiff dated _____, 20 ____);
2. Affidavit in Opposition to Motion for Summary Judgment (Affidavit of defendant dated _____, 20 ____); and
3. Interrogatories to defendant and answers thereto filed on _____, 20 ____.

The Court having considered the briefs of counsel and determined this matter pursuant to local rule without oral argument; and being of the opinion that there exists no genuine issues of material fact and that as a matter of law plaintiff has a valid maritime lien against the vessel _____ for which has been substituted a security deposit in the amount of \$ _____ at [bank], pursuant to stipulation of counsel; and that therefore plaintiff is entitled to summary judgment directing payment from said substituted security for the vessel _____ of its maritime lien, together with interest and taxable costs; now therefore

It Is Hereby Ordered, Adjudged And Decreed that the plaintiff, be and the same is hereby awarded judgment against the substituted security deposit with _____ [bank], in the amount of \$ _____, together with prejudgment interest thereon at the rate of _____ per annum from and after

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_____, 20 _____, to date of judgment set forth below, and together with plaintiff's taxable costs in the amount of \$ _____, which judgment shall earn interest at the rate of _____ % per annum from and after date of entry set forth below; and

It Is Further Ordered, Adjudged And Decreed that defendant, _____, is ordered to enter the necessary withdrawal authorization to _____ [bank] to immediately satisfy the above judgment in it entirely pursuant to stipulation for release of vessel entered herein; the balance of such security deposit shall be returned forthwith to demandant _____.

Dated this _____ day of _____, 20 _____.

United States Judge

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in Shaw v. 46-Foot Chris-Craft Camelot, 391 F. Supp. 1026, 2075 A.M.C. 1474 (W.D. Wash. 1975), courtesy of Charles E. Watts, Esq., Seattle, Washington.

(n2)Footnote 2. See Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-534

FORM No. 3-534 Motion for Summary Judgment by Defendant Vessel Owner on Grounds That Cargo Damage Did Not Occur During Ocean Carriage, Rule 56(b)n1

[Caption] n2

Now come the Defendants, _____ and _____, by their attorneys
_____ and move the Court to enter, pursuant to *Rule 56 of the Federal Rules of Civil Procedure*,
summary judgment in the defendants' favor dismissing Owners from the action on the ground that there is no genuine
issue as to any material fact and that Owners are entitled to a judgment as a matter of law.

In support of this motion, owners attach hereto and make a part hereof:

1. The affidavit of _____.
2. Plaintiffs' Answers to Interrogatories (Exhibit A).
3. The railroads' Uniform Domestic Straight Bill of Lading (Exhibit B).
4. The railroads' Answers to Interrogatories (Exhibit C).

[And as may otherwise be necessary]

Dated: _____

Attorney for Defendants

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Asea, Inc. v. M.S. Brunhorn*, Civ. No. 78-897 (S.D.N.Y. 1978), furnished through the courtesy of De Orchis & Partners, New York, New York. *See also* Form No. 3-163.4, Affidavit in Support, *infra*.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-535

FORM No. 3-535 Affidavit in Support of Defendant Vessel Owners' Motion for Summary Judgment on Grounds That Cargo Damage Did Not Occur During Ocean Carriage, Rule 56(b)n1

[Caption] n2

STATE OF _____)
COUNTY OF _____) ss
)
)

_____, being duly sworn, deposes and says:

1. That he is associated with the firm of _____ and is fully familiar with the facts of this case and makes this affidavit in support of a motion by the defendants _____ and _____ (hereinafter "Owners"), the owners and managers of the vessel _____, for summary judgment on the grounds that there is no genuine issue as to any material fact and that the defendants are entitled to judgment as a matter of law.

2. This action arises out of a shipment of a _____ by plaintiff, _____, which was carried aboard the vessel _____ from _____ to the Port of _____ and there transferred to the Railroad and _____ Railway (hereinafter "railroads") for overland transportation to final destination at _____ in _____, 20____.

3. It has been clear since the inception of this lawsuit that the damage to the _____ did not occur during the ocean segment and, therefore, that the vessel and its Owners are not responsible. Indeed, at the very first

pre-trial conference held before the Honorable _____ on _____, 20____, both plaintiffs and the defendant railroad companies were ordered to avoid vigorously involving the defendant vessel owner in pre-trial discovery. The Court issued its instructions because plaintiff's counsel during that conference stated that this lawsuit was one of approximately 20 similar litigations between the plaintiff and American railroad companies involving damage to similar _____ during railroad carriage. Furthermore, counsel for the co-defendant railroads conceded during the conference that the rail car carrying the _____, which is the subject of the captioned suit, had derailed during the overland carriage.

4. After two and a half years of pre-trial discovery, involving hundreds of documents, multiple sets of interrogatories, and depositions of witnesses from the United States and abroad, the evidence now firmly establishes that the damage to the _____ occurred after delivery by the vessel owner to the railroad at _____ on _____, 20____.

ADMISSIONS IN PLAINTIFFS' ANSWERS TO INTERROGATORIES

5. Plaintiffs, in their Answers to Interrogatories (Exhibit A, par. 47), admit that "Defendants delivered the unit to the Defendant railroad in working order and condition."

6. Plaintiffs concede in paragraph 44 of their Answers to Interrogatories (Exhibit A) that there were "no exceptions" to the condition of the _____ when it was delivered from the vessel _____ to the rail carrier in the United States. Indeed, according to paragraphs 45 of plaintiffs' Answers to Interrogatories (Exhibit A), plaintiffs intend to rely upon the following documents and testimony to establish that the _____ was received by the co-defendant railroads undamaged:

"... clean delivery receipts from the steamship company, a clean bill of lading from the railroad, the testimony of longshoremen at discharge and of the heavy-duty crane operator; unnamed railroad employees"

CLEAN DELIVERY RECEIPTS

7. As the Court is aware, in cases involving damage or loss to goods in the process of multimodal transportation, the most important document used to ascertain where damage occurred is the delivery receipt. In this case, the railroad issued a Uniform Domestic Straight Bill of Lading (Exhibit B) at _____ receipt of the _____ from the vessel owner. The bill of lading acknowledges that the co-defendant railroads received the goods described on the face of the documents "in apparent good working order." There are no notations on the bill of lading that indicate that the cargo was in other than good condition when received by the railroad.

RAILROADS ADMISSIONS IN ANSWERS TO INTERROGATORIES

8. The railroads, in their Answers to Interrogatories (Exhibit C), admit in paragraph 24 that a railroad inspector was employed by the co-defendant railroads to examine the shipment "subsequent to the loading and before acceptance by the defendant railroad of the transformer."

9. The railroads in their Answers to Interrogatories (Exhibit C), repeatedly admit that there was no damage to the _____ observed when it was received from the vessel _____.

10. State whether any damage to the _____ was noted by the railroad representative at the time it was accepted by the railroad.

Answer: No visible damage noted.

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*

11. State whether the defendant railroad issued a clean bill of lading upon receipt of the _____ and gave a clean receipt to the vessel owner upon receipt.

Answer: Clean receipt was issued. No visible damage noted.

[Continue recitation of additional supporting evidence, such as deposition testimony, inspection reports, and the like]

12. All of the evidence adduced by all of the parties to this action supports the conclusion that there can be no dispute that the damage to the _____ did not occur while in the custody of the ocean carrier.

13. To force the ocean carrier to remain in this litigation any longer would be an unjust and unbearable burden and expense to the ocean carrier, especially in light of the recent demands between plaintiffs and co-defendants' counsel to conduct depositions of foreign witnesses, to re-examine three witnesses, and to continue with extensive and time-consuming discovery of documents and interrogatories. No amount of additional discovery can alter the fact that the ocean carrier is not the party responsible for the damage alleged by plaintiffs.

Wherefore, it is respectfully requested that this Honorable Court grant the Motion for Summary Judgment in favor of _____ and _____, owners and managers of the vessel _____, and against the plaintiffs, together with costs and reasonable attorneys' fees.

Dated: _____

Attorney for Defendants

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

[Seal]

Notary Public

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Asea, Inc. v. M.S. Brunhorn*, Civ. No. 78-897 (S.D.N.Y. 1978), furnished through the courtesy of DeOrchis & Partners, New York, New York. *See also* Form No. 3-163.3, Motion for Summary Judgment, *supra*.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-536

FORM No. 3-536 Motion for Partial Summary Judgment Invoking COGSA Package Limitation--Action for Cargo Damage, Rule 56(b)n1

[Caption] n2

Now comes the Defendant, _____, by its attorneys, _____, and moves this Honorable Court pursuant to the provisions of *Rule 56(b) of the Federal Rules of Civil Procedure* for partial summary judgment for the following reasons:

1. There is no genuine dispute of material fact with respect to this Motion and Defendant is entitled to judgment as a matter of law.
2. This action is a maritime claim for damage to cargo owned by plaintiff and plaintiff's Complaint alleges that defendant delivered the cargo in a damaged condition.
3. If the plaintiff is entitled to any recovery, which is denied, such recovery must be limited to Five Hundred Dollars per package in accordance with the provisions of the United States Carriage of Goods by Sea Act, *46 U.S.C. § 1300, et seq.*, and the terms of the applicable Bill of Lading and the Stevedoring Contract.

Wherefore, defendant respectfully requests that this Court grant partial summary judgment in its favor.

Dated: _____

Attorney for Defendant

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 No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-537

FORM No. 3-537 Notice of Motion for Summary Judgment To Dismiss Passenger's Injury Claim on Grounds of Contractual Time Bar, Rule 56(b)n1

[Caption] n2

Please Take Notice that on _____, 20 _____, at _____ p.m., or as soon thereafter as counsel can be heard, before Honorable _____, United States District Judge, in Courtroom of the United States Court House, _____, defendants will move upon the attached affidavit of _____ with Exhibits thereto attached, and defendants' memorandum of law, pursuant to *Rule 56, F.R. Civ. P.*, for summary judgment in favor of defendants dismissing this action.
Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from paper filed in *Hadden v. Steamship Statendam*, Civ. No. 83-3350 (E.D.N.Y. 1983). *See also* Form No. 3-163.6, Affidavit in Support, *infra*.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-538

**FORM No. 3-538 Affidavit in Support of Motion for Summary Judgment To Dismiss Passenger's Injury Claim
 on Ground of Contractual Time Bar, Rule 56(b)n1**

[Caption] n2

STATE OF _____)
) ss
 COUNTY OF _____)
)

_____, being duly sworn, deposes and says:

1. I am and for the past _____ years have been Manager of the Claims Division _____ [Cruises, Inc.], and therefore am familiar with the facts and practices hereinafter set forth.

2. As shown by the Summons in this action, a copy of which is attached hereto as Exhibit A, this action was commenced on or about _____, 20_____.

3. As shown by Paragraphs _____ of the Complaint in this action, a copy of which is annexed hereto as Exhibit B, plaintiffs seek to recover damages allegedly caused by injury to the plaintiff occurring on or about _____, 20_____, aboard the vessel _____ on which she was a passenger.

4. As shown by Paragraphs _____ of said Complaint and by Paragraphs _____ of the Answer thereto, a copy of which is attached hereto as Exhibit C, defendant _____ owned, operated, managed, maintained, and controlled the vessel _____ on _____, 20_____, and defendant _____ [Cruises, Inc.] was and is the disclosed agent of defendant

_____.

5. As shown by the plaintiff's Embarcation Coupon, annexed hereto as Exhibit D, Cruise Contract No. _____ was issued to her on or about _____, 20 _____, for a cruise commencing from _____ on 20 _____, as a passenger aboard the vessel _____.

6. Attached hereto as Exhibit E is a sample Cruise Contract which is in exactly the same form and contains exactly the same Terms and Conditions of Contract as said Cruise Contract No. _____.

7. As can be seen by examining said sample Cruise Contract, such Contracts consist of 5 tear-off sections. The first three copies are retained by _____ [*Cruises, Inc.*], for accounting and passenger identification purposes. The Cruise Contract itself consists of the last two sheets and contains the Terms and Conditions of Contract.

8. Thus, because of the form of Cruise Contract No. _____ and hereinbefore described procedures with respect thereto, the last two sheets of Contract No. _____ were not retained by Defendant, but, on the contrary, were to be retained by the plaintiff.

9. As appears from the sample Cruise Contract annexed hereto as Exhibit E, Paragraph _____ of the Terms and Conditions of Contract No. _____ identified and defined the Shipowner of the vessel _____ as defendant _____ and provided that exemptions from liability and defenses of the Shipowner under the Contract shall also inure to the Shipowner's agents. Below Paragraph _____ of the Terms and Conditions of Contract No. _____ [*Cruises, Inc.*] is identified as "Agent for Shipowner." Paragraph _____ of the Terms and Conditions of Contract No. _____ provided in relevant part as follows:

"... in any case where Section 4283-A of the United States Revised Statutes shall apply, no suit shall be maintainable against the Shipowner or the vessel or any of their agents or employees for ... bodily injury, unless ... suit is commenced not later than one (1) year, computed from the day when such ... injury occurred."

10. It is clear from the facts admitted as true in the Complaint and Answer in this action that plaintiffs' suit was commenced later than one year after the day on which the injury was alleged to have occurred. Therefore, plaintiffs' suit is untimely and is barred and should be dismissed.

Deponent

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

[Seal]

Notary Public

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Hadden v. Steamship Statendam*, Civ. No. 83-3350 (E.D.N.Y. 1983). *See also* Form No. 3-163.5, Notice of Motion for Summary Judgment, *supra*.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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4-III Benedict on Admiralty FORM No. 3-539

FORM No. 3-539 Defendant Cruise Line's Motion to Dismiss, or, in the Alternative, for Summary Judgment

[Caption] n1

Now comes the defendant, _____, by its attorneys _____, pursuant to the Federal Rules of Civil Procedure and moves the Court to Dismiss, or, in the alternative, for Summary Judgment on the grounds that there is an absence of a genuine issue as to any material fact pertinent to this motion, and that the defendant is entitled to judgment as a matter of law, in support of which it has filed an accompanying Memorandum in Support of Motion, and for further grounds states as follows:

1. That plaintiffs have filed a Complaint seeking damages for injuries sustained by plaintiff _____ when he was allegedly struck by a golf ball while on a cruise aboard the _____ on or about _____, 20____.
2. That this Court lacks personal jurisdiction over defendant _____.
3. That defendant denies plaintiff's allegations of law and fact and further defends upon the premise that plaintiffs' claim fails to state a cause of action upon which relief can be granted inasmuch as their suit is barred by way of limitation under the general maritime law and pursuant to the terms and conditions of plaintiffs' passenger ticket contract which requires that suit to recover on any claim for loss or injury must be commenced, if at all, within one year after the date of loss or injury. Whereas plaintiffs allegedly were injured or suffered loss on _____, 20____, suit was not filed on plaintiffs' behalf until more than two years later, i.e. on _____, 20____.
4. That defendant further defends, without waiving or excluding any other defense, on the premise of improper venue in this Court, pursuant to the terms and conditions of plaintiffs' passenger ticket contract which requires that suit to recover on any claim for loss or injury must be litigated, if at all, before a Court located in the State of _____.

Wherefore, defendant respectfully prays that this action be dismissed or, in the alternative that judgment be granted in its favor, together with costs.

Attorneys for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 56 -- SUMMARY JUDGMENT

4-III Benedict on Admiralty FORM No. 3-540

FORM No. 3-540 Order Granting Motion for Summary Judgment, Rule 56(b)

[Caption] n1

A motion having been regularly made by the defendant (or, *plaintiff*) herein for summary judgment in the defendant's favor dismissing the action (or, *for the relief demanded in the complaint*) on the ground that there is no genuine issue as to any material fact and that the defendant (or, *plaintiff*) is entitled to judgment as a matter of law,

Now, on considering the _____ [*affidavits, etc. considered*]; and after hearing counsel for the respective parties, and due deliberation having been had, and the decision of the court having been filed, it is

Ordered, that said motion be and the same hereby is granted, and that judgment be entered herein in the defendant's favor dismissing this action with costs and disbursements to be taxed by the clerk, in favor of the defendant and against the plaintiff (or, in the case of summary judgment for plaintiff, that judgment be entered herein in favor of the plaintiff for _____)

Dated: _____, 20 _____

District Court Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 56 -- SUMMARY JUDGMENT

4-III Benedict on Admiralty FORM No. 3-541

FORM No. 3-541 Order for Summary Judgment and Judgment, Rule 56(b)

[Caption] n1

This cause came on to be heard on motion of the defendant, _____, for summary judgment, pursuant to *Rule 56 of the Federal Rules of Civil Procedure*, and the court having considered the pleadings in the action, the affidavit therein, having heard oral argument, and having found there is no genuine issue of fact to be submitted to the trial, the court having concluded that the defendant is entitled to judgment in this matter as of law, it is hereby

Ordered that the defendant's motion for summary judgment is in all respect Granted, and it is further

Ordered that cause be dismissed with prejudice to the plaintiff herein and defendant is awarded his costs.

Done at _____ this _____ day of _____, 20 ____.

District Court Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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CHAPTER III MOTIONS AND REMEDIES
RULE 56 -- SUMMARY JUDGMENT

4-III Benedict on Admiralty FORM No. 3-542

FORM No. 3-542 Order Denying Summary Judgment, Rule 56(b)

[Caption] n1

On this day came on to be reconsidered Defendant's Motion for Summary Judgment together with the briefs and memoranda relating to said Motion, and after further consideration the Court remains of the opinion that the Defendant's Motion for Summary Judgment is without merit and that the Order of this Court dated _____, 20____ denying Defendant's Motion for Summary Judgment should be affirmed.

It is, therefore, Ordered, Adjudged And Decreed that the Defendant's Motion for Summary Judgment is hereby denied, and that this cause be set for trial on the merits on _____, 20____ at _____ o'clock a.m.

ENTERED this _____ day of _____, 20____.

District Court Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 56 -- SUMMARY JUDGMENT

4-III Benedict on Admiralty FORM Nos. 3-543-3-553

Reserved

FORM Nos. 3-543Reserved



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 57 DECLARATORY JUDGMENTS

4-III Benedict on Admiralty FORM No. 3-554

FORM No. 3-554 Petition for Declaratory Judgment--Obligation To Pay for Medical Procedure Requested by Seaman, Rule 57n1

[Caption] n2

1. The petitioner is and was at all pertinent times a corporation organized under the laws of the _____ doing business within the state and was the owner of the vessel _____ on or about _____, 20____.
2. Respondent is a seaman who is a resident of _____, and was a member of the crew of the _____ on or about _____, 20____.
3. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201-2202 for the purpose of determining questions of actual controversy between the parties, namely petitioner's obligation, if any, to pay for certain medical procedures under the employment contract between the petitioner shipowner and the respondent crew member and under the doctrine of maintenance and care.
4. This action is an admiralty and maritime dispute within the meaning of *Rule 9(h) of the Federal Rules of Civil Procedure* and the Court's jurisdiction rests in Title 28 U.S.C. 1331(i).
5. The respondent has asserted, and for present purposes only the petitioner does not dispute, that he sustained a dislocated shoulder on or about _____, 20____ while employed as a fisherman aboard the petitioner's fishing vessel, _____, when he fell after jumping over the fishhold hatch, while the vessel was at sea.
6. The respondent has asserted, and for present purposes only the petitioner does not dispute, that the Respondent was

subsequently transferred to a United States Coast Guard vessel, transported to _____ [hospital], and subsequently treated at the _____ [hospital] in _____, where x-rays indicated a dislocated shoulder and where a closed reduction of the shoulder was performed by _____.

7. Prior to the incident on board the petitioner's vessel on _____, 20 _____, the respondent had sustained at least two separate dislocations to the same shoulder totally unrelated to any activities associated with the Petitioner's vessel.

8. Prior to joining the petitioner's vessel, the respondent at no time disclosed or made known to Petitioner this prior medical history and chronic condition of his left shoulder.

9. Upon information and belief, the petitioner believes that Respondent sustained another dislocation of the left shoulder subsequent to the surgical procedure for resetting the shoulder at _____ [hospital] in _____.

10. The respondent has requested that the petitioner authorize and pay for a second surgical procedure to be performed on his left shoulder to correct the chronic condition.

Wherefore, petitioner Prays:

1. That this Court enter a Declaratory Judgment declaring:

a. That the petitioner has provided the respondent with adequate and sufficient medical attention for his dislocated shoulder to the extent that it resulted from the incident aboard its vessel on _____, 20 _____, and that under the doctrine of maintenance and care and the employment contract between the parties, petitioner owes Respondent no further medical attention.

b. That as a result of that surgical procedure, already provided, that is closed reduction, the Respondent was given maximum cure under the applicable admiralty and maritime law and under the employment contract between the parties.

c. That the petitioner has no obligation to pay for the corrective medical procedure requested by the respondent at this time because the condition for which the corrective procedure is being performed pre-existed the time at which the Respondent joined the petitioner's vessel, was undisclosed to the petitioner at said time, is a condition that did not manifest itself on the vessel and is not causally related to the service of the vessel.

2. That the petitioner may have such other relief as in law and justice it may be entitled to receive.

Dated: _____

Attorney for Petitioner

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Barbara Jean, Inc., and FV Barbara Jean v. Stephen LaPine*, Civ. No. 83-0261-MA (D. Mass. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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RULE 57 DECLARATORY JUDGMENTS

4-III Benedict on Admiralty FORM Nos. 3-555-3-565

Reserved

FORM Nos. 3-555Reserved



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CHAPTER III MOTIONS AND REMEDIES
RULE 58 ENTRY OF JUDGMENT

4-III Benedict on Admiralty FORM No. 3-566

FORM No. 3-566 Satisfaction of Judgment, Rule 58

[Caption] n1

Whereas, a consent judgment herein was entered on _____, 20____, providing that plaintiff,
_____ recover of and from _____ the sum of \$ _____, without
interest and without costs, and

Whereas the said judgment having been paid,

Therefore, satisfaction of said judgment is hereby acknowledged, and the Clerk is hereby authorized and directed to
make a proper entry of said satisfaction in the judgment docket.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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CHAPTER III MOTIONS AND REMEDIES
RULE 58 ENTRY OF JUDGMENT

4-III Benedict on Admiralty FORM No. 3-567

FORM No. 3-567 Consent Order for Satisfaction of Judgment, Rule 58n1

[Caption] n2

Whereas, a Consent Judgment was entered in this matter on _____, 20 _____, wherein defendant _____, acknowledged a debt in the sum of \$ _____ in favor of plaintiff _____ [transportation companies], and that said debt constituted a lien against the vessel _____, *in rem*, and wherein defendant _____, also agreed to be bound to the plaintiff for the filing fee of this action and the fees and expenses of the U.S. Marshal in connection with the arrest of the vessel _____, and agreed that the judgment would bear interest at the rate of _____ % per annum, and

Whereas, plaintiff and defendant have agreed that the said judgment shall be satisfied and the lien against the vessel _____ extinguished by a total payment of _____, in consideration of the underlying debt embodied in the judgment, filing fee hereof, and the Marshal's fees and expenses, and payment in said amount has been transmitted by defendant's attorney to plaintiff's attorneys,

Now, upon the subjoined consent of the attorneys for plaintiff and defendant, it is

Ordered, that satisfaction of the judgment herein is acknowledged and the Clerk of the Court is hereby authorized and directed to cancel and discharge the same.

Dated: _____

U.S. District Judge

The undersigned hereby consent to the entry of the foregoing Order for the Satisfaction of Judgment.

Attorney for Plaintiff

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Reinauer Trans Transportation Companies v. Barge Howlett* No. 20, Civ. No. 83-1368 (E.D.N.Y. 1983).

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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CHAPTER III MOTIONS AND REMEDIES
RULE 58 ENTRY OF JUDGMENT

4-III Benedict on Admiralty FORM No. 3-568

FORM No. 3-568 Order--Consent Judgment, Rule 58

[Caption] n1

This suit having been compromised for the sum of \$ _____ to be paid to the plaintiff,
_____, by defendant, _____, it is upon the subjoined consents,

Ordered And Adjudged that plaintiff, _____ recover of and from _____ the sum
of \$ _____ without interest and without costs.

Dated: _____

District Court Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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CHAPTER III MOTIONS AND REMEDIES
RULE 58 ENTRY OF JUDGMENT

4-III Benedict on Admiralty FORM Nos. 3-569-3-579

Reserved

FORM Nos. 3-569Reserved



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CHAPTER III MOTIONS AND REMEDIES
RULE 59 NEW TRIALS; AMENDMENT OF JUDGMENTS

4-III Benedict on Admiralty FORM No. 3-580

FORM No. 3-580 Motion for a New Trial, Rule 59(a)n1

[Caption] n2

Now comes the plaintiff, _____, pursuant to *Fed. R. Civ. P. 59*, and moves for a new trial in the above action for the reasons set out in the accompanying memorandum.

Dated: _____

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Valm v. Hercules Fish Products, Inc.*, 701 F.2d 235 (1st Cir. 1983), furnished through the courtesy of Glynn & Dempsey, Boston, Massachusetts.

(n2)Footnote 2. *See* Form No. 3-1 *supra*.



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RULE 59 NEW TRIALS; AMENDMENT OF JUDGMENTS

4-III Benedict on Admiralty FORM Nos. 3-581-3-591

Reserved

FORM Nos. 3-581Reserved



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CHAPTER III MOTIONS AND REMEDIES
RULE 60 RELIEF FROM JUDGMENT OR ORDER

4-III Benedict on Admiralty FORM No. 3-592

FORM No. 3-592 Motion To Vacate Judgment Dismissing Complaint and Denying Petitioner's Motion To Intervene, Rule 60(b)(4)

[Caption] n1

Now comes the Petitioner _____ by and through its attorneys _____ and moves this Court, pursuant to *Fed. R. Civ. P. 60(b)(4)* for an order vacating the Judgment of Dismissal and denial of the petitioner's previous Motion to Intervene in the case of _____, dated _____, 20 _____. In support of this motion, the petitioner states as follows.

This judgment is null and void and is of no effect whatsoever because the Court never acquired legal jurisdiction. The Court's *in rem* jurisdiction is based solely on fraudulent statements, and there is no *in rem* defendant that has been properly arrested in these actions, and therefore the Court has no jurisdiction. Article III, Section Two of the U.S. Constitution requires that there be a real case or controversy.

or

This Court did not acquire jurisdiction over any *in rem* defendant on _____, 20 ____ or at any other time, since there is no defendant property, and nothing has been arrested and brought into the Court's jurisdiction. These issues are more fully briefed in the attached Memorandum of Law Pursuant to Rule 60(b)(4) Motion.

Wherefore, upon the grounds and evidence presented, this petitioner prays the Court to withdraw its opinion, and issue a new opinion based on the issues and facts herein presented, or to grant a rehearing to further review the facts and evidence as they may be presented.

4-III Benedict on Admiralty FORM No. 3-592

Dated: _____

I, _____, being first duly sworn, say that I am the petitioner in the within entitled action, and that the foregoing Motion is true and correct.

Signature

Address

STATE OF _____ CITY OF _____)
 _____)
 _____)

Subscribed and sworn to before me this _____ day of _____, 20 _____, a Notary Public for the State and County aforesaid.

Notary Public

My Commission Expires: _____

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 60 RELIEF FROM JUDGMENT OR ORDER

4-III Benedict on Admiralty FORM No. 3-593

FORM No. 3-593 Notice of Cross Appeal

[Caption] n1

Notice is hereby given that the plaintiff, _____, hereby cross appeals to the United States Court of Appeals for the _____ Circuit from the order _____ [*describe order appealed from*] entered in this action on the _____ day of _____, 20____, and from the final Judgment entered on the _____ day of _____, 20_____.

Attorney for Plaintiff

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-*supra*.



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RULE 60 RELIEF FROM JUDGMENT OR ORDER

4-III Benedict on Admiralty FORM Nos. 3-594-3-604

Reserved

FORM Nos. 3-594Reserved



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RULE 62 STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

4-III Benedict on Admiralty FORM No. 3-605

FORM No. 3-605 Motion for Stay of Execution Pending Disposition of Motion Addressed to Judgment, Rule 62(b)

[Caption] n1

Defendant moves the court for an order staying execution of or any proceedings to enforce the judgment entered in favor of plaintiff herein on _____, 20____, pending disposition of defendant's motion for a new trial [*or as the case may be*], on the ground that irreparable injury might result to defendant, as more particularly appears from the affidavit of _____ attached hereto as Exhibit A.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 62 STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

4-III Benedict on Admiralty FORM No. 3-606

FORM No. 3-606 Order To Show Cause With Stay Provision--General Form, Rule 62(b)

[Caption] n1

Upon the attached motion [*and affidavits of* _____ *and* _____ *or and the exhibits thereto attached*], it is

Ordered that the defendant [*or as the case may be*] show cause at a motion term of this Court, to be held in Room _____, United States Court House, _____, on the _____ day of _____, 20 _____, at _____ o'clock in the forenoon of that day or as soon thereafter as counsel can be heard why an order should not be made herein [*specify relief or order sought*]

It Is Further Ordered that service of a copy of this order and of the papers upon which the same is granted, on the said _____, on or before _____, 20 _____, shall be sufficient service of this order, and in the meantime and until the hearing and determination of this motion and the entry of an order thereon, let all proceedings be stayed for [*specify action stayed*].

Dated: _____

District Court Judge

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 62 STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

4-III Benedict on Admiralty FORM Nos. 3-607-3-617

Reserved

FORM Nos. 3-607Reserved



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Volume 4: Practice and Procedure: Forms
CHAPTER III MOTIONS AND REMEDIES
RULE 64 SEIZURE OF PERSON OR PROPERTY

4-III Benedict on Admiralty FORM No. 3-618

FORM No. 3-618 Notice of Lien

[Caption] n1

Defendant, _____, by _____, its attorneys, hereby gives notice to
_____ Company, plaintiff herein, that _____ has a lien against the cargo of
_____ carried aboard the vessel _____ from _____ to
_____, arriving there on or about _____, 20 _____, in the amount of \$
_____, plus interest and costs, for unpaid freight and demurrage due and owing from plaintiff to
_____, pursuant to the provisions of the charter party and/or bills of lading under and by which the
cargo was transported.

Attorneys for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 3-1 *supra*.



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RULE 64 SEIZURE OF PERSON OR PROPERTY

4-III Benedict on Admiralty FORM Nos. 3-619-3-629

Reserved

FORM Nos. 3-619Reserved