

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2005 SEP 29 PM 2:14
LORETTA G. WYNN
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF THE
COMPLAINT OF INGRAM BARGE
COMPANY, AS OWNER OF THE
ING4727, PETITIONING FOR
EXONERATION FROM OR
LIMITATION OF LIABILITY

* CIVIL ACTION
* NO. **05-4419**
* SECTION ""
* JUDGE **SECT. 0 MAG. 2**
MAGISTRATE JUDGE

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Ingram Barge Company, as owner of the Barge ING4727, and petitions for exoneration from or limitation of liability, pursuant to Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure, and 46 U.S.C. § 181, *et seq.*, as follows:

I.

At all material times, plaintiff Ingram Barge Company ("Ingram"), a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Nashville, Tennessee, was, and now is, owner of the Barge ING4727.

Fee **\$250.**
Process _____
X Dktd _____
CtRmDep _____
Doc. No _____

II.

At all material times, the Barge ING4727 was an inland hopper barge, official number 955868, of 705 gross tons. At all material times, the Barge ING4727 was tight, staunch, strong, fully and properly equipped and supplied, and in all respects seaworthy and fit for the services for which it was engaged.

III.

On or about August 28 and August 29, 2005, the Barge ING4727 was located at a terminal owned by a customer on the Gulf Intracoastal Waterway East (also known as the "Industrial Canal" or "Inner Harbor Canal") near Mile Marker 8 in New Orleans, Louisiana. On August 28 and August 29, the Barge ING4727 was not under the care, custody, or control of Ingram, but rather was in the care, custody, and control of others. Prior to entering the Industrial Canal, the custody of the ING4727 had been transferred to other entities that thereafter transported it through the Industrial Canal Locks and into the care, custody, and control of the customer. During the night of August 28 and on August 29, 2005, Hurricane Katrina struck southeastern Louisiana. The barge had been unloaded of its cargo and was empty. The storm cast the ING4727 adrift and caused it to traverse a breach in the floodwall on the eastern bank of the Gulf Intracoastal Waterway East.

IV.

The aforesaid incident has resulted in various claims being made or anticipated to be made against the plaintiff and the Barge ING4727.

V.

The aforementioned incident and all resultant losses or damages were not caused or contributed to by the fault of the Barge ING4727 or of any person for whose acts plaintiff is

responsible, but on the contrary, were caused by an Act of God and/or the acts or omissions of others for whom plaintiff is not responsible.

VI.

Plaintiff denies it or the Barge ING4727, or any persons or property for whom or which it may be responsible are liable to any extent in the premises. Plaintiff claims exoneration from all liability for all losses, damages, injuries, and destruction incurred by reason of the matters aforesaid. In the alternative, and in the event plaintiff or the Barge ING4727 should be held responsible by reason of the matters hereinabove set forth, plaintiff claims the benefits of the Limitation of Liability Act provisions set forth in sections 181 through 195, inclusive, of Title 46, United States Code (App.) and all laws supplementary thereto and amendatory thereof, because all of the losses, damages, injuries, and/or destruction resulting from the aforesaid incident occurred without privity or knowledge of plaintiff.

VII.

The Barge ING4727 was a constructive total loss as a result of the incident. As a result, its value following the passing of Hurricane Katrina was \$0. The barge's wreck is currently aground at the site of the incident. The pending charter hire and/or freight does not exceed \$16,071.47. Plaintiff further avers that the amount of potential claims alleged against it and the Barge ING4727 exceed the value of plaintiff's interest in the Barge ING4727 and the charter hire and/or freight pending.

VIII.

Plaintiff will file an *ad interim* stipulation averring that the Barge ING4727 is a constructive total loss and that the pending charter hire and/or freight does not exceed \$16,071.47. Plaintiff is prepared to give bond or stipulation for any amount in excess of the *ad*

interim stipulation as may be ascertained and determined to be necessary under the orders of this Court and as provided by the laws of the United States and of this Court.

IX.

All and singular, the premises of this petition are true on information and belief and within the admiralty and maritime jurisdiction of this Court.

WHEREFORE, plaintiff prays:

(1) That the Court enter an Order approving the *ad interim* stipulation for the value of the Barge ING4727 and its pending charter hire and/or freight.

(2) That the Court enter an Order directing the Clerk of Court to accept into the Registry of the Court the sum of \$17,035.76, representing the value of the Barge ING4727, its pending charter hire and/or freight, and six percent interest.

(3) That the Court issue notice to all persons asserting claims by reason of any loss, injury, expense or damage, occasioned or incurred by reason of the aforementioned incident, admonishing them to file their claims with the Clerk of Court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice.

(4) That the Court issue its injunction restricting the commencement or prosecution of any and all actions or suits or legal proceedings of any kind whatsoever against plaintiff, its property or its underwriters arising out of the aforementioned casualty other than in the present action.

(5) That this Court adjudge that the plaintiff and Barge ING4727 are not liable for any loss, injury, expense or damage or claim whatsoever in consequence of the aforementioned incident or that, if such liability ever existed, then that it be limited to the value of the plaintiff's

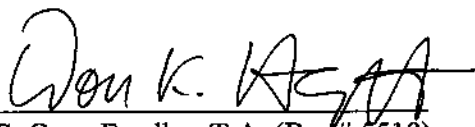
interest in and to the Barge ING4727, together with charter hire and/or freight, if any, pending at the time of the casualty.

(6) That this Court grant such other and further relief as justice and equity require.

September 29, 2005.

Respectfully submitted:

LISKOW & LEWIS
822 Harding Street
P.O. Box 52008
Lafayette, LA 70505-2008
Telephone: (337) 232-7424

By: 
S. Gene Fendler, T.A. (Bar # 5510)
Don K. Haycraft, (Bar #14361)
David W. Leefe (Bar #1479)
Brett D. Wise (Bar #24711)

Attorneys for Plaintiff Ingram Barge Company,
as owner of the Barge ING4727

VERIFICATION

STATE OF TENNESSEE

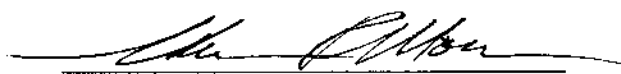
COUNTY OF DAVIDSON

BEFORE ME, the undersigned notary, personally came and appeared:

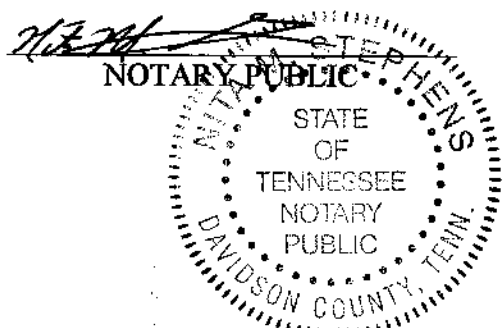
William P. Morelli

who, after being duly sworn, did depose and say:

That he is the Assistant Secretary of Ingram Barge Company, the owner of the Barge ING4727, that he has read the foregoing complaint for exoneration from or limitation of liability and knows the contents thereof, that the same is true to the best of his own knowledge, information and belief, and that the sources of his information and the grounds of his belief are statements, documents and information in the possession of Ingram Barge Company or furnished to it by employees or agents of said corporation, and that he makes this verification as the duly authorized officer of Ingram Barge Company



SWORN TO AND SUBSCRIBED
BEFORE ME THIS 21st DAY
OF September, 2005.



My Commission Expires JULY 19, 2008

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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* CIVIL ACTION
* NO.
* SECTION ""
* JUDGE

05-4419

SECT. C MAG. 2

MAGISTRATE JUDGE

**NOTICE TO CLAIMANTS OF COMPLAINT FOR
EXONERATION FROM OR LIMITATION OF LIABILITY**

NOTICE is hereby given that Ingram Barge Company ("Ingram") , as the Owner of the Barge ING4727, has filed a Complaint pursuant to 46 U.S.C. § 181, *et seq.*, claiming the right to exoneration from or limitation of liability for all claims for loss, damage, death, injury or destruction allegedly caused, arising out of, or resulting from Hurricane Katrina casting the Barge ING4727 adrift and causing it to travel through a breach in the Gulf Intracoastal Waterway East floodwall (also known as the "Industrial Canal" and the "Inner Harbor Canal") on or about August 28 and 29, 2005, in or near New Orleans, Louisiana, all as more fully set forth in the Complaint.

All persons, firms, corporations or other legal entities asserting claims with respect to which the Complaint seeks limitation and/or exoneration are advised to file their respective

claims under oath with the Clerk of this Court at the Eastern District of Louisiana, 102 Versailles Street, Suite 501, Lafayette, LA 70501, and to serve on the attorney for Ingram Barge Company, Don K. Haycraft, Liskow & Lewis, 822 Harding Street, P.O. Box 52008, Lafayette, Louisiana 70505-2008, a copy thereof, on or before the 29th day of August, 2006, or be defaulted. Personal attendance is not required.

Any claimant desiring to contest either the right of exoneration from or the right to limitation of liability shall file and serve an answer to the Complaint on or before the above date unless his claim has included an answer, all as required by Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims.

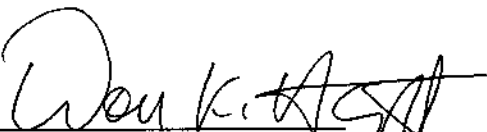
Baton Rouge, Louisiana, this 30th day of September, 2005.


UNITED STATES DISTRICT JUDGE

PLEASE PUBLISH IN THE NEW ORLEANS
TIMES-PICAYUNE, THE BATON ROUGE ADVOCATE,
AND THE LAFAYETTE DAILY ADVERTISER
ONCE A WEEK FOR FOUR SUCCESSIVE WEEKS
PRIOR TO THE DATE FIXED FOR THE FILING
OF CLAIMS.

Respectfully submitted:

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Lafayette, LA 70505-2008
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By: 

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Attorneys for Plaintiff Ingram Barge Company,
as owner of the Barge ING4727