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Benedict on Admiralty

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Volume 4: Practice and Procedure: Forms
CHAPTER II DEFENSES

4-II Benedict on Admiralty II.syn

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FORM No. 2-1 Answer

[Caption] n1

ANSWER n2

1. The defendant [*or* claimant; defendant and claimant] admits the jurisdiction alleged in Paragraph 1 of the complaint.
2. The defendant [*or* claimant; defendant and claimant] is without information or belief sufficient to enable it to answer Paragraph 2 of the complaint.
3. The defendant [*or* claimant; defendant and claimant] admits the allegations contained in Paragraphs 3, 4, etc., of the complaint.
4. The defendant [*or* claimant; defendant and claimant] denies the allegations contained in Paragraphs 5, 6, etc., of the complaint.

Attorney for Defendant [*or* Claimant; Defendant and Claimant]

FOOTNOTES:

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

(n2)Footnote 2. The answer is governed by Rules 8(b), 9, and 12 of the Federal Rules of Civil Procedure. This form is for a simple answer. An answer need no longer be verified. *See* Rule 11.



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

FORM No. 2-2 Affirmative Defense--Laches

_____: The complaint herein was not filed until _____, 20 _____, more than _____ years after the date of the events upon which the plaintiff relies as entitling him to recover, and hence the plaintiff has been guilty of such gross laches that the claim should be barred and the complaint dismissed.



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FORM No. 2-3 Affirmative Defense--State Statute of Limitation

_____: The negligence of defendant, _____, if any, which is herein denied, took place in the State of _____ prior to _____, 20 _____. Pursuant to Section _____ of the [*describe statutory limitation period*], any cause of action for negligence against the defendant is barred by the applicable Statutes of Limitation.



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FORM No. 2-4 Affirmative Defense--Foreign Statute of Limitation

_____: The right of action set forth in the complaint arose in _____ [*country*] and the facts giving rise to the claim occurred more than _____ years prior to the commencement of this action. In _____, at all times mentioned in the complaint, there were and now are the statutes of limitation which provide that actions on _____ must be commenced within _____ years after the cause of action therefor accrued.



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FORM No. 2-5 Defense of Limitation of Liability

_____: That defendants' liability, if any, is limited to Defendants' interest in the vessel
_____ at the end of her voyage in question plus freight then pending, pursuant to *46 U.S.C. § 183*.



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FORM No. 2-6 Affirmative Defense--Fraud

_____: Plaintiff's cause of action is barred by virtue of the plaintiff's fraud in that plaintiff knowingly misrepresented to the defendant the _____ [*describe*] that plaintiff requested the defendant to ship, the plaintiff intended the defendant to rely on that misrepresentation, and the defendant did, in fact, rely on that misrepresentation to its detriment.



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FORM No. 2-7 Affirmative Defense--Release

Plaintiff's cause of action is barred by the doctrine of release in that plaintiff failed to notify defendant of any agreement that plaintiff entered into with any third parties to whom plaintiff may have paid monies.



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4-II Benedict on Admiralty Form 2-8

Form 2-8 Affirmative Defense -- Failure to State a Claim

Plaintiff's Complaint, and each and every cause of action therein, fails to state a claim upon which relief may be granted against Defendant.



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FORM No. 2-9 Affirmative Defense--Improper Venue

_____ : Plaintiff's claim was not brought in the proper venue of this Court.



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FORM No. 2-10 Defense of Forum Non Conveniens

_____: Plaintiff was employed as a _____ based on shore in
_____ [country]. Neither Plaintiff nor the alleged incident had any connection with the United States.
This Court should decline jurisdiction under the doctrine of forum non conveniens.



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4-II Benedict on Admiralty FORM No. 2-11

FORM No. 2-11 Defense That Plaintiff Is Not Real Party in Interest

Said vessel, prior to the date of said hire, as set forth in the complaint herein, was insured by plaintiff under a policy of marine insurance which was in full force and effect at the time said damage is alleged to have been sustained. Thereafter, by reason of the terms and conditions of said policy, the insurance company, on account of the alleged damage, paid over to plaintiff the amount of its loss and plaintiff thereupon duly assigned to the insurance company all its right, title and interest in said damages. Plaintiff therefore is not the real party in interest herein and is not entitled to maintain this action.

or

At the time suit was commenced on this action or at the time when any loss or damage was sustained by the goods, or at any other material time, the plaintiff herein was not the real party in interest, and this action is not commenced pursuant to proper authority or subrogation perfected within the statute of limitations time period.

or

The plaintiff was not and is not the Owner of the cargo shipped aboard the vessel and is not a proper party in interest as required by *Rule 17 of the Federal Rules of Civil Procedure*.

or

The cause of action referred to in the Complaint is the subject of a court action initiated in _____ [country] on _____, 20 _____, by Company against the same Defendant as is addressed herein. A

copy and translation of the court notice therein is attached to this Answer as Exhibit A. Accordingly, the plaintiffs in the present suit are not the real parties in interest and this Honorable Court is an inappropriate and inconvenient forum for the determination of this action.



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4-II Benedict on Admiralty Form 2-12

Form 2-12 Existence of Jurisdiction Clause

The claim is subject to the jurisdiction clause of the bill of lading requiring that all disputes be resolved in [COUNTRY].



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4-II Benedict on Admiralty Form 2-13

Form 2-13 Affirmative Defense -- Time Bar

Subject to the facts which come to light during discovery in this case, Defendant asserts that Plaintiff's complaint is time barred by law.



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4-II Benedict on Admiralty Form 2-14

Form 2-14 Affirmative Defense -- Want of Consideration

The alleged agreement referred to in the complaint herein is void for want of any consideration whatsoever.



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4-II Benedict on Admiralty Form 2-15

Form 2-15 Affirmative Defense -- Failure to Mitigate Damages

Plaintiff failed to mitigate its alleged damages, and its recovery herein, if any, should be diminished in an amount equivalent to that portion of damages which Plaintiff could have mitigated.



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4-II Benedict on Admiralty Form 2-16

Form 2-16 Affirmative Defense -- Fault of Third Parties

Defendant is informed and believes and thereupon alleges that the alleged damage, if any, was caused by the fault and neglect of third parties for whom this answering Defendant is not responsible or liable. Said fault and neglect comparatively reduces the percentage of fault, if any, of this answering Defendant.



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4-II Benedict on Admiralty Form 2-17

Form 2-17 Affirmative Defense -- Lack of Diversity Jurisdiction

There is no jurisdiction over this subject matter since the jurisdictional prerequisites to this action prescribed by statute have not been satisfied because diversity of citizenship does not exist among the parties.



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4-II Benedict on Admiralty Form 2-18

Form 2-18 Affirmative Defense -- No Written Agreement

The alleged agreement set forth in the complaint herein by its terms, was never made in writing and described by the party to be charged therewith or its lawful agents as required by the laws of the State of [STATE].



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4-II Benedict on Admiralty Form 2-19

Form 2-19 Affirmative Defense -- Waiver

Through its conduct or through the conduct of its attorneys and its agents, Plaintiff has waived its rights, if any, and cannot recover on its complaint, or any claim contained therein.



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Reserved

FORM Nos. 2-20Reserved



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CHAPTER II DEFENSES
ARBITRATION *

4-II Benedict on Admiralty FORM No. 2-52

FORM No. 2-52 Defense of Arbitration and Award

_____: On or about _____, 20 _____, plaintiff and defendant submitted the claim set forth in the complaint to _____ and _____ as arbitrators, who made an award finding that there was due from defendant to plaintiff the sum of \$ _____ which defendant paid to plaintiff.

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



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ARBITRATION *

4-II Benedict on Admiralty FORM No. 2-53

FORM No. 2-53 Affirmative Defense of Arbitration as Sole Remedy

_____: The agreement referred to in and annexed to the complaint provided as follows:

[arbitration clause]

The plaintiff's sole remedy was under the clause above set forth; he did not within the 30-day period specified in such clause ask or demand of defendant that it proceed to arbitrate any alleged claim, dispute or right he might have, if any, by reason of the matters and alleged facts set forth in the complaint, and this action is barred under the above clause.

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



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ARBITRATION *

4-II Benedict on Admiralty FORM No. 2-54

FORM No. 2-54 Defense Reserving Right to Invoke Arbitration Clause

_____: The occurrences described in the Complaint arose under a _____ Charter party, dated _____, 20 _____, entered into between Defendant _____, as Chartered Owner, and _____, as Charterer, and a Tanker Voyage Charter party dated _____, 20 _____, entered into between Defendant _____, as Chartered Owner, and _____, as Charterer.

_____: The aforesaid voyage Charter parties provide that, should any dispute arise between the Chartered Owners and the Charterers, it should be referred to arbitration in _____. Defendant _____ hereby reserves its right to demand arbitration.

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



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Reserved

FORM Nos. 2-55Reserved



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CARGO DAMAGE *

4-II Benedict on Admiralty FORM No. 2-75

FORM No. 2-75 Defense of the Fire Statute--Cargo Damage

_____ On or about _____, 20 _____, the vessel _____ sailed from _____, intending to proceed to _____. On _____, 20 _____, smoke was observed coming from one of the ship's ventilators and it immediately became evident that part of the ship's cargo was on fire. Despite the efforts of the crew, it was impossible to extinguish the fire before a great number of shipments on board the vessel _____, including those which are the subject of this cause, were destroyed or damaged by fire.

_____: Any loss of or damage to the shipments was due to fire for which the defendant is not liable or responsible by virtue of the provisions of Section 4282 of the Revised Statute of the United States, commonly known as the Fire Statute (*46 U.S.C. § 182*). n1

FOOTNOTES:

(n1)Footnote 1. In this, as well as many other separate defenses to actions for cargo damage, attorneys for the defendant often set forth the bill of lading provision in extenso and rely on them as well as the statutes. Such contractual provisions were essential under § 2 of the Harter Act which was not self-executing, but they are not of the same importance since the passage of the Carriage of Goods by Sea Act.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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CARGO DAMAGE *

4-II Benedict on Admiralty FORM No. 2-76

FORM No. 2-76 Defense of Non-Liability Without Fault or Privity--Cargo Damage

_____ : If the goods referred to in the Complaint sustained any loss or damages as alleged in the Complaint, which is denied, and if any of such loss or damage was caused by the act, neglect or default of the master, mariner, pilot or the servants of the carrier and the navigation or in the management of the ship, or by the perils, dangers and accidents of the sea, or other navigable waters, or by act or omission of the shipper or owner of the goods, his agents or representatives, or by wastage in bulk or weight, or any other loss or damage arising from inherent defect, quality or vice of the goods, or by insufficiency of packing or latent defect not discoverable by due diligence, or any other cause arising without the fault and privity of the carrier and without default or neglect of the agents or servants of the carrier or those for whom it is responsible, this defendant is not under any liability therefor.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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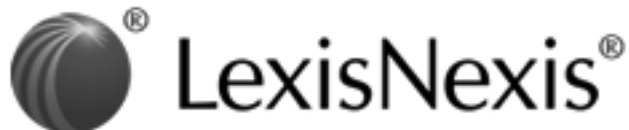
CARGO DAMAGE *

4-II Benedict on Admiralty FORM No. 2-77

FORM No. 2-77 Defense of Non-Liability as Agent for a Disclosed Principal Cargo Damage

_____: Defendant _____ was not the owner of the vessel, nor the carrier of the goods, nor did _____ enter into any contract with the plaintiff herein, and _____ cannot be liable to the plaintiff herein for any of the matters alleged in the complaint. The only activities carried on by _____ for the vessel _____ were those of a general agent for a disclosed principal and as such it is not subject to any liability to the plaintiff.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-78

FORM No. 2-78 Defense of Unseaworthiness and Due Diligence--Cargo Damage

_____: On or about _____, 20 _____, the vessel _____ sailed from _____ for _____. On _____, 20 _____, water was discovered in the _____ hold. Such water gained access to the hold from a break in a ballast pipe resulting from a latent defect in such pipe. As a result a number of shipments, including those which are the subject of this cause, were damaged by water.

_____: Prior to the departure of the vessel _____ from _____ the defendant had exercised due diligence to make her seaworthy and properly manned, equipped and supplied. Any loss or damage to such shipments was due to an unseaworthy condition, not caused by want of due diligence on the part of the defendant to make the vessel _____ seaworthy, for which the defendant is not liable or responsible by virtue of the provisions of the United States Carriage of Goods by Sea Act (46 U.S.C. §§ 1300-1315). n1

or

_____: Due diligence was used to make the vessel seaworthy and to secure that it was properly manned, equipped and supplied and to make the holds and all other parts of the vessel in which goods were carried, safe and fit for their reception, carriage and preservation in accordance with the provisions of the United States Carriage of Goods by Sea Act, 2036. Accordingly, if the goods referred to in the Complaint sustained any loss or damage while they were in the possession or custody of the defendant, or on board the vessel _____ due to any unseaworthiness of the vessel, which is denied, this defendant is not under any liability therefor.

or

_____: Due diligence was used to make this vessel seaworthy and to secure that it was properly manned, equipped and supplied and to make the holds and all other parts of the vessel in which goods were carried safe and fit for their reception, carriage and preservation. Accordingly, if the shipment referred to in the complaint sustained any loss, shortage or damage while it was in the possession or custody of the defendant due to any unseaworthiness of the vessel, which is denied, defendant is not under any liability therefor.

FOOTNOTES:

(n1)Footnote 1. In this, as well as many other separate defenses to actions for cargo damage, attorney for the defendant often set forth the bill of lading provision in extenso and rely on them as well as the statutes. Such contractual provisions were essential under § 2 of the Harter Act which was not self-executing, but they are not of the same importance since the passage of the Carriage of Goods by Sea Act.

* *See* 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-79

FORM No. 2-79 Defense of Negligent Navigation--Cargo Damage Due to Stranding

On or about _____, 20____, the vessel _____ sailed from _____ for _____. On _____, 20____ after the vessel _____ had passed the _____ and was proceeding toward _____, she encountered a storm with high winds and seas, and visibility became poor. In the early morning hours of _____, 20____, the vessel _____ stranded on _____, well to the west of her intended course. Despite repeated efforts it proved impossible to refloat the vessel _____ by use of her engines and it became necessary to obtain outside aid. Even with outside assistance the vessel _____ could not be refloated until after a portion of her cargo, including the shipments which are the subject of this cause, had been jettisoned. After a portion of cargo had been jettisoned the vessel _____ was finally refloated on or about _____, 20____, and thereafter proceeded to _____.

Any loss of or damage to the merchandise was due to negligent navigation of the vessel _____ by the master, mariners or servants of the carrier, for which the defendant is not liable or responsible by virtue of the provisions of the United States Carriage of Goods by Sea Act (46 U.S.C. §§ 1300-1315). n1

or

If any loss or damage to the goods, as alleged in the complaint, occurred while they were on board the said vessel, which is denied; and if it be held that the loss or damage arose or resulted from the act, neglect or default of the Master, mariner, pilot or the servants of the carrier in the navigation or in the management of the vessel, the defendant is not under any liability for any such loss or damage.

FOOTNOTES:

(n1)Footnote 1. In this, as well as many other separate defenses to actions for cargo damage, attorney for the defendant often set forth the bill of lading provision in extenso and rely on them as well as the statutes. Such contractual provisions were essential under § 2 of the Harter Act which was not self-executing, but they are not of the same importance since the passage of the Carriage of Goods by Sea Act.

* *See* 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-80

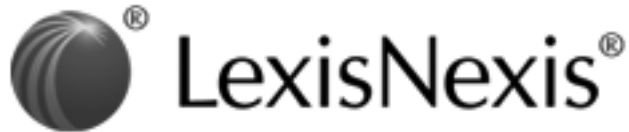
FORM No. 2-80 Defense of Fire--Cargo Damage

_____: Any loss of or damage to the shipments was due to fire for which the defendant is not liable or responsible by virtue of the provisions of the United States Carriage of Goods by Sea Act (46 U.S.C. §§ 1300-1315)
n1

FOOTNOTES:

(n1)Footnote 1. In this, as well as many other separate defenses to actions for cargo damage, attorney for the defendant often set forth the bill of lading provision in extenso and rely on them as well as the statutes. Such contractual provisions were essential under § 2 of the Harter Act which was not self-executing, but they are not of the same importance since the passage of the Carriage of Goods by Sea Act.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-81

FORM No. 2-81 Defense of Perils of the Sea Storm--Cargo Damage

_____: On or about _____, 20 _____, the vessel _____ sailed from _____ for _____. On _____, 20 _____, she encountered a storm with mountainous seas and winds of hurricane force. During the course of the storm _____ [*describe damage*] and waves and water gained access to the _____ hold, causing damage to a number of shipments, including those which are the subject of this cause.

_____: Any loss or damage to such shipments was due to perils, dangers, and accidents of the sea, for which the defendant is not liable or responsible by virtue of the provisions of the United States Carriage of Goods by Sea Act (46 U.S.C. §§ 1300-1315). n1

FOOTNOTES:

(n1)Footnote 1. In this, as well as many other separate defenses to actions for cargo damage, attorney for the defendant often set forth the bill of lading provision in extenso and rely on them as well as the statutes. Such contractual provisions were essential under § 2 of the Harter Act which was not self-executing, but they are not of the same importance since the passage of the Carriage of Goods by Sea Act.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-82

FORM No. 2-82 Defense of Reasonable Deviation--Cargo Damage

_____: On or about _____, 20 _____, while proceeding from _____ to _____ the vessel _____ changed her course to the north to answer an S.O.S. call from the vessel _____. After arriving in the vicinity of that vessel the vessel _____ took aboard all the members of the crew of the vessel _____, some of whom had been seriously injured by heavy seas and were in immediate need of hospitalization. Thereupon the vessel _____ proceeded to the nearest port, which was _____, in order that the injured men might be hospitalized at the earliest possible moment.

_____: The defendant specifically denies that there was any deviation on the part of the vessel _____ within the meaning of the provisions of the United States Carriage of Goods by Sea Act (46 U.S.C. §§ 1300-1315); n1 but alleges that even if proceeding to _____ could by any possibility be considered a deviation, so proceeding was a reasonable deviation within the provisions of such act, by virtue of which the defendant is not liable or responsible.

FOOTNOTES:

(n1)Footnote 1. In this, as well as many other separate defenses to actions for cargo damage, attorney for the defendant often set forth the bill of lading provision in extenso and rely on them as well as the statutes. Such contractual provisions were essential under § 2 of the Harter Act which was not self-executing, but they are not of the same importance since the passage of the Carriage of Goods by Sea Act.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-83

FORM No. 2-83 Defense of Limitation of Time for Bringing Suit--Cargo Damage

_____: The vessel _____ arrived in _____ on or about _____, 20 _____, and the within action was not instituted until _____, 20 _____, more than one year after the delivery of the merchandise or the date when the merchandise should have been delivered, and in consequence thereof the defendant and the vessel _____ are free of any liability with respect to the loss or damage in accordance with the provisions of the United States Carriage of Goods by Sea Act (46 U.S.C. §§ 1300-1315). n1

or

_____: This defendant puts plaintiff to its proof of the giving of proper notice and commencement of the suit within the time provided by the United States Carriage of Goods by Sea Act, 2036.

or

_____: Defendant puts plaintiff to its proof of compliance with the provision for the giving of Notice of Claim or Loss and commencement of suit as provided for in the Hague Rules.

FOOTNOTES:

(n1)Footnote 1. In this, as well as many other separate defenses to actions for cargo damage, attorney for the defendant often set forth the bill of lading provision in extenso and rely on them as well as the statutes. Such contractual provisions were essential under § 2 of the Harter Act which was not self-executing, but they are not of the same importance since the passage of the Carriage of Goods by Sea Act.

4-II Benedict on Admiralty FORM No. 2-83

* *See* 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-84

FORM No. 2-84 Partial Defense of Valuation--Cargo Damage

_____: In the event that any liability is adjudged against the defendant by reason of the matters and facts alleged in the complaint, then the liability of the defendant is restricted and limited to \$500, lawful money of the United States, per package, or, in case of goods not shipped in packages, per customary freight unit, in accordance with the provisions of the United State Carriage of Goods by Sea Act (*46 U.S.C. §§ 1300-1315*). n1

or

_____: The defendant's responsibility, if any, for damages in this case will be limited to the sum of \$500 per barge unit in view of the fact that plaintiff's cargo moved in the form of barge units from the time the barges aid to contain plaintiff's cargo were packed at the point of origin of the shipment until the time they reached their final destination. n2

or

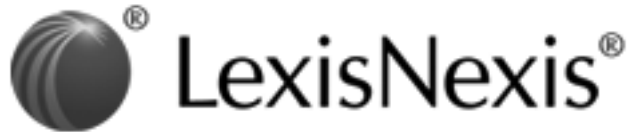
_____: If plaintiff is entitled to any recovery, which is denied, such recovery must be computed in accordance with the terms of the bill of lading and/or the provisions of the United States Carriage of Goods by Sea Act, 2036.

FOOTNOTES:

(n1)Footnote 1. In this, as well as many other separate defenses to actions for cargo damage, attorney for the defendant often set forth the bill of lading provision in extenso and rely on them as well as the statutes. Such contractual provisions were essential under § 2 of the Harter Act which was not self-executing, but they are not of the same importance since the passage of the Carriage of Goods by Sea Act.

(n2)Footnote 2. Form adapted from papers used in *Unites States Steel International, Inc. v. S.S. Lash Italia*, 439 F. Supp. 365, 2078 A.M.C. 384 (S.D.N.Y. 1977) , courtesy of Bleakley, Platt, Schmidt & Fritz, New York, New York.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-85

FORM No. 2-85 Defense of Excepted Causes Under Hague Rules and Charter Party--Cargo Damage

_____ : Any shortage or damage existing at the time of delivery of the goods at the port of discharge was due to causes for which the defendant is not liable or responsible by virtue of the provisions of the Hague Rules and/or the provisions of the charter party and/or the said charter party bill of lading, and/or applicable provisions of the contract of carriage, and/or applicable provisions of the General Maritime Law and/or the laws of the ports of shipment and/or discharge.

_____ : The goods were received, loaded and carried pursuant to the terms and conditions of a certain aforesaid charter party and bill of lading, which will be produced at the trial. If it be proved at the trial that the alleged loss arose or resulted from a cause for which defendant is not liable under any of the provisions of the aforementioned bill of lading and/or the charter party and/or the Hague Rules the defendant will claim the benefits thereof and be relieved of any liability with respect to plaintiffs' claim. The defendant reserves the right to amend this answer, if need be, as facts may develop or may be proved.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-86

FORM No. 2-86 General Defense of Excepted Causes--Cargo Damage

_____: The said shipment hereinbefore described in this answer was subject to all the terms, conditions, and exceptions contained in certain bills of lading, contract of affreightment, and voyage charter party, then and there issued, therefore by which the shippers and consignees of said bills of lading/contract of affreightment/voyage charter party agree to be and are bound.

_____: Such shipment was transported on said vessel subject to the contractual terms and conditions of the bills of lading/contract of affreightment/voyage charter party.

Any shortage, loss, or damage to the goods, which is denied, was due to causes for which neither the carrier nor the ship were liable or responsible by virtue of the Carriage of Goods by Sea Act, approved April 16, 21936, and/or the provisions of the said bills of lading, and/or Harter Act.

_____: Due diligence was exercised on the part of the carrier to make the vessel seaworthy with respect to the voyage referred to in the complaint and said vessel was, in fact, seaworthy for said voyage.

or

_____: The shipment herein was carried pursuant to all the terms, conditions, and exceptions of a certain bill of lading issued by the carrier to the shippers by the terms of which the plaintiff is bound, and the shipment is also subject to all the terms and conditions of the U.S. Carriage of Goods by Sea Act, approved April 16, 1936, *46 U.S.C § 1300, et. seq.* If any shortage, loss, or damage occurred as alleged, the said shortage, loss, or damage was due to a cause or causes for which the carrier is excused from liability under the terms of the aforesaid U.S. Carriage of Goods by Sea Act and/or the terms of the aforesaid bill of lading and/or the general maritime law.

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* *See* 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-87

FORM No. 2-87 Defense of Due Delivery--Cargo Damagen1

The subject shipment of _____ was delivered to and off-loaded at the port of destination in good order and condition and, upon authority and instructions received from the plaintiff, was released by defendant _____ to _____, the consignee named by the plaintiff. Said delivery by the named vessel constituted full and proper performance of any and all obligations, contractual, legal or otherwise, which may have been owed by the vessel and/or her owners to plaintiff; and said authorized release of the subject shipment to the consignee named by plaintiff constituted full proper performance of any and all obligations, contractual, legal or otherwise, which may have been owed by defendant _____ to plaintiff.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Dowzer Electric v. S.S. Victoria U*, Civ. No. 80-2935 (E.D.N.Y. 1980).

* *See* 2A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-88

FORM No. 2-88 Defendant Time Charterer's Affirmative Defenses--Collapse of Container Spilling Cargo Onto Deck

Defendant is entitled to each and every exculpatory and limiting provision of the United States Carriage of Goods by Sea Act as a beneficiary of exculpatory clauses in the Bill of Lading.

and/or

If this defendant is liable in any respect to plaintiff, which is not admitted, then such liability is limited to \$500 by virtue of the package limitation in the United States Carriage of Goods by Sea Act.

and/or

If this defendant is responsible to plaintiff in any respect, which is not admitted, then such liability is limited to \$2,500 as a consequence of the package limitation in the United States Carriage of Goods by Sea Act.

and/or

If plaintiff's cargo was damaged in any respect, which is not admitted by defendant, then such damage was caused, in whole or in part, by the negligence or other fault of plaintiff or of third-party defendant or of some party for whom defendant is not responsible.

and/or

4-II Benedict on Admiralty FORM No. 2-88

If cargo of plaintiff was damaged as alleged then such damage was caused, in whole or in part, by the inherent vice of the cargo and/or because the cargo was improperly prepared for shipment.

and/or

If plaintiff's cargo was damaged in any respect, such damage was caused, in whole or in part, by the inadequate stuffing of container No. _____ by plaintiff or its agent.

and/or

Defendant, _____, did not itself at any time enter into any contract or other agreement with plaintiff herein and is, therefore, not in any respect obligated to the plaintiff.

and/or

Defendant, _____, at all relevant times herein acted as agent for disclosed principals known to the plaintiff and, therefore, is not directly obligated in any respect to the plaintiff herein.

and/or

Defendant, _____, never contracted with plaintiff herein for ocean carriage of the goods contained in container No. _____ and, therefore, is not obligated in any respect to plaintiff in consequence of any alleged contract for ocean carriage.

and/or

Plaintiff has failed to join a necessary party, the ocean carrier, as a party defendant in this action.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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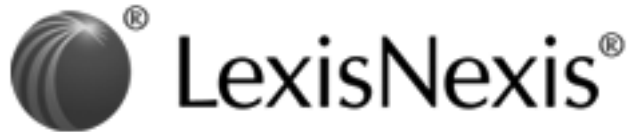
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4-II Benedict on Admiralty FORM No. 2-89

FORM No. 2-89 Defense of Negligent Acts of Shipper--Cargo Damage

Any loss, shortage or damage to the aforementioned shipment, which is denied, was caused by the act or omission of the shipper of the goods or its agents or representatives and accordingly this defendant is not liable therefor.

* *See* 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty Form 2-90

Form 2-90 Defense of Act or Omission of Shipper

Said Carriage of Goods by Sea Act provides in part as follows:

"4(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from --

"(i) Act or omission of the shipper or owner of the goods, his agent or representative."

Defendant is informed and believes, and on such information and belief alleges, that the damage to said cargo, if any, arose or resulted from an act or omission of the shipper or owner of the goods, his agent or representative.

* *See 2A Benedict on Admiralty (Matthew Bender 7th ed.).*



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4-II Benedict on Admiralty Form 2-91

Form 2-91 Claim of Benefit of Carriage of Goods by Sea Act

Defendant claims the benefit of each and every provision of COGSA. Defendant is not presently advised fully of the nature and cause of the alleged loss or damage to said goods, if any, but begs leave to amend this answer when more fully advised, and to offer proof accordingly.

* *See* 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty Form 2-92

Form 2-92 Defense of Lack of Privity Under Carriage of Goods by Sea Act

Said Carriage of Goods by Sea Act provides in part as follows:

"4(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from --

"(q) Any other cause arising without the actual privity of the carrier and without the fault or negligence of the agents or servants of the carrier... ."

Defendant is informed and believes, and on such information and belief alleges that the damage to said cargo, if any, arose or resulted from a cause or causes arising without the actual fault and privity of Defendant carrier and without fault or neglect of agents or servants of said carrier.

* *See 2A Benedict on Admiralty (Matthew Bender 7th ed.).*



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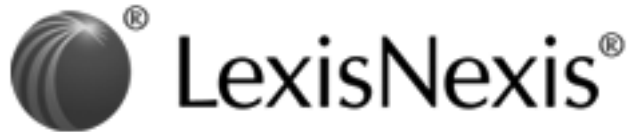
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4-II Benedict on Admiralty Form 2-93

Form 2-93 Defense of Lack of Standing to Sue

[PLAINTIFF] lacks standing to sue under the bills of lading and is not the proper party to bring suit against Defendant.

* *See* 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty Form 2-94

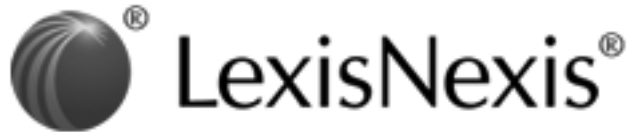
Form 2-94 Partial Defense -- Package Limitation

Said Carriage of Goods by Sea Act provides in part as follows:

"4(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package lawful money of the United States or in the case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before the shipment and inserted in the bill of lading. This declaration if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier... ."

Defendant is informed and believes and on such information and belief alleges that Defendant's liability, if any, is limited to \$500 per package or customary freight unit pursuant to COGSA and the terms of the applicable bills of lading.

* *See* 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty Form 2-95

Form 2-95 Defense of No Fault or Neglect by Carrier

If any loss or damage did occur to said cargo, none of said loss or damage was caused or contributed to by any fault or neglect on the part of Defendant but from a cause or causes from which it is expressly exempted from the responsibility by the terms and conditions of the bills of lading covering the carriage. Defendant claims the benefit of each and every provision contained in said bills of lading and applicable tariffs, including the jurisdiction and limitation of liability provisions, and begs leave to amend this answer and to offer proof thereof when more fully advised of the details concerning said loss or damage.

* See 2A Benedict on Admiralty (Matthew Bender 7th ed.).



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Reserved

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4-II Benedict on Admiralty FORM No. 2-130

FORM No. 2-130 Owner's Defense of Frustration--Charter Party

_____: The charter party dated _____ 20 _____, between the plaintiff and the defendant covering the vessel _____, contained in clause _____ the following provision: "Restraint of princes, rulers and the people throughout this charter party always mutually excepted." While the vessel _____ was being operated under the above mentioned charter party, and on _____, 20 _____, a notice was served on the defendant by the _____, a part of the government of the _____, that it had become necessary to requisition the vessel of _____ for immediate use on government service, and the vessel accordingly was requisitioned by the _____ Government.

On that date the vessel _____ was at sea. Thereafter, in the latter part of _____, 20 _____, the vessel arrived at _____ and discharged cargo under the orders of the defendant, but was not permitted by the _____ Government to load additional cargo for the defendant.

The vessel proceeded from _____ to _____ and there discharged additional cargo under the orders of the plaintiff.

Since that date the _____ has been operated under the orders and direction of the _____ Government.

The above mentioned action of the _____ Government constituted a restraint of princes, rulers and people within the meaning of clause 18 of the charter party above set forth and the defendant is not liable for any loss or damage that may have been sustained by the plaintiff in consequence thereof.

* See 2B Benedict on Admiralty, chs. I, II, III (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-131

FORM No. 2-131 Charterer's Defense of Fraud--Charter Party

_____: In order to induce defendant to enter into the charter party set forth in plaintiff's complaint herein, plaintiff stated and represented to defendant that the vessel which it was to furnish to defendant under the said contract had the power and capacity for doing the work required of it namely _____ as set forth in plaintiff's complaint; before the making of such representations, plaintiff was informed and well-knew of the nature of the work for which defendant desired to rent the said vessel.

_____: The representations so made were false and fraudulent and were known to plaintiff to be false and fraudulent when made; in truth and in fact the said vessel did not have the power and capacity for doing the work for which defendant desired it.

_____: Defendant did not know the truth with regard to such representations but believed them to be true and relied upon them and in such reliance entered into the charter party set forth in plaintiff's complaint; defendant would not have entered into such charter party had he known the truth with regard to such representations.

_____: On the _____ day of _____, 20____, defendant endeavored to use the vessel for the purpose for which he hired it and found as hereinbefore alleged that the said vessel did not have the power and capacity for doing the said work; defendant thereupon rescinded the said contract and on the _____ day of _____, 20____, duly notified plaintiff that he rescinded the same.

* See 2B Benedict on Admiralty, chs. I, II, III (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-132

FORM No. 2-132 Affirmative Defense in Answer Preserving Right to Arbitration and Counterclaim for Security--Charter Party

[Caption] n1

ANSWER TO CHARTERER'S COMPLAINT IN REM AND IN PERSONAM WITH CLAUSE OF MARITIME ATTACHMENT TO SEEK SECURITY FOR CLAIM PENDING ARBITRATION AND COUNTERCLAIM TO SEEK SIMILAR SECURITY BY OWNER

[Normal Answer With Admission, Denials, etc.] n2

_____ DEFENSE

_____ alleges that the serving and filing of this answer shall not constitute or act as a waiver of its right to invoke an arbitration provision in a charter party contract or agreement entered into in _____ in writing with the plaintiff and dated _____, and _____ hereby states that it reserves unto itself and does not waive any such right to arbitration of any dispute between it and the plaintiff.

COUNTERCLAIM

[Jurisdictional Statement and Allegations Concerning Parties] n3

3. At all material times, plaintiff and counter-defendant was the time charterer of the vessel _____ and operated the vessel in its service, pursuant to and subject to the terms and conditions of a certain charter party contract or agreement in writing made and entered into by and

4-II Benedict on Admiralty FORM No. 2-132

between it and the defendant, dated at _____ on _____, 20 _____.
A copy of said charter party or agreement, marked Exhibit "A," is attached hereto and incorporated herein.

4. By and pursuant to the terms and conditions of said charter party contract or agreement, plaintiff and counterdefendant, at all material times, was responsible for the bookings, reception, loading, stowing, discharging and delivery, under its bills of lading, of all cargoes carried by and on board the vessel _____.

5. The plaintiff and counter-defendant has breached said charter party contract or agreement in several respects and on several occasions during the term and tenure thereof, including:

- (a) By negligent, careless and improper loading operations.
- (b) By negligent, careless and improper discharging operations.
- (c) By negligent, careless and improper cargo stowage.
- (d) By negligent, careless and improper delivery operations.
- (e) By exposing the defendant to numerous and substantial claims for cargo damage and/or loss.
- (f) In other respects to be shown during the proceedings herein.

6. The defendant and counter-claimant have performed all those things required on its part to be performed under the said charter party or agreement.

7. The defendant and counter-plaintiff have been required and obligated to give security to respond in damages to plaintiff's claims arising out of said charter party contract or agreement as appears from a certain letter of indemnity and undertaking a copy of which is attached hereto, and incorporated herein as Exhibit B.

8. The defendant and counter-plaintiff pursuant to the provisions of Rule E(7) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure requests security for its claim against the plaintiff and counter-defendant which will be the subject of an arbitration between plaintiff and counter-defendant and pursuant to the provisions of Clause 17 of the aforementioned written charter party or agreement.

9. As a result of the breach of said charter party or agreement by plaintiff and counter-defendant, it has been exposed to numerous and substantial claims for cargo damage and to other losses, expenses and damages, the full extent of which are not known but are presently estimated at no less than _____.

Wherefore, _____, claimant, defendant and counter-claimant herein, prays:

1. That the complaint filed against the vessel _____ in rem and against it, in personam, be dismissed with costs.

2. That this Court, pursuant to Rule E(7) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, direct that it be given security from plaintiff and

4-II Benedict on Admiralty FORM No. 2-132

counter-defendant, _____, to respond in damages on its counterclaim in the sum of _____, failing which this Court dismiss the complaint of plaintiff and vacate any security given by _____ to secure the release of the vessel _____.

3. That this Court stay the trial of this action and retain jurisdiction to enter its judgment upon the award of the arbitrators against the security herein obtained by _____, as counter-claimant, to the extent same may be capable of satisfying said award in whole or in part.

4. That the Court grant to it such other, further and different relief as justice may require.

[*Verification*] n4

FOOTNOTES:

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

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

(n3)Footnote 3. *See* Forms No. 1-2 and 1-4, *supra*.

(n4)Footnote 4. *See* Forms Nos. 1-10 and 1-11, *supra*.

* *See* 2B Benedict on Admiralty, chs. I, II, III (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM Nos. 2-133-2-152

Reserved

FORM Nos. 2-133Reserved



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4-II Benedict on Admiralty FORM No. 2-153

FORM No. 2-153 Defense--Obstruction to Navigation

At the time of the alleged losses referred to in the complaint, said terminal at _____ was an illegal installation and constituted an illegal obstruction to navigation.



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4-II Benedict on Admiralty FORM No. 2-154

FORM No. 2-154 Defense--Assumption of the Risk

Even if, by reason of the matters set forth in the complaint, plaintiff was damaged, as alleged by plaintiff and denied by defendants, the said terminal was unable to withstand ordinary harbor contacts and its owners or operators knew, or should have known, the conditions at the terminal and they assumed the risk of damage to the terminal.



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4-II Benedict on Admiralty Form 2-155

Form 2-155 Defense of Plaintiff's Own Negligence

Plaintiff, its agents and representatives and/or predecessors-in-interest did not exercise ordinary care, caution or prudence to avoid the alleged loss and that the alleged loss, if any, sustained by Plaintiff was proximately caused and contributed to by the negligence and fault of Plaintiff, its agents or representatives and/or predecessors-in-interest. Said negligence and fault bars Plaintiff's recovery from this answering Defendant or comparatively reduces the percentage of fault, if any, of this answering Defendant.



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4-II Benedict on Admiralty Form 2-156

Form 2-156 Partial Defense of Proportionate Fault

Any judgment that may be entered against this Defendant for damages must be limited to an amount proportionate with that degree of fault attributable to this defendant, if any, as opposed to fault attributed to Plaintiff and others.



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4-II Benedict on Admiralty FORM Nos. 2-157-2-174

Reserved

FORM Nos. 2-157

Reserved



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GENERAL AVERAGE *

4-II Benedict on Admiralty FORM No. 2-175

FORM No. 2-175 Defense of Fault of Shipowner--General Average

The stranding of the vessel _____ resulting in the sacrifice for which the plaintiff seeks general average contributions, was due to the failure of the plaintiff to exercise due diligence to make the vessel seaworthy.

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



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GENERAL AVERAGE *

4-II Benedict on Admiralty FORM Nos. 2-176-2-195

Reserved

FORM Nos. 2-176Reserved



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4-II Benedict on Admiralty FORM No. 2-196

FORM No. 2-196 Defense of Misconduct [Intoxication]--Maintenance and Cure

_____: The injury suffered by the plaintiff was due solely to the culpable misconduct of the plaintiff in that at the time such injury was sustained the plaintiff was grossly intoxicated.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-197

FORM No. 2-197 Defense of Maximum Cure--Injury

_____: Plaintiff has received the maximum benefit from medical care.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-198

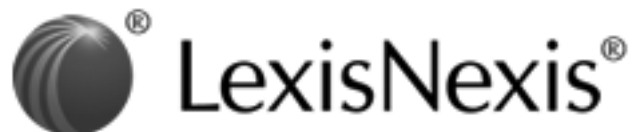
FORM No. 2-198 Defense of Contributory Negligence--Injury

Any injuries sustained or suffered by plaintiff at the time and place or on the occasion mentioned in the complaint were caused in whole or in part, or were contributed to, by the negligence or fault or want of care of plaintiff and not be any negligence or fault or want of care on the part of the defendant [*or* by any unseaworthiness of the steamship _____].

or

_____: Whatever illnesses or injuries, if any, the plaintiff may have sustained herein were solely caused or contributed to by the negligence, fault or want of care on the part of the plaintiff and were not caused or contributed to by the negligence, fault or want of care on the part of the defendant, _____, his agents, servants, officers or employees or by persons or parties for whose acts or omissions this defendant is responsible or liable.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-199

FORM No. 2-199 Defense of Contributory Negligence--Injury

_____: Plaintiff's injury was not due to any negligence of defendant _____ or to its failure to provide a seaworthy vessel or a safe place to work.

In the alternative, however, if any of such grounds of liability are found, then plaintiff was guilty of contributory negligence proximately causing his injury, consisting of his failure to observe the open hatch and thereby avoid falling through it, which is specially pleaded in mitigation or in bar of the damages he sustained.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-200

FORM No. 2-200 Defense of Assumption of Risk and/or Contributory Negligence--Injury Or Death

_____: That at all times material to plaintiff's complaint, the plaintiffs' decedent, _____, did voluntarily and with full knowledge of the risks involved, engage in the activities described in the complaint and thereby assumed all of the ordinary and usual risks and perils incident to such activity. Further, plaintiffs' decedent was guilty of negligence which was the sole proximate cause of his death or in the alternative such negligence should be apportioned with any proven negligence of these defendants in determining the damages claimed by plaintiffs against these defendants. n1

or

_____: That at the times mentioned in plaintiff's complaint, the activities of the plaintiff had certain risks and dangers ordinarily and normally incident thereto which were open, obvious and known to him and in engaging in said activities, plaintiff assumed all of the said risks and dangers and whatever damages, if any, plaintiff may have sustained, as alleged in the complaint, the same occurred in the ordinary and normal course of said activities and by reason thereof, plaintiff is barred from recovering from defendant, _____, herein.

or

_____: That plaintiff's employment had certain risks, dangers, and hazards, all of which were open, obvious, and well known to the plaintiff at the time he entered upon said employment and that, if the plaintiff sustained any injuries as alleged in the complaint, said injuries arose out of and were caused by said risks, dangers, and hazards, all of which were taken and assumed by the plaintiff at the time he entered upon his said employment. n2

_____: The injuries and/or illnesses to plaintiff, if any, arose out of several risks, dangers, and

hazards, all of which were open, obvious, and well-known to plaintiff at and before the said injuries and/or illnesses were sustained, and all of said risks, dangers, and hazards had been assumed by plaintiff. n3

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Palmer v. Ribax, Inc.*, 407 F. Supp. 974, 2076 A.M.C. 1056 (M.D. Fla. 1976) , courtesy of Richard W. Bates, Esq., Orlando, Florida.

(n2)Footnote 2. Form adapted from papers filed in *Pinto v. Rederei Claus-Peter Offen*, Civ. No. 83-4976 (E.D.N.Y. 1983).

(n3)Footnote 3. Form adapted from papers filed in *Parrilla v. Moore McCormack Lines, Inc.*, Civ. No. 84-2259 (E.D.N.Y. 1984).

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-201

FORM No. 2-201 Defense of Comparative Negligence--Injury

_____: Plaintiff's employment on defendant's vessel required a reasonable level of skill and care in order to carry out the duties assigned to plaintiff with due regard for the safety of plaintiff, his fellow seamen and the vessel.

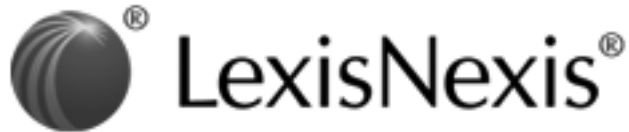
_____: Upon signing aboard defendant's vessel, the plaintiff represented himself to be an experienced seaman, capable of the level of skill and care required for the position for which he was hired.

_____: If the plaintiff was injured, he was not conducting himself in the manner of a capable seaman as he represented himself to be, in that he was not being observant of obvious hazards, was not taking due regard for his own safety, and was not requesting or using proper and available equipment or procedure to do the tasks assigned to him. n1

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in Neilson v. Prudential Lines, Inc., Civ. No. 84-505 (E.D.N.Y. 1984).

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-202

FORM No. 2-202 Defense of Wrongful Act of Third Party--Injury

_____: The defendant alleges that the vessel _____ was at all times mentioned in the complaint properly equipped, maintained and manned by a competent and able Master, officers and crew. Any injury which the plaintiff may have sustained while working on or near said vessel was due to, or was contributed to, by his own fault, carelessness or negligence or was due to the fault, carelessness or negligence entirely of _____, which was engaged to perform stevedoring services aboard said vessel at the time plaintiff alleges he was injured.

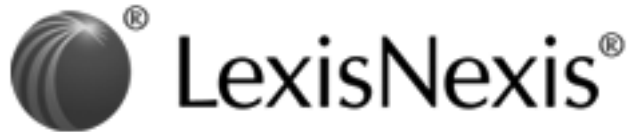
or

_____: The negligence, if any, causing the plaintiff's accident was solely due to the negligence of third persons who are not parties to the lawsuit.

or

_____: Any injuries sustained by plaintiff as alleged in the complaint, if not caused solely by his own negligence, were caused or contributed to by the negligence of _____, his stevedore employer, or by other third parties for whom defendants are not responsible.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-203

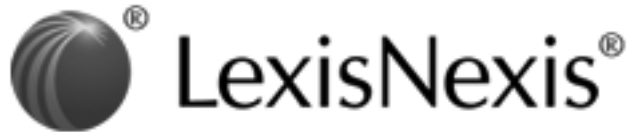
FORM No. 2-203 Defense of Wrongful Act of Plaintiff's Employer--Injury to Longshoreman¹

_____: That the plaintiff worked as an employee of _____ aboard the vessel _____ as alleged, and as such employee he worked under the direct control and supervision of his employer, and the area in which plaintiff worked aboard said vessel was under the management, operation, and control of said employer and all equipment in use aboard said vessel in connection with plaintiff's employment was being operated by and in the complete control of plaintiff's employer, its agents, servants, and employees, so that plaintiff's injuries, if any, were the direct result of the negligence, carelessness and breach of duty of said _____, without any fault, neglect, or breach of the warranty of seaworthiness on the part of the defendant contributing thereto.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Pinto v. Redeerei Claus-Peter Offen*, Civ. No. 83-4976 (E.D.N.Y. 1983).

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-204

FORM No. 2-204 Defense of Pre-existing Condition--Injury¹

_____: If plaintiff sustained any injury or suffered from any illnesses or disabilities, such illnesses, injuries and/or disabilities were the result of a pre-existing condition suffered by the plaintiff which was not caused or contributed to by his employment aboard defendant's vessel or by any alleged negligence or breach of warranty of seaworthiness by the defendant.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Neilson v. Prudential Lines, Inc.*, Civ. No. 84-505 (E.D.N.Y. 1984).

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-205

FORM No. 2-205 Defense of Failure To State a Claim--Injury to Longshoreman

_____: The complaint filed herein fails to state a claim upon which relief can be granted in that Section 5 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 905, eliminated unseaworthiness as a cause of action for shore workers.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-206

FORM No. 2-206 Defense That Longshore and Harbor Workers' Compensation Act Is Plaintiff's Sole Remedy--Injury to Longshoreman¹

_____: Plaintiff's sole and exclusive remedy, if any, is under and by virtue of the provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950 and all the statutes amendatory thereof and supplemental thereto, and Defendant hereby pleads said Longshore and Harbor Workers' Compensation Act, and all amendments and supplements thereto, as a complete defense and bar to this action by plaintiff.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Parrilla v. Moore McCormack Lines Inc.*, Civ. No. 84-2259 (E.D.N.Y. 1984).

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-207

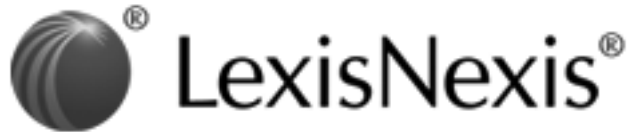
FORM No. 2-207 Defense of Longshore and Harbor Workers' Compensation Act Off-Set--Injury to Longshoreman¹

_____: Plaintiff's injuries, if any, were proximately caused in whole or in part by the concurring negligence and breach of warranty of his employer and its employees; plaintiff received from his employer and his employer's compensation carrier the benefits of the Longshore and Harbor Workers' Compensation Act; plaintiff's recovery, if any, should be reduced or offset by a credit to the defendant in an appropriate percentage or amount.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Parrilla v. Moore McCormack Lines Inc.*, Civ. No. 84-2259 (E.D.N.Y. 1984).

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-208

FORM No. 2-208 Defense of Statutory Assignment of Cause of Action--Injury to Longshoreman¹

_____: Upon information and belief, payment of compensation to plaintiff commenced and/or plaintiff received an award or awards under the Longshore and Harbor Workers' Compensation Act more than six months prior to Commencement of this suit. By virtue of 33 U.S.C.A. § 933(b), "all rights" of plaintiff against defendant was assigned to plaintiff's employer or its insurer six months after compensation payments commenced and/or plaintiff received an award or awards and plaintiff is therefore without standing to maintain this action.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Pinto v. Redeerei Claus-Peter Offen*, Civ. No. 83-4976 (E.D.N.Y. 1983).

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-209

FORM No. 2-209 Affirmative Defense That Court Lacks Jurisdiction--Death on the High Seas Act¹

_____: The death of the decedent is alleged to have occurred in the _____ River in the area of _____, _____ [state]. Under 46 U.S.C. § 761, and the laws amendatory thereof, the right of action under said Section accrues only when the alleged wrongful act, neglect or default occurs on the high seas beyond a marine league from the shore of any State. Accordingly, the defendant maintains that this Honorable Court is without jurisdiction of the parties and the subject matter alleged in plaintiff's _____ cause of action.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Marczak v. McAllister Bros., Inc.* 439 F. Supp. 1075, 2078 A.M.C. 374 (S.D.N.Y. 1977), courtesy of Newmark, Lamb, Dowling & Marchisio, New York, New York.

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-210

FORM No. 2-210 Defense of Lack of Causation--Injury

_____: At the time of the said occurrence, the vessel was not seaworthy. However, the unseaworthiness of the vessel in no way contributed to or caused the occurrence which resulted in the plaintiff's injuries.

_____: The aforesaid occurrence and the resultant alleged injury to the plaintiff were not caused or contributed to by any negligence on the part of the said yacht, or any negligence on the part of the defendant, or any negligence on the part of anyone for whom the defendant may be responsible.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-211

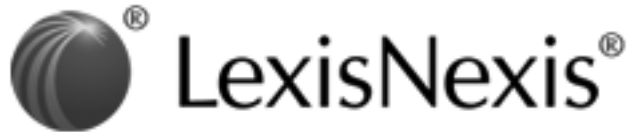
FORM No. 2-211 Affirmative Defense--Statute of Limitation (Jones Act)n1

_____: Pursuant to *46 U.S.C. § 763(a)* and the laws amendatory thereof and *46 U.S.C. § 688* and the laws amendatory thereof, this cause of action is barred since it was not commenced within three years from the date the cause of action accrued.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Marczak v. McAllister Bros., Inc.*, 439 F. Supp. 1075, 2078 A.M.C. 374 (S.D.N.Y. 1977), courtesy of Newmark, Lamb, Dowling & Marchisio, New York, New York.

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-212

FORM No. 2-212 Affirmative Defenses--Statute of Limitation and Laches (Jones Act)n1

_____: Defendant says that the incident made the basis of this suit occurred, as to this defendant, according to the plaintiff's complaint, on or about _____, 20 _____. Suit was not filed until _____, 20 _____, more than three years after the alleged accident. Therefore, this defendant affirmatively pleads the three-year statute of limitations as set forth in *46 U.S.C. § 688*, known as the Jones Act, as a bar to the prosecution of this claim against this defendant. Defendant would further assert the doctrine of laches as a defense in this case, since it has been substantially and greatly prejudiced by the delay of over three years in the filing of this lawsuit.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *De Oliveira v. Delta Marine Drilling Co.*, 684 F.2d 337 (5th Cir. 1992), furnished through the courtesy of Dixie Smith, Esq., Fulbring & Jaworski, Houston, Texas.

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-213

FORM No. 2-213 Defense--Comparative Negligence (Jones Act)n1

_____: For further answer herein, this defendant says that the accident made the basis of this suit was solely and proximately caused by the failure of plaintiff, _____, to exercise that degree of care for his own safety that a reasonably prudent person, in the exercise of ordinary care, would have exercised under the same or similar circumstances, or in the alternative, such failure on the part of plaintiff, _____, was a proximate cause of said accident.

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.

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-214

FORM No. 2-214 Defense--Forum Non Conveniens (Jones Act)

_____: For further answer herein, defendant says that the accident made the basis of this suit occurred in the waters of the Republic of _____, just off the coast of _____. With one exception, all of the material witnesses are presently located in _____ Co-defendant, _____, is a corporation of the _____ and is located there. The plaintiff is a national of the _____ and has led there all of his life. Plaintiff has an accessible forum in the _____. The laws of the _____ should be used in determining the merits of this action. A court of the _____ would be better situated to determine the issues involved in this action. Therefore, defendant prays that this entire action be dismissed for reasons of forum non conveniens.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-215

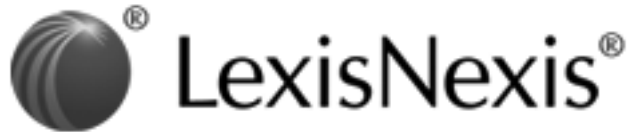
FORM No. 2-215 Defense--Lack of Standing (Jones Act and General Maritime Law)n1

_____: The plaintiff, by his own admission, is a citizen of _____. The alleged accident made the basis of this suit occurred within or in the waters just off the coast of _____. Therefore, the plaintiff is not entitled to bring this suit under the Jones Act or the General Maritime Law of the United States.

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.

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-216

FORM No. 2-216 Defense--Intervening Medical Cause (Jones Act)n1

_____: For further answer herein, defendant further says that if plaintiff has, or will have, any loss of earning capacity, that such loss was caused solely or in some degree by some condition of body, some other injury, or combination thereof, that is completely unrelated to the injury claimed in this lawsuit, or has been and will be solely or in part the result of the plaintiff's failure to follow the advice, care, and treatment of attending doctors.

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.

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-217

FORM No. 2-217 Defense--Unavoidable Accident (Jones Act)n1

_____: Defendant says that the damages sustained by the plaintiff, if any, were the result of an accident and that, insofar as this defendant is concerned, such accident was unavoidable.

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.

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM No. 2-218

FORM No. 2-218 Defense That Action is Barred by Term of Contract of Passage--Injury to Passengers¹

Plaintiffs failed to give defendant timely notice of a claim as hereinafter provided in Article _____ of their passage ticket and group boarding pass:

[state terms of article]

or

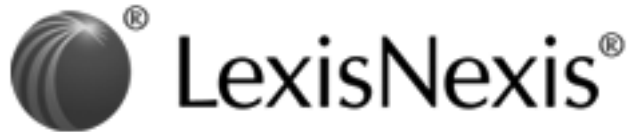
Plaintiff's injuries, if any, were caused or contributed to by persons for whose actions defendant is not responsible, as is set forth in Article _____ of plaintiff's passage ticket and boarding pass:

[state terms of article]

FOOTNOTES:

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

* As to seamen, see 1B *Benedict on Admiralty* (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* (Matthew Bender 7th ed.). As to longshoremen, see 1A *Benedict on Admiralty* (Matthew Bender 7th ed.).



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CHAPTER II DEFENSES
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4-II Benedict on Admiralty Form 2-219

Form 2-219 Defense of Preexisting Duty to Provide Medical Care

Subject to the facts which come to light during discovery in this case, Defendant asserts that Plaintiff's complaint, and each and every cause of action therein, is barred, or recovery sought thereby should be diminished, under the doctrine of preexisting duty because Plaintiff was legally obligated to provide emergency medical services to [SEAMAN] as provided for by Health and Safety Code Section 1317.

* As to seamen, see 1B Benedict on Admiralty (Matthew Bender 7th ed.); 2 Benedict on Admiralty (Matthew Bender 7th ed.). As to longshoremen, see 1A Benedict on Admiralty (Matthew Bender 7th ed.).



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4-II Benedict on Admiralty FORM Nos. 2-220-2-258

Reserved

FORM Nos. 2-220

Reserved



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CHAPTER II DEFENSES
INSURANCE

4-II Benedict on Admiralty FORM No. 2-259

FORM No. 2-259 Sue and Labor Defense to an Action on a Hull Policy

_____: The insurance policy referred to in Paragraph 4 of the complaint contains and was subject to the following Sue and Labor Clause:

"And in case of any Loss, or Misfortune, it shall be lawful for the Assured, their Factors, Servants, or Assigns, to sue, labor and travel for, in and about the Defense, Safeguard and Recovery of the said Vessel, etc., or any part thereof, without prejudice to this Insurance, to the Charges whereof the Underwriters will contribute their proportion as provided below."

_____: Upon information and belief, the plaintiff failed to exercise due diligence or make reasonable efforts for the recovery of the vessel _____.



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CHAPTER II DEFENSES
INSURANCE

4-II Benedict on Admiralty FORM No. 2-260

FORM No. 2-260 Defense of Unseaworthiness--Insurance

_____: In the application for the policy of insurance set forth in plaintiff's complaint herein, which application is attached to and forms a part of the said policy, plaintiff warranted that the vessel, _____, covered by the said policy, was seaworthy as follows: _____.

_____: In the said policy of insurance it was among other things stipulated and agreed as follows: _____ [policy void if vessel unseaworthy]

_____: The said ship was in fact unseaworthy for the reasons hereinafter set forth; at _____, during the course of the voyage mentioned in plaintiff's complaint herein and in reference thereto and to any damage which the said ship sustained in the prosecution thereof, a regular survey was had on the _____ day of _____, 20 _____, and the said ship was thereby declared to be and to have been unseaworthy by reason of the fact _____.



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CHAPTER II DEFENSES

INSURANCE

4-II Benedict on Admiralty FORM Nos. 2-261-2-280

Reserved

FORM Nos. 2-261Reserved



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CHAPTER II DEFENSES

POSSESSORY, PETITORY, AND PARTITION ACTIONS

4-II Benedict on Admiralty FORM No. 2-281

FORM No. 2-281 Defense of Lien Claim--Possessory Action

_____: The merchandise of which the plaintiff seeks possession arrived in the port of _____ on or about the _____ day of _____, 20_____, and the plaintiff was duly notified of its arrival, but failed to request delivery thereof until more than three weeks thereafter. As a result of such delay on the part of the plaintiff, charges for the storage of such merchandise accrued in the amount of \$_____ and constitute a lien upon such merchandise, which the defendant is entitled to retain until such charges have been paid.



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POSSESSORY, PETITORY, AND PARTITION ACTIONS

4-II Benedict on Admiralty FORM Nos. 2-282-2-301

Reserved

FORM Nos. 2-282Reserved



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CHAPTER II DEFENSES
PRODUCTS LIABILITY

4-II Benedict on Admiralty FORM No. 2-302

FORM No. 2-302 Affirmative Defenses--Negligent Design and Installation of Helmsman's Chair

[Caption] n1

FIRST AND AFFIRMATIVE DEFENSE

13. That the Complaint fails to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

14. That the product which forms the subject of this lawsuit was misused by the plaintiff and by others over whom defendant neither had nor exercised any control.

THIRD AFFIRMATIVE DEFENSE

15. That any damages which the plaintiff may have sustained, all of which are expressly denied, were caused or contributed to by the culpable conduct, fault and negligence of the plaintiff.

FOURTH AFFIRMATIVE DEFENSE

16. That any damages which the plaintiff may have sustained, all of which are expressly denied, were caused or contributed to by the culpable conduct, fault, negligence, and/or strict liability in tort of third persons over whom defendant neither had nor exercised any control.

FIFTH AFFIRMATIVE DEFENSE

17. That the plaintiff assumed any and all risks associated with the use of the products which form the subject of this lawsuit.

SIXTH AFFIRMATIVE DEFENSE

18. That if it is found that any products designed, manufactured or distributed by defendant are involved in this lawsuit, said products underwent significant and material alteration after said products left the possession and control of defendant.

SEVENTH AFFIRMATIVE DEFENSE

19. That whatever damages and injuries the plaintiff may have sustained at the time and place alleged in the Complaint were caused in whole or in part by the culpable conduct of the plaintiff and that the amount of damages recovered if any, shall therefore be diminished in that proportion which said culpable conduct attributable to the plaintiff bears to the culpable conduct which caused said damages and injuries.

A FIRST CROSS-CLAIM AGAINST _____,

20. That if defendant is found to be liable in whole or in part for the injuries which were allegedly sustained by the plaintiff, all of which liability is expressly denied by defendant, such liability arose in whole or in part by the negligence, breach of warranty, strict liability in tort, culpability and carelessness of codefendant _____, its agents, servants or employees, and therefore defendant is entitled to contribution and/or common law and contractual indemnity, inclusive of all costs and expenses with respect to the defense of this action and prosecution of this cross-claim, including but not limited to attorney's fees, from _____, in whole or in part for the amount of any verdict, judgment or settlement which may be recovered against defendant.

Wherefore, defendant _____ by its attorneys, _____, demands judgment dismissing the plaintiff's complaint together with costs and disbursements, including but not limited to attorney's fees, and further demands that the answering defendant _____ shall have full indemnification and/or contribution from _____, Inc.; that the relative responsibility of the named plaintiff and defendant be apportioned and that the answering defendant herein have judgment against said plaintiff and defendant, together with costs, disbursements, expenses and attorney's fees.

Dated: _____

Attorney for Defendant

FOOTNOTES:

(n1)Footnote 1. *See* Form No. 2-1 *supra*.



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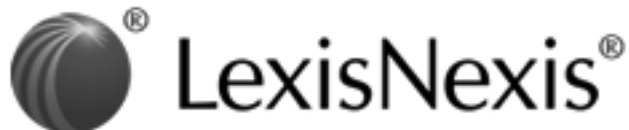
CHAPTER II DEFENSES

PRODUCTS LIABILITY

4-II Benedict on Admiralty FORM Nos. 2-303-2-322

Reserved

FORM Nos. 2-303Reserved



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CHAPTER II DEFENSES
PROPERTY DAMAGE

4-II Benedict on Admiralty FORM No. 2-323

FORM No. 2-323 Defenses of Failure To Provide Safe Berth--Damage to Vessel¹

_____: The breaking of the moorings and the subsequent grounding of the vessel _____ were proximately caused by acts and failures on the part of the owner, its agents, servants and employees.

_____: The breaking of the moorings and the subsequent grounding of the vessel _____ were the result of an Act of God, specifically Hurricane _____, and therefore the same was the result of an inevitable accident.

_____: The master of the vessel _____ determined that the first and the second berths to which said vessel was assigned were safe and sufficient, and plaintiff has therefore waived any claims against defendant, or is estopped to assert any such claims.

_____: The second berthing and the subsequent grounding of the vessel _____ were due to a failure of her machinery or to an error of judgment of the master and crew of said vessel, by reason of which the said vessel could not put to sea to ride out safely the said Hurricane _____.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers used in *Trade & Transport, Inc. v Caribbean S.S. Co.*, 384 F. Supp. 782, 2075 A.M.C. 1065 (S.D. Tex. 1974), courtesy of Klebert, Bobley, Lockett & Weil, Corpus Christi, Texas.



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PROPERTY DAMAGE

4-II Benedict on Admiralty FORM No. 2-324

FORM No. 2-324 Affirmative Defense--Act of God

The damages to the vessel _____ were the result of an act of God, specifically winds of unusual and extraordinary strength and violence, occurring without warning, in a weather front, caused the cranes to skid on their tracks and make contact with the vessel _____, without any fault, negligence or want of due care on the part of the defendant, its agents, servants, employees or equipment and therefore the same was the result of an inevitable accident.



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PROPERTY DAMAGE

4-II Benedict on Admiralty FORM No. 2-325

FORM No. 2-325 Affirmative Defense Waiver

The Master, officers, and crew of the vessel _____ determined that loading operations should continue under the existing weather conditions and plaintiff has therefore waived any claims against defendant or is estopped from asserting any claims.



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CHAPTER II DEFENSES

PROPERTY DAMAGE

4-II Benedict on Admiralty FORM Nos. 2-326-2-345

Reserved

FORM Nos. 2-326Reserved



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CHAPTER II DEFENSES

SALVAGE *

4-II Benedict on Admiralty FORM No. 2-346

FORM No. 2-346 Counterclaim--Abandonment and Salvage

As a result of the abandonment of the vessel by plaintiff in an unseaworthy condition, defendant rendered services in efforts to salvage the vessel at risk of life, limb and property, as a result of which the defendant has sustained damage of \$ _____ for which plaintiff is liable.

* See 3A Benedict on Admiralty (Matthew Bender 7th ed.).



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CHAPTER II DEFENSES

SALVAGE *

4-II Benedict on Admiralty FORM No. 2-347

FORM No. 2-347 Defense of No Peril--Salvage

_____: At the time the alleged salvage services were rendered to the vessel _____, the _____ was not, nor had she been prior thereto, in any danger, but was resting against a mud bank in a sheltered harbor, undamaged, and neither needing nor requesting assistance; and as a consequence thereof the plaintiff is not entitled to compensation for the alleged salvage services.

* See 3A Benedict on Admiralty (Matthew Bender 7th ed.).



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CHAPTER II DEFENSES
SALVAGE *

4-II Benedict on Admiralty FORM No. 2-348

FORM No. 2-348 Defense of Legal Duty--Salvage

_____: The plaintiffs rendering the alleged salvage services were members of the crew of the tug _____ which was engaged in towing the vessel _____; the alleged salvage services were rendered after the towing line between the _____ and the _____ had parted; and the plaintiffs were not volunteers, but were under a legal duty to render the services referred to in the complaint, and therefore are not entitled to any salvage award.

* See 3A Benedict on Admiralty (Matthew Bender 7th ed.).



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CHAPTER II DEFENSES

SALVAGE *

4-II Benedict on Admiralty FORM No. 2-349

FORM No. 2-349 Defense of Fault--Salvage

_____: The collision as a result of which the claimant's vessel _____ became endangered and in need of assistance was the result of fault on the part of the plaintiff's vessel _____, and therefore the plaintiff is not entitled to a salvage award for services rendered in assisting the vessel _____.

* See 3A Benedict on Admiralty (Matthew Bender 7th ed.).



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SALVAGE *

4-II Benedict on Admiralty FORM No. 2-350

FORM No. 2-350 Defense of Limitations--Salvage

_____: The salvage services for which the plaintiff seeks recovery of remuneration were rendered on _____, 20 _____, more than two years prior to the filing of the within complaint, which is not maintainable by virtue of the provisions of *46 U.S.C. § 730*.

* *See* 3A Benedict on Admiralty (Matthew Bender 7th ed.).



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CHAPTER II DEFENSES
SALVAGE *

4-II Benedict on Admiralty FORM Nos. 2-351-2-370

Reserved

FORM Nos. 2-351Reserved



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CHAPTER II DEFENSES
SUPPLIES

4-II Benedict on Admiralty FORM No. 2-371

FORM No. 2-371 Defense That Person Ordering Supplies Acted Without Sufficient Authority

_____ DEFENSE

The vessel _____ was under bareboat charter to _____, who ordered the supplies from the plaintiff. The charter contained, among others, the following provisions:

"Charterer will not suffer, nor permit to be continued, any lien or encumbrance incurred by him or his agents, which might have priority over the title and interest of the owner in the vessel."

The plaintiff knew that the charterer was without authority to bind the vessel _____ for the supplies furnished by the plaintiff.



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SUPPLIES

4-II Benedict on Admiralty FORM Nos. 2-372-2-391

Reserved

FORM Nos. 2-372Reserved



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CHAPTER II DEFENSES

WAGES *

4-II Benedict on Admiralty FORM No. 2-392

FORM No. 2-392 Defense of Desertion--Wages

_____: The plaintiff wrongfully deserted the vessel _____ at
_____, thereby forfeiting all wages which he had then earned.

* See 1B Benedict on Admiralty § 66 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 33 (Matthew Bender 7th ed.); 3 Benedict §§ 32, 52 (Matthew Bender 7th ed.).



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CHAPTER II DEFENSES

WAGES *

4-II Benedict on Admiralty FORM No. 2-393

FORM No. 2-393 Partial Defense of Bad Conduct--Wages

_____: The plaintiff unlawfully and without just excuse refused and neglected to work when required by his superior officers to do so for a period of ten days from _____ to _____, and is not entitled to wages for that period.

* See 1B Benedict on Admiralty § 66 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 33 (Matthew Bender 7th ed.); 3 Benedict §§ 32, 52 (Matthew Bender 7th ed.).



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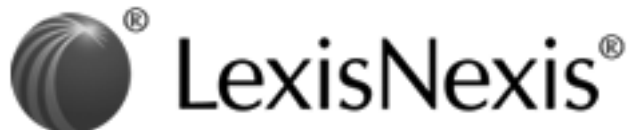
WAGES *

4-II Benedict on Admiralty FORM No. 2-394

FORM No. 2-394 Defense of Termination of Voyage by Wreck--Wages

_____: The vessel _____, on which the plaintiff was employed as a _____, grounded on a _____ at _____ on or about _____; because of such grounding the holds of the vessel _____ were Flooded and it became necessary to abandon the vessel _____ on _____, as a result of which the plaintiff's right to wages terminated at this time; and the plaintiff has heretofore been paid all wages earned by him prior to such termination.

* See 1B Benedict on Admiralty § 66 (Matthew Bender 7th ed.); 2 Benedict on Admiralty § 33 (Matthew Bender 7th ed.); 3 Benedict §§ 32, 52 (Matthew Bender 7th ed.).



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CHAPTER II DEFENSES
WAGES *

4-II Benedict on Admiralty FORM No. 2-395

FORM No. 2-395 Affirmative Defense to Master's Claim for Wages--Accord and Satisfaction¹

On _____, 20 _____, plaintiff, with the consent of defendant, drew a check to himself in the sum of \$ _____, a figure which represented his pay to that date, _____ weeks severance pay, _____ days accumulated leave reimbursements, and travel expenses. A copy of plaintiff's pay envelope, with his signature, is attached hereto and incorporated herein as Exhibit _____.

On _____, 20 _____, plaintiff signed himself off the vessel _____.

The \$ _____ represented a sum which was an accord and full satisfaction of all monies due and owing plaintiff from defendant in connection with plaintiff's employment by defendant.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Miller v. Young America Marine Education Society, Inc.*, Civ. No. 80-1797 (E.D.N.Y. 1980).

* See 1B *Benedict on Admiralty* § 66 (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* § 33 (Matthew Bender 7th ed.); 3 *Benedict* §§ 32, 52 (Matthew Bender 7th ed.).



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CHAPTER II DEFENSES
WAGES *

4-II Benedict on Admiralty FORM No. 2-396

FORM No. 2-396 Affirmative Defense to Master's Claim of Wrongful Discharge--Misconductn1

Plaintiff consumed alcoholic beverages while underway and in command of the vessel _____ with passengers on board.

Plaintiff, on several occasions, personally disregarded the dress code pertaining to the crew of the vessel _____.

Each of the incidents detailed above were in violation of defendant's standing orders. A copy of the Ship's Rules is annexed hereto as Exhibit _____. These violations constituted a material breach of the contract of employment between plaintiff and defendant, entitling defendant to terminate the contractual relationship at any time.

FOOTNOTES:

(n1)Footnote 1. Form adapted from papers filed in *Miller v. Young American Marine Education Society, Inc.*, Civ. No. 80-1797 (E.D.N.Y. 1980).

* See 1B *Benedict on Admiralty* § 66 (Matthew Bender 7th ed.); 2 *Benedict on Admiralty* § 33 (Matthew Bender 7th ed.); 3 *Benedict* §§ 32, 52 (Matthew Bender 7th ed.).