

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SYVLESTER DZIENNIK, MIECZYSLAW  
KIERSZTYN, FERDYNAND KOBIEROSKI

individually and on behalf of all persons  
similarly situated,

Plaintiffs

05 Cv. 4659 (DLI) (MDG)

-against-

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

Defendants

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NOTICE OF CLASS ACTION

*A court authorized this notice. This is not a solicitation from a lawyer.*

**To:** All Polish and Filipino Foreign Nationals who were employed on any of the below listed vessels owned, operated or managed by defendants Sealift, Inc., Fortune Maritime Inc., Sagamore Shipping Inc. and Victory Maritime, Inc., whose principal offices are at 68 West Main Street, Oyster Bay New York, at any time from January 1, 1999 to October 3, 2005.

The vessels are identified as:

TSGT JOHN A. CHAPMAN, formerly the M/V MERLIN;  
CAPTAIN STEVEN L. BENNETT; M/V VIRGINIAN;  
M/V ADVANTAGE; M/V ASCENSION; M/V SAGAMORE  
M/V MONTAUK; S/S CLEVELAND; M/V NOBLE STAR;  
M/V MAJOR BERNARD FISHER and  
S/S WILSON.

A Foreign National for purposes of this Class Action Suit is defined as an individual who was not a citizen of the United States of America nor an alien lawfully admitted to the United States for permanent residence at any time during the period January 1, 1999 to October 3, 2005.

**Read this notice carefully. This is not a lawsuit against you. You are not being sued. This is a notice of a Class action in which you may be a member, unless you ask in writing to be excluded within 90 days from April 18, 2008, the date of this notice.**

**This notice is being provided to Polish citizens in both English and Polish and to Filipino citizens in both English and Tagalog.**

- Foreign Nationals, who were employed on the above named vessels, have sued the defendants, alleging that they are entitled to additional wages, overtime wages and statutory penalties.
- The Court has allowed the lawsuit to proceed as a class action on behalf of all Polish and Filipino Foreign Nationals who were employed on any of the above named vessels at any time from January 1, 1999 until October 3, 2005.
- The Court has not decided whether any of the defendants are required to pay any money damages. There is no money available to class members now and no guarantee that there will be. However, your legal rights are affected, and you have a choice to make now:

<b><u>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</u></b>	
<b>DO NOTHING</b>	Stay in this lawsuit. Await the outcome. Give up certain rights. By doing nothing, you keep the possibility of getting money that may come from a trial or settlement. But you give up any rights to sue the defendants separately about the same legal claims in this lawsuit.
<b>ASK TO BE EXCLUDED</b>	Get out of this lawsuit. Get no benefits from it. Keep rights. If you ask to be excluded and money is later awarded, you will not share in it. But you keep any rights to sue the defendants separately about the same legal claims in this lawsuit.

- Your options are explained in this notice. To ask to be excluded, you must submit a request to be excluded within 90 days from the date of this notice.
- Lawyers must prove the claims against the defendants at a trial, unless the parties agree to settle the class action claims. If money is obtained from any of the defendants by a trial or settlement, class members will be notified about how to ask for a share.
- **For answers to additional questions, please carefully read the rest of this notice.**

**Why did you receive this notice?**

This notice has been sent to you because you have been identified as a Foreign National who worked on one or more of the above named vessels during the period January 1, 1999 to October 3, 2005. This Notice answers the following questions:

1. What is the nature of this action?
  2. Who are the parties in this Class action?
  3. The Court where the Class Action Suit Was Filed
  4. The Definition of the Class Certified by the Court-are you a member of this Class?
  5. What is this lawsuit about?
    - a) The Class claims at issue
    - b) The defenses by the defendants and the shipowner
  6. Has the Court decided who is right?
  7. Is there any money available now?
  8. Your Rights and Options.
    - a. What happens if you do nothing?
    - b. Why would you ask to be excluded?
    - c. How do you ask the Court to exclude you from the class?
  9. The Lawyers Representing You.
    - a. Do you have a lawyer in this case?
    - b. Your right to enter an appearance by Counsel.
    - c. How the lawyers for the Class will be paid.
  10. Trial or Settlement of the Class Action
  11. Do you need to participate in the case?
  12. The binding effect of the Class judgment on Class members in this proceeding.
  13. Where you can obtain additional information.
  14. The Importance to Advise as to Change of Address.
  15. Who are the Lawyers that Represent the Defendants?
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**1. What is a Class action?**

A Class action is a lawsuit in which one or more persons, called “Class Representatives” sue on behalf of themselves and other persons who have similar claims. Together, the Class Representatives and the persons with similar claims are called the Class. The people who sued,

and the class members, are called “plaintiffs.” The companies they sued are called “defendants”. One Court resolves certain issues for everyone in the class-except for those people who choose to exclude themselves from the class.

**2. Who are the Parties to this Class action?**

- a) The named Plaintiffs are the persons who are suing on behalf of all Class Members. They are identified as follows: Sylvester Dziennik, a citizen of Poland, who was employed on the M/V ASCENSION and the M/V CLEVELAND, Mieczyslaw Kiersztyn, a citizen of Poland, who was employed on the M/V ADVANTAGE, and Ferdynand Kobieroski, a citizen of Poland, who was employed on the M/V ADVANTAGE.
- b) The named Defendants in this action are Sealift, Inc., Fortune Maritime, Inc., Sagamore Shipping, Inc., and Victory Maritime, Inc.

**3. The Court Where the Class Action Suit Was Filed**

This Class Action suit is pending in the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201. The presiding judge is the Honorable Dora L. Irizarry. The Civil Number of the case is 05-Cv-04659.

**4. The Definition of the Class Certified by the Court --Are you a member of the class?**

By Order dated May 29, 2007, Judge Dora L. Irizarry decided that this lawsuit can proceed as a Class Action on behalf of all Polish and Filipino Foreign Nationals who were employed on any of the above named vessels identified on page 1 of this Notice, at any time between January 1, 1999 and October 3, 2005. It is estimated that the number of persons falling within the description of the Class is about two hundred nine (209) individuals, one hundred thirteen (113) of whom are Polish and ninety-six (96) of whom are Filipinos. You received this notice because records indicate that you are a Polish or Filipino Foreign National who was employed on one or more of the above named vessels between January 1, 1999 to October 3, 2005. Persons who fit within this description are referred to as “class members”.

## 5. What is this lawsuit about?

**The Class claims at issue:** The Class Representatives have filed this class action seeking unpaid wages, overtime wages and statutory penalties under employment contracts and federal maritime law, court costs, attorneys fees and prejudgment interest. They claim that the defendants violated the following laws of the United States in their employment of class members aboard the above named vessels:

- a) **Title 46 U.S.C. §8103** – Plaintiffs contend that this law requires that each unlicensed seaman employed on the above vessels must be either a citizen of the United States or an alien lawfully admitted to the United States for permanent residence. Plaintiffs claim that defendants employed foreign seamen who were neither US citizens nor aliens lawfully admitted to the United States in violation of this law.
- b) **46 U.S.C. §10302** – Plaintiffs contend that this law requires that each seaman employed on the above named vessels must sign and enter into a “Shipping Agreement” (commonly called “Shipping Articles”) before employment begins. Plaintiffs claim that none of the class members employed to work on a Sealift vessel signed Shipping Articles.
- c) **46 U.S.C. §8701 and 46 U.S.C. §7302** – Plaintiffs contend that these laws require that all persons who served aboard the above named vessels must have a “merchant mariner’s document” issued by the United States Coast Guard. Plaintiffs claim that none of the members of the Class possessed a Merchant Mariner Document and that defendants attempted to evade these laws by identifying class members as “Sailing School Students”.
- d) **46 U.S.C. §11107** – Plaintiffs contend that this law states the employment or engagement of a seaman which is contrary to a law of the United States is void and that “[a] seaman so engaged may leave the service of the vessel at any time and is entitled to recover the highest rate of wages at the port from which the seaman was engaged. . .” Plaintiffs claim that because the employment or engagement of Class members was contrary to the laws of the United States, as discussed in “a” to “c” above, Class members are entitled to be paid at the highest rate of pay permitted by law in the port of embarkation for their respective position aboard a vessel, less the amount actually paid.
- e) **46 U.S.C. §10313** – Plaintiffs contend that this law states that the balance of a seaman’s wages must be paid at the end of the voyage or within twenty-four (24) hours after cargo has been discharged or within four (4) days after the seaman has been discharged, whichever is earlier. Plaintiffs contend that it further provides that failure to do so without sufficient cause, entitles the seaman to two (2) days’ pay for every day of delay. Plaintiffs and Class members seek the delay pay allowed in this law for the defendants’ failure to pay the balance of wages which were due to each Class member.

Additionally, plaintiffs and class members seek an award of attorney's fees and costs for bringing this proceeding.

**The Defendants' Claims:** Defendants contend that plaintiffs and Class members were paid all of the wages that they were entitled to receive under their contracts of employment and otherwise. Defendants deny that plaintiffs are entitled to any recovery in this suit.

The defendants contend that plaintiffs failed to state a claim in this lawsuit upon which any relief may be granted. Defendants contend that each cause of action is barred by laches or the applicable statute of limitations, meaning that too much time has passed before the lawsuit was instituted. Defendants contend that the suit should be dismissed on *forum non conveniens* grounds, that is, there is a more convenient forum available in Poland or the Philippines. Defendants contend the plaintiffs lack standing to sue and are not the real party of interest and are barred by the doctrine of unclean hands. Defendants contend that the Contracts of Employment control plaintiffs' rate of pay and that there has been accord and satisfaction. Defendants contend that pursuant to the Convention for Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. Section 201 et. seq., the claims of the Filipino class members must be resolved by arbitration in the Philippines as provided by the arbitration clauses in their POEA contracts, and by Philippines law.

Denying that they have violated any law, Defendants contend that plaintiffs' Contracts of Employment substantially comply with the requirements of 46 U.S.C. §10302, the Shipping Articles provision. Defendants also contend that the remedy provided for in 46 U.S.C. §11107, the "highest rate of wages at the port from which the seaman was engaged. . .", is a remedy that can be recovered only for a violation of 46 U.S.C. §10302, the Shipping Articles provision, and is not a remedy for violation of any other statute, such as 46 U.S.C. §8103 (Citizenship provision) or 46 U.S.C. §8701 or 46 U.S.C. §7302 (merchant mariner's provisions).

Defendants contend that no private action exists for a violation of 46 U.S.C. §8103, 46 U.S.C. §8701 or 46 U.S.C. §7302. Defendants also contend that plaintiffs cannot recover both the highest rate of pay from the port of embarkation under 46 U.S.C. §11107 and penalties under 46 U.S.C. §10313 as that would be an unfair "penalty upon penalty" and contrary to law.

Defendants also contend that, if any wages are due, no penalty wages are due under 46 U.S.C. § 10313 because any wages due were not withheld "without sufficient cause."

Defendants also contend that plaintiffs have not exhausted all contractually or otherwise mandated remedies prior to instituting this lawsuit.

## **6. Has the Court decided who is right?**

The Court hasn't decided whether the plaintiffs or defendants are correct. By establishing the Class and issuing this Notice, the Court is not suggesting that the plaintiffs will win or lose this case. However, the Court will be addressing the validity of some of the claims and defenses that the parties have raised in motions that have been filed with the Court. The plaintiffs must prove their claims at a trial which are not disposed by the Court in a decision on the motions.

**7. Is there any money available now?**

No money damages are available to class members now because the Court has not decided whether plaintiffs and class members are entitled to recover any money damages, and the lawsuit has not been settled. If there is a settlement or the Court decides that plaintiffs and class members are entitled to recover money damages, class members will be notified about how to apply for a share.

**8. Your Rights and Options**

You must decide whether to stay in the Class or to ask to be excluded from the class.

a. What happens if you do nothing?

You do not have to do anything now if you want to remain in this lawsuit as a Class Member and keep the possibility of getting money from the Class Action lawsuit. By doing nothing you will remain in the Class. If you remain in the lawsuit and if the Plaintiffs obtain money, either as a result of trial or settlement, you will be notified about how to apply for a share. However, if you do nothing now and remain in this lawsuit, then, regardless of whether plaintiffs win or lose the trial or recover damages, you will not be able to sue the defendants in another lawsuit about the same legal claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in this class action.

b. What happens if you ask to be excluded?

If you exclude yourself from the Class—which also means to remove yourself from the class, and which is sometimes called “opting out” of the class—you won’t get any money damages from this lawsuit even if Plaintiffs obtain them as a result of a trial or from a settlement with Defendants. However, you may be able to sue Defendants in a separate lawsuit about the same legal claims that are the subject of this lawsuit. If you exclude yourself, you will not be legally bound by the Court’s judgments in the class action.

If you start your own lawsuit against defendants after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit, and you’ll have to prove your claims. If you do exclude yourself so you can start your own lawsuit against defendants, you should talk to your own lawyer soon, because your case may be subject to a statute of limitations.

c. How do you ask the Court to exclude you from the class?

To ask to be excluded, you must submit an Exclusion Request Form (a copy is attached hereto) stating that you want to be excluded from the *Dziennik vs. Sealift* class action. You must include your name and address and sign the Exclusion Request Form. Your exclusion request must be postmarked within 90 days from April 18, 2008, the date of this notice and mailed to:

**The Notice Company  
Sealift Opt Out Requests  
PO Box 778  
Hingham, MA 02043, USA**

You may also obtain an Exclusion Request form at <http://www.dodsonhooks.com/>

**9. The Lawyers Representing You.**

- a. Do you have a lawyer in this case?

The Court decided that the law firms of Dodson, Hooks & Frederick of Baton Rouge, Louisiana and Tabak, Mellusi & Shisha of New York, New York are qualified to represent you and all Class members. Together the law firms are called "Class Counsel". More information about these law firms, their practices, and their lawyers' experiences is available at <http://www.dodsonhooks.com/> and <http://www.sealawyers.com/>.

- b. Your right to enter an appearance by Counsel.

Each Class Member has the right to retain an attorney at his own expense or to represent himself. Each Class Member has the right to enter an appearance through his own counsel if the Member so desires. If you do not hire your own attorney, the Judge will consider you to be represented by Dodson, Hooks & Frederick APLC and Tabak Mellusi & Shisha LLP - the attorneys for the Class.

- c. How the lawyers for the Class will be paid.

If Class Counsel gets money damages for the class, they may ask the Court for fees and expenses. You will not have to pay these fees and expenses. If the Court grants Class Counsel's request, the fees and expenses would be either deducted from any money obtained for the Class or paid separately by defendants.

**10. Trial or Settlement of the class action.**

Unless the case is resolved by settlement or otherwise, Class Counsel will have to prove the Plaintiffs' claims at trial. The trial is currently estimated to take place in 2008 at the United States District Court for the Eastern District of New York in Brooklyn, New York, before District Judge Dora Irizarry. During the trial, the Judge or a jury will hear all of the evidence to help them reach a decision about the Plaintiffs' claims in the lawsuit. There is no guarantee that the Plaintiffs will win, or that they will get any money for the Class.

Class Counsel will present the case for the plaintiffs. You and your own lawyer are welcome to come at your own expense.

**11. Do you need to participate in the case?**

You may be required to participate in the case. If the Plaintiffs prove their claims at trial, you may be required to testify or make a written submission to show the amount of your individual damages. The possibility also exists that you will be required to participate in some other way in the trial of the Plaintiffs' claims. You will be notified if your participation is necessary.

**12. The binding effect of the Class judgment on Class members in this proceeding.**

In the event you do not request to be excluded within 90 days from April 18, 2008, the date of this notice, you will be bound by rulings of the Court in this matter.

**13. Where you can obtain additional information.**

This Notice provides only a summary of matters regarding the lawsuit. Other documents and Court orders in the lawsuit provide greater detail and may clarify matters that are described in general or summary terms in this Notice. Copies of all documents are available on the United States Government website [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov) on the internet. Also, copies of pleadings and court opinions have been posted on the web page of Dodson, Hooks & Frederick, APLC at [www.dodsonhooks.com](http://www.dodsonhooks.com).

If you wish, you may seek the advice of your own attorney at your own expense. If you wish to communicate with or obtain information from attorneys for the Class you may do so by letter, fax or email to the address listed below. They welcome your calls, e-mails or letters.

Richard J. Dodson  
**DODSON, HOOKS & FREDERICK, APLC**  
One Maritime Centre  
17405 Perkins Road  
Baton Rouge, LA 70810  
Telephone: 225-756-0222  
Facsimile: 225-756-0025  
E-mail : [seamanlaw@aol.com](mailto:seamanlaw@aol.com)

**14. The Importance to Advise of Any Change of Address**

If you change your address or if this Notice was not mailed to the correct address, you should immediately provide your current address to Richard J. Dodson at the above address by letter, fax or e-mail to insure that you will receive future communications about this lawsuit. If correct contact information is not provided, you may not receive notice of important case developments or your share of any money that may be recovered on behalf of the Class.

**15. Who are the Lawyers that Represent the Defendants?**

All of the defendants in this action are represented by the following law firm:

**HILL, BETTS & NASH, LLP**

One World Financial Center  
200 Liberty Street, 26<sup>th</sup> Floor  
New York, New York 10281  
Tel: (212) 839-7000  
Fax: (212) 466-0514

**DO NOT WRITE, CALL OR CONTACT THE COURT REGARDING  
THIS NOTICE OR ANY MATTER RELATED TO THIS LAWSUIT.**

## EXCLUSION REQUEST FORM

*Sylvester Dziennik, et al. v. Sealift, Inc., et al*

Docket Number: 05 cv-4659

U.S.D.C. Eastern District of New York

If you want to remain a member of the class, you are not required to do anything at this time and should not fill in this form. You should use this form only if you want to exclude yourself from this lawsuit.

If you want to exclude yourself from this lawsuit (opt-out of the class) you must fill out this Exclusion Request Form and return it by mail postmarked no later than ninety (90) days from April 18, 2008 (the date of the mailing of the attached notice) to:

The Notice Company  
Sealift Opt Out Requests  
P.O. Box 778  
Hingham, Ma 02403, USA

If you exclude yourself from this lawsuit (opt-out of the class): (1) You will not share in any recovery that might be paid claimants as a result of any settlement of this lawsuit. (2) You will not be bound by any decision in this lawsuit. (3) You may pursue any claims you have against the defendants by filing your own suit.

If you have any questions regarding this case, please contact class counsel as follows:

Richard J. Dodson  
Dodson, Hooks & Frederick, APLC  
One Maritime Centre  
17405 Perkins Road  
Baton Rouge, LA 70810  
Telephone: 225-756-0222  
Facsimile: 225-756-0025  
E-mail: seamanlaw@aol.com

**DO NOT CALL THE CLERK OF COURT FOR INFORMATION  
TO REMAIN A MEMBER OF THE CLASS, DO NOT SUBMIT THIS FORM.**

I hereby certify that I believe myself to be a member of the class. Further, I want to exclude myself from this lawsuit. **Please print legibly and return this form to exclude yourself from this lawsuit.**

Name:

Date:

Address:

Phone:

City:

Country:

Signature of Class Member: