

HOFMANN & SCHWEITZER  
Attorneys for Plaintiff  
212 West 35<sup>th</sup> Street, 12<sup>th</sup> Fl.  
New York, NY10001  
212-465-8840

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In the Matter of the Complaint of  
of  
ENERGETIC TANK, INC., as Owner  
of the MN ALNIC MC, for Exoneration from or  
Limitation of Liability  
-----X

**Docket No. 1:18-cv-1359**

**CLAIMANT [REDACTED] ANSWER AND CLAIM**

1. Claimant admits that Plaintiff has filed this action under the Court's admiralty and maritime jurisdiction, and designated the action as an admiralty and maritime claim within the meaning of Fed.R.Civ.P. 9(h). Plaintiff's Complaint for limitation should be dismissed and Claimant's claims be heard by a jury under this Court's Diversity Jurisdiction, 28 U.S.C. §1332.
2. Admitted.
3. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied.
4. Admitted.
5. Admitted.
6. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied.
7. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied.

8. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied
9. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied, except that it is specifically denied that MCCAIN's actions were unannounced, unexpected and were the sole cause of the collision, and further, it is believed that the USS McCain ("McCain") was showing the lights for a vessel not under command which required the MV ALNIC ("ALNIC") to steer clear of the McCain.
10. Admitted.
11. Admit that on October 23, 2017, the U.S. Navy issued its report on the collision between the McCain and the ALNIC. All other allegations contained in paragraph 11 are denied as claimant denies knowledge or information sufficient to admit or deny the allegations therein.
12. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied.
13. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied.
14. Denied.
15. Denied.
16. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied, except it is admitted that the claims against ALNIC will exceed the value of the vessel and pending freight post collision.

17. Admitted.
18. Claimant denies knowledge or information sufficient to admit or deny the allegations, thus, the allegations are denied.
19. Plaintiff does make the claims asserted in the paragraph denominated as #19 of its complaint, but it is denied that plaintiff is entitled to the relief sought.
20. Plaintiff does make the claims asserted in the paragraph denominated as #19 of its complaint, but it is denied that plaintiff is entitled to the relief sought.

#### **AFFIRMATIVE DEFENSES**

21. At the commencement of the voyage, Plaintiff's vessel, the ALNIC was not seaworthy, not properly manned, equipped, nor operated in a competent manner.
22. Claimant was injured due to negligence and recklessness of the operators of the ALNIC and the unseaworthiness of the vessel, which were within the privity and knowledge of the Plaintiff prior to the start of the voyage.
23. The captain and crew of the ALNIC were improperly trained and supervised, and the Plaintiff did not have adequate procedures in place to make sure that there was a proper lookout and that the watch officer was properly trained and versed in the International Nautical Rules of the Road.
24. The ALNIC was unseaworthy and not reasonably suited for her intended purpose, because she did not have proper procedures for standing watch in heavily trafficked areas, posting of a proper lookout, procedures to communicate with other vessels, sound required danger signals and take adequate action to avoid collision with a vessel showing the lights of a vessel not under command.

25. The negligence and recklessness for the petitioner/operator of the ALNIC include but are not limited to:
1. Failure to have proper procedures and training in place;
  2. Failing to keeping a proper lookout.
  3. Having an inadequate number of properly trained crew on the bridge under the prevailing conditions;
  4. Failing to identifying a vessel not under command;
  5. Failing to communicating with a vessel not under command and/or in a crossing situation;
  6. Failing to sound danger signals, warnings or other emergency warnings;
  7. Failing to take adequate and early action to avoid another vessel in a crossing situation or a vessel not under command;
  8. Failing to abide by the International Nautical Rules of the Road;
  9. Further failings as the evidence will show after discovery has been taken.
26. As a result of the above stated actions or inactions constituting negligence, fault, recklessness, and vessel unseaworthiness, which were within the privity and knowledge of the Plaintiff prior to starting the voyage, the ALNIC collided with the McCAIN, causing severe injuries to Claimant [REDACTED]
27. At all times relevant, Chapter IX of the International Convention for the Safety of Life at Sea (SOLAS), 1974, International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management Code), hereinafter "ISM Code", required the ALNIC to have a "Safety Management

Certificate" an approved "Safety Management System" and to adhere to the principles and objectives of the ISM Code.

28. Prior to commencement of the voyage Plaintiff negligently failed to follow, comply or adhere to the objectives of the ISM Code in regard to the above including but not limited to officer and crew training, collision avoidance and risk analysis to prevent collisions at sea.
29. The acts, omissions and conditions constituted violations of the ISM Code and rendered the ALNIC unseaworthy.
30. Plaintiff's interim stipulation of value of the ALNIC and pending freight following the collision is inadequate. Therefore, limitation proceedings should be dismissed.

WHEREFORE, Claimant prays that Plaintiff be denied exoneration from or limitation of liability, and the limitation/exoneration action be dismissed; that Claimant be allowed to bring his claims against the Plaintiff under Diversity of Citizenship with a jury and that judgment be entered on behalf of Claimants, together with fees costs, pre and post judgment interest.

### **CLAIMS IN LIMITATION**

NOW INTO COURT, through undersigned counsel, comes Claimant [REDACTED]

[REDACTED] to claim damages from Plaintiff, and seek trial by jury on all counts.

1. Claimant realleges the allegations contained in the above stated Answer and Affirmative Defenses to the Complaint in Limitation as if fully stated herein.
2. At all relevant times Claimant was a permanent resident of Irma, South Carolina, with other residences while he served his military service.

3. At all relevant times Claimant was an enlisted sailor in the United States Navy deployed aboard the McCAIN.
4. At about 0520 on August 21, 2017 claimant was aboard the McCAIN when the ALNIC and McCAIN came into collision.
5. The collision resulted from the negligence and unseaworthiness of the ALNIC.
6. The ALNIC was negligent in failing to maintain a lookout, failure to communicate with the McCAIN, failure to sound the danger signal, failure stay out of the way of the McCAIN which was showing lights as being not under command, failure to have adequate number of properly trained crew on watch and as further set forth in claimant's Affirmative Defenses to the Complaint for Limitation of Liability.
7. As a result of the aforesaid, claimant was thrown to the deck, covered with debris, water and oil, suffered severe injuries, witnessed death, injury and destruction, was in grave fear of his own life ending; endured extreme hardship in saving his life and participating in attempts to save and aid his fellow sailors.
8. As a result of plaintiff's faults, as aforesaid, claimant sustained injuries to his neck, back, arms and other external and internal injuries; he suffers from severe post-traumatic stress disorder ("PTSD") as well as anxiety and depression.
9. As a result of Plaintiff's faults, as aforesaid, claimant has incurred past loss of earnings, medical expenses, pain and suffering and will incur future loss of earnings, medical expenses, pain and suffering in an amount for which fair compensation would be, and will be, at least Ten Million Dollars (\$10,000,000).
10. Claimants prays that his Answer and Claim be deemed sufficient and that Plaintiff be

denied the right to limits/or exonerate its liability in this matter, and that Claimant's claims be heard before a jury, be resolved in his favor and that a judgment in his favor be entered on all claims, in an amount to be proven at trial and be found reasonable by the court and jury, together with costs, pre-judgment and post judgment interest, fees and expenses.

11. The jurisdiction of this Court over this claim arises under and by virtue of the General Admiralty and Maritime Law, and through and by 28 U.S.C. 1332, this being a claim in excess of \$75,000, exclusive of costs and interest.
12. The injuries claimant suffered were not caused or contributed to by any fault or negligence on the part of claimant, but were caused by reason of the negligence, recklessness, and carelessness of the plaintiff, its officers, servants, agents, and employees and/or other persons for whom plaintiff was responsible, and the unseaworthiness of the vessel, referred to above, in that inter alia:
  - A. The conduct of the vessel was such that it was operated, controlled, managed and maintained in a careless, negligent and reckless manner;
  - B. The vessel was not safe, staunch, properly equipped, supplied or seaworthy;
  - C. Plaintiff failed to maintain the said vessel and its equipment and appliances, in a safe and seaworthy condition;
  - D. The vessel was not reasonably safe or suitable to perform the intended voyage;
  - E. The vessel was permitted and allowed to go upon the waters in an unsafe and unseaworthy condition and that such condition of said vessel and any and all damages and

injuries was done, occasioned and incurred with the privity or knowledge of the plaintiff, its officers, agents, servants or employees at or prior to the commencement of the voyage;

F. Plaintiff, its officers, agents, servants, employees, and/or other persons for whom the plaintiff is responsible, failed to take suitable precautions for the safety of the claimant under the circumstances and conditions then existing to the knowledge of the plaintiff, the said plaintiff having actual and constructive notice of the unsafe, dangerous and unseaworthy conditions.

13. Claimant reserves the right to claim against the petitioner and the vessel for such other and further and different faults, negligence, and unseaworthiness as the evidence may disclose.
14. Claimant further alleges that plaintiff breached the nondelegable duty in permitting the vessel to go upon the waters in an unsafe and unseaworthy condition, and that the casualty caused by said vessel and any and all damages and injuries resulting therefore was done, occasioned, and occurred with the privity or knowledge, at or prior to the commencement of the voyage upon which the vessel was then engaged; of her master, operator(s), superintendent, agents, or other responsible officials.
15. This answer is filed herein pursuant to statutes covering limitation of liability proceedings 46 U.S.C. § 30501 et seq. and claimant reserves all rights, including the right to trial by jury pursuant to 28 U.S.C. § 1332 in event the plaintiff is denied exoneration from or limitation or liability herein.

WHEREFORE, claimant having fully answered, prays:

That an order be entered herein that plaintiff is not entitled to exoneration from



liability herein;

That an order be entered herein that plaintiff is not entitled to limitation of liability herein;

That an order be entered that the occurrence referred to in the complaint happened with the privity and knowledge of the plaintiff;

That an order be entered that the claimant be permitted to institute and/or prosecute an action with trial by jury to recover damages against the plaintiff for injuries and losses of the claimant;

That if this Court does not allow the claimant the right of a trial by jury to recover the aforesaid damages, then in such event the claim of the claimant be allowed as requested herein with interest and costs, and that claimant may have such other and further relief as in law and justice he may be entitled to receive.

Dated: New York, New York  
April 2, 2018

HOFMANN & SCHWEITZER

By: 

Paul T. Hofmann, Esq. (PH1356)  
Attorneys for Plaintiff  
212 W. 35th Street, 12th Floor  
New York, N.Y. 10001  
(212) 465-8840 Fax: 212-465-8849  
[paulhofmann@hofmannlawfirm.com](mailto:paulhofmann@hofmannlawfirm.com)