

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SYLVESTER DZIENNIK, MIECZYSLAW 05 Civ. 4659 (DLI) (MDG)
KIERSZLYN, FERDYNAND KOBIERSKI,
individually and on behalf of all persons
similarly situated,

Plaintiffs,

- against -

ANSWER

SEALIFT, INC., FORTUNE MARITIME
INC., SAGAMORE SHIPPING INC.,
VICTORY MARITIME, INC.,

Defendants.

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Defendants, by their attorneys Hill, Betts & Nash LLP, as and for their answer to the
Class Action Complaint herein allege upon information and belief as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 1 of the Complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 2 of the Complaint.
3. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 3 of the Complaint.
4. Admit the allegations contained in paragraph 4 of the Complaint except state that defendants listed in subparagraphs D, F, G and I have been dismissed from this action by the Court. Defendants further deny that the "Sealift fleet", for the purposes of this action, includes

all those vessels referred to paragraph 4 of the Complaint in light of the Court's decision dismissing the defendants referred to in subparagraphs D, F, G and I.

5. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 5 of the Complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 6 of the Complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 7 of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 8 of the Complaint.

GENERAL ALLEGATIONS

9. Deny the allegations contained in paragraph 9 of the Complaint insofar as it alleges that Plaintiff Sylvester Dziennik was employed as a "seaman" and otherwise deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 9 of the Complaint.

10. Deny the allegations contained in paragraph 10 of the Complaint insofar as it alleges that Plaintiff Mieczyslaw Kierstyn was employed as a "seaman" and otherwise deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 10 of the Complaint.

11. Deny the allegations contained in paragraph 11 of the Complaint insofar as it alleges that Plaintiff Ferdynand Kobierowski was employed as a "seaman" and otherwise deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 11 of the Complaint.

12. Deny the allegations contained in paragraph 12 of the Complaint insofar as it alleges defendants have employed plaintiffs and other foreign nationals as “seamen” and otherwise deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph 12 of the Complaint.

13. Deny the allegations contained in paragraph 13 of the Complaint.

14. Deny the allegations contained in paragraph 14 of the Complaint.

15. Deny the allegations contained in paragraph 15 of the Complaint. Defendants further state that plaintiffs have voluntarily withdrawn from this action all claims arising under the Fair Labor Standards Act.

16. No response to the allegations contained in paragraph 16 of the Complaint is required because the Court has dismissed all claims arising under the Collective Bargaining Agreement.

17. Deny the allegations contained in paragraph 17 of the Complaint. Defendants further state that the Court has dismissed all claims arising under the Collective Bargaining Agreement.

18. Deny the allegations contained in paragraph 18 of the Complaint. Defendants further state that the Court has dismissed all claims arising under the Collective Bargaining Agreement.

19. Deny the allegations contained in paragraph 19 of the Complaint. Defendants further state that the Court has dismissed all claims arising under the Collective Bargaining Agreement.

20. Deny the allegations contained in paragraph 20 of the Complaint. Defendants further state that the Court has dismissed all claims arising under the Collective Bargaining

Agreement and that that plaintiffs have voluntarily withdrawn from this action all claims arising under the Fair Labor Standards Act.

21. Deny the allegations contained in paragraph 21 of the Complaint.

22. Deny the allegations contained in paragraph 22 of the Complaint.

MARITIME LIEN CLAIM

23. Deny the allegations contained in paragraph 23 of the Complaint.

CLASS ACTION ALLEGATIONS

24. Deny the allegations contained in paragraph 24 of the Complaint.

25. Defendants deny that a class should be certified.

26. Deny the allegations contained in paragraph 26 of the Complaint.

27. Deny the allegations contained paragraph 27 of the Complaint.

28. Deny the allegations contained in paragraph 28 of the Complaint.

29. The allegations contained in paragraph 29 of the Complaint are statements of law for which no response is required but should this Honorable Court require a response, defendants deny that a class should be certified.

AND AS FOR A FIRST AFFIRMATIVE DEFENSE

30. Plaintiffs fail to state a claim upon which relief may be granted.

AND AS FOR A SECOND AFFIRMATIVE DEFENSE

31. This action or each cause of action is barred by laches or the applicable statute of limitations.

AND AS FOR A THIRD AFFIRMATIVE DEFENSE

32. This action should be dismissed on the grounds of *forum non conveniens*.

AND AS FOR A FOURTH AFFIRMATIVE DEFENSE

33. Pursuant to the various Contracts of Employment, all causes of action are to be decided in the Courts of Poland and Polish law applies.

AND AS FOR A FIFTH AFFIRMATIVE DEFENSE

34. Plaintiffs lack standing to sue.

AND AS FOR A SIXTH AFFIRMATIVE DEFENSE

35. Plaintiffs are not the real parties in interest.

AND AS FOR A SEVENTH AFFIRMATIVE DEFENSE

36. Plaintiffs' action is barred by the doctrine of unclean hands.

AND AS FOR A EIGHTH AFFIRMATIVE DEFENSE

37. The terms of individual Contracts of Employment control plaintiffs' rate of pay, and plaintiffs were paid in accordance with the individual Contracts of Employment.

AND AS FOR A NINTH AFFIRMATIVE DEFENSE

38. This action should be dismissed because there has been an accord and satisfaction.

AND AS FOR A TENTH AFFIRMATIVE DEFENSE

39. Plaintiffs have no private right of action for violation of 46 U.S.C. § 8701.

AND AS FOR AN ELEVENTH AFFIRMATIVE DEFENSE

40. Plaintiffs cannot recover both "the highest rate of pay from their respective ports of embarkation" pursuant to 46 USC § 11107 and Delay and Penalty wages pursuant to 46 USC § 10313 as such would constitute an unfair "penalty upon a penalty" contrary to law.

AND AS FOR A TWELFTH AFFIRMATIVE DEFENSE

41. Plaintiffs have failed to exhaust all contractually mandated remedies prior to instituting this action.

AND AS FOR A THIRTEENTH AFFIRMATIVE DEFENSE

42. Plaintiffs cannot meet the requirements for bringing or maintaining a class action pursuant to Fed. R. Civ. P. 23.

WHEREFORE, defendants demand judgment dismissing the complaint, together with the costs and disbursements of defending this action.

Dated: New York, New York
September 14, 2006

HILL, BETTS & NASH LLP

By _____
Gregory O'Neill (GON-1944)
Gordon S. Arnott (GSA-8612)
Elizabeth A. McCoy (EAM-8448)
Eric M. Underriner (EMU-8646)
Daniel J. McInerney Jr.(DJM-2963)
Attorneys for Defendants
One World Financial Center
200 Liberty Street, 26th Floor
New York, New York 10281-1003
(212) 839-7000
(212) 466-0514 (fax)

To: Tabak, Mellusi, & Shisha
29 Broadway
New York, NY 10006
212-962-1590