

SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS

RULE A. SCOPE OF RULES

These Supplemental Rules apply to the procedure in admiralty and maritime claims within the meaning of Rule 9 (h) with respect to the following remedies:

- (1) Maritime attachment and garnishment;
- (2) Actions in rem;
- (3) Possessory, petitory, and partition actions;
- (4) Actions for exoneration from or limitation of liability.

These rules also apply to the procedure in statutory condemnation proceedings analogous to maritime actions in rem, whether within the admiralty and maritime jurisdiction or not. Except as otherwise provided, references in these Supplemental Rules to actions in rem include such analogous statutory condemnation proceedings.

The general Rules of Civil Procedure for the United States District Courts are also applicable to the foregoing proceedings except to the extent that they are inconsistent with these Supplemental Rules.

RULE B. ATTACHMENT AND GARNISHMENT: SPECIAL PROVISIONS

(1) WHEN AVAILABLE; COMPLAINT, AFFIDAVIT, AND PROCESS. With respect to any admiralty or maritime claim in personam a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or credits and effects in the hands of garnishees named in the complaint to the amount sued for, if the defendant shall not be found within the district. Such a complaint shall be accompanied by an affidavit signed by the plaintiff or his attorney that, to the affiant's

knowledge, or to the best of his information and belief, the defendant cannot be found within the district. When a verified complaint is supported by such an affidavit the clerk shall forthwith issue a summons and process of attachment and garnishment. In addition, or in the alternative, the plaintiff may, pursuant to Rule 4 (e), invoke the remedies provided by state law for attachment and garnishment or similar seizure of the defendant's property. Except for Rule E (8) these Supplemental Rules do not apply to state remedies so invoked.

(2) NOTICE TO DEFENDANT. No judgment by default shall be entered except upon proof, which may be by affidavit, (a) that the plaintiff or the garnishee has given notice of the action to the defendant by mailing to him a copy of the complaint, summons, and process of attachment or garnishment, using any form of mail requiring a return receipt, or (b) that the complaint, summons, and process of attachment or garnishment have been served on the defendant in a manner authorized by Rule 4 (d) or (i), or (c) that the plaintiff or the garnishee has made diligent efforts to give notice of the action to the defendant and has been unable to do so.

(3) ANSWER.

(a) BY GARNISHEE. The garnishee shall serve his answer, together with answers to any interrogatories served with the complaint, within 20 days after service of process upon him. Interrogatories to the garnishee may be served with the complaint without leave of court. If the garnishee refuses or neglects to answer on oath as to the debts, credits, or effects of the defendant in his hands, or any interrogatories concerning such debts, credits, and effects that may be propounded by the plaintiff, the court may award compulsory process against him. If he admits any debts, credits, or effects, they shall be held in his hands or paid into the registry of the court, and shall be held in either case subject to the further order of the court.

(b) BY DEFENDANT. The defendant shall serve his answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee.

RULE C. ACTIONS IN REM: SPECIAL
PROVISIONS

(1) WHEN AVAILABLE. An action in rem may be brought:

(a) To enforce any maritime lien;

(b) Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.

Except as otherwise provided by law a party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable.

Statutory provisions exempting vessels or other property owned or possessed by or operated by or for the United States from arrest or seizure are not affected by this rule. When a statute so provides, an action against the United States or an instrumentality thereof may proceed on in rem principles.

(2) COMPLAINT. In actions in rem the complaint shall be verified on oath or solemn affirmation. It shall describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action. In actions for the enforcement of forfeitures for violation of any statute of the United States the complaint shall state the place of seizure and whether it was on land or on navigable waters, and shall contain such allegations as may be required by the statute pursuant to which the action is brought.

(3) PROCESS. Upon the filing of the complaint the clerk shall forthwith issue a warrant for the arrest of the vessel or other property that is the subject of the action and deliver it to the marshal for service. If the property that is the subject of the action consists in whole or in

part of freight, or the proceeds of property sold, or other intangible property, the clerk shall issue a summons directing any person having control of the funds to show cause why they should not be paid into court to abide the judgment.

(4) NOTICE. No notice other than the execution of the process is required when the property that is the subject of the action has been released in accordance with Rule E (5). If the property is not released within 10 days after execution of process, the plaintiff shall promptly or within such time as may be allowed by the court cause public notice of the action and arrest to be given in a newspaper of general circulation in the district, designated by order of the court. Such notice shall specify the time within which the answer is required to be filed as provided by subdivision (6) of this rule. This rule does not affect the requirements of notice in actions to foreclose a preferred ship mortgage pursuant to the Act of June 5, 1920, ch. 250, § 30, as amended.

(5) ANCILLARY PROCESS. In any action in rem in which process has been served as provided by this rule, if any part of the property that is the subject of the action has not been brought within the control of the court because it has been removed or sold, or because it is intangible property in the hands of a person who has not been served with process, the court may, on motion, order any person having possession or control of such property or its proceeds to show cause why it should not be delivered into the custody of the marshal or paid into court to abide the judgment; and, after hearing, the court may enter such judgment as law and justice may require.

(6) CLAIM AND ANSWER; INTERROGATORIES. The claimant of property that is the subject of an action in rem shall file his claim within 10 days after process has been executed, or within such additional time as may be allowed by the court, and shall serve his answer within 20 days after the filing of the claim. The claim shall be

verified on oath or solemn affirmation, and shall state the interest in the property by virtue of which the claimant demands its restitution and the right to defend the action. If the claim is made on behalf of the person entitled to possession by an agent, bailee, or attorney, it shall state that he is duly authorized to make the claim. At the time of answering the claimant shall also serve answers to any interrogatories served with the complaint. In actions in rem interrogatories may be so served without leave of court.

RULE D. POSSESSORY, PETITORY, AND PARTITION
ACTIONS

In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel, in all actions so maintainable with respect to the possession of cargo or other maritime property, and in all actions by one or more part owners against the others to obtain security for the return of the vessel from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the vessel for any voyage on giving security for its safe return, the process shall be by a warrant of arrest of the vessel, cargo, or other property, and by notice in the manner provided by Rule B (2) to the adverse party or parties.

RULE E. ACTIONS IN REM AND QUASI IN REM:
GENERAL PROVISIONS

(1) APPLICABILITY. Except as otherwise provided, this rule applies to actions in personam with process of maritime attachment and garnishment, actions in rem, and petitory, possessory, and partition actions, supplementing Rules B, C, and D.

(2) COMPLAINT; SECURITY.

(a) COMPLAINT. In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with such par-

ticularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.

(b) SECURITY FOR COSTS. Subject to the provisions of Rule 54 (d) and of relevant statutes, the court may, on the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, require the plaintiff, defendant, claimant, or other party to give security, or additional security, in such sum as the court shall direct to pay all costs and expenses that shall be awarded against him by any interlocutory order or by the final judgment, or on appeal by any appellate court.

(3) PROCESS.

(a) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. Process in rem and of maritime attachment and garnishment shall be served only within the district.

(b) ISSUANCE AND DELIVERY. Issuance and delivery of process in rem, or of maritime attachment and garnishment, shall be held in abeyance if the plaintiff so requests.

(4) EXECUTION OF PROCESS; MARSHAL'S RETURN; CUSTODY OF PROPERTY.

(a) IN GENERAL. Upon issuance and delivery of the process, or, in the case of summons with process of attachment and garnishment, when it appears that the defendant cannot be found within the district, the marshal shall forthwith execute the process in accordance with this subdivision (4), making due and prompt return.

(b) TANGIBLE PROPERTY. If tangible property is to be attached or arrested, the marshal shall take it into his possession for safe custody. If the character or situation of the property is such that the taking of actual possession is impracticable, the marshal

shall execute the process by affixing a copy thereof to the property in a conspicuous place and by leaving a copy of the complaint and process with the person having possession or his agent. In furtherance of his custody of any vessel the marshal is authorized to make a written request to the collector of customs not to grant clearance to such vessel until notified by the marshal or his deputy or by the clerk that the vessel has been released in accordance with these rules.

(c) **INTANGIBLE PROPERTY.** If intangible property is to be attached or arrested the marshal shall execute the process by leaving with the garnishee or other obligor a copy of the complaint and process requiring him to answer as provided in Rules B (3)(a) and C (6); or he may accept for payment into the registry of the court the amount owed to the extent of the amount claimed by the plaintiff with interest and costs, in which event the garnishee or other obligor shall not be required to answer unless alias process shall be served.

(d) **DIRECTIONS WITH RESPECT TO PROPERTY IN CUSTODY.** The marshal may at any time apply to the court for directions with respect to property that has been attached or arrested, and shall give notice of such application to any or all of the parties as the court may direct.

(e) **EXPENSES OF SEIZING AND KEEPING PROPERTY; DEPOSIT.** These rules do not alter the provisions of Title 28, U. S. C., § 1921, as amended, relative to the expenses of seizing and keeping property attached or arrested and to the requirement of deposits to cover such expenses.

(5) **RELEASE OF PROPERTY.**

(a) **SPECIAL BOND.** Except in cases of seizures for forfeiture under any law of the United States, whenever process of maritime attachment and gar-

nishment or process in rem is issued the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by stipulation of the parties, conditioned to answer the judgment of the court or of any appellate court. The parties may stipulate the amount and nature of such security. In the event of the inability or refusal of the parties so to stipulate the court shall fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiff's claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiff's claim or (ii) the value of the property on due appraisement, whichever is smaller. The bond or stipulation shall be conditioned for the payment of the principal sum and interest thereon at 6 per cent per annum.

(b) GENERAL BOND. The owner of any vessel may file a general bond or stipulation, with sufficient surety, to be approved by the court, conditioned to answer the judgment of such court in all or any actions that may be brought thereafter in such court in which the vessel is attached or arrested. Thereupon the execution of all such process against such vessel shall be stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by plaintiffs in all actions begun and pending in which such vessel has been attached or arrested. Judgments and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such actions. The district court may make necessary orders to carry this rule into effect, particularly as to the giving of proper notice of any action against or attachment of a vessel for which a general bond has been filed. Such bond or stipulation shall be indorsed by the clerk with a minute of the actions

wherein process is so stayed. Further security may be required by the court at any time.

If a special bond or stipulation is given in a particular case, the liability on the general bond or stipulation shall cease as to that case.

(c) RELEASE BY CONSENT OR STIPULATION; ORDER OF COURT OR CLERK; COSTS. Any vessel, cargo, or other property in the custody of the marshal may be released forthwith upon his acceptance and approval of a stipulation, bond, or other security, signed by the party on whose behalf the property is detained or his attorney and expressly authorizing such release, if all costs and charges of the court and its officers shall have first been paid. Otherwise no property in the custody of the marshal or other officer of the court shall be released without an order of the court; but such order may be entered as of course by the clerk, upon the giving of approved security as provided by law and these rules, or upon the dismissal or discontinuance of the action; but the marshal shall not deliver any property so released until the costs and charges of the officers of the court shall first have been paid.

(d) POSSESSORY, PETITORY, AND PARTITION ACTIONS. The foregoing provisions of this subdivision (5) do not apply to petitory, possessory, and partition actions. In such cases the property arrested shall be released only by order of the court, on such terms and conditions and on the giving of such security as the court may require.

(6) REDUCTION OR IMPAIRMENT OF SECURITY. Whenever security is taken the court may, on motion and hearing, for good cause shown, reduce the amount of security given; and if the surety shall be or become insufficient, new or additional sureties may be required on motion and hearing.

(7) SECURITY ON COUNTERCLAIM. Whenever there is asserted a counterclaim arising out of the same trans-

action or occurrence with respect to which the action was originally filed, and the defendant or claimant in the original action has given security to respond in damages, any plaintiff for whose benefit such security has been given shall give security in the usual amount and form to respond in damages to the claims set forth in such counterclaim, unless the court, for cause shown, shall otherwise direct; and proceedings on the original claim shall be stayed until such security is given, unless the court otherwise directs. When the United States or a corporate instrumentality thereof as defendant is relieved by law of the requirement of giving security to respond in damages it shall nevertheless be treated for the purposes of this subdivision E (7) as if it had given such security if a private person so situated would have been required to give it.

(8) RESTRICTED APPEARANCE. An appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem, or process of attachment and garnishment whether pursuant to these Supplemental Rules or to Rule 4 (e), may be expressly restricted to the defense of such claim, and in that event shall not constitute an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.

(9) DISPOSITION OF PROPERTY; SALES.

(a) ACTIONS FOR FORFEITURES. In any action in rem to enforce a forfeiture for violation of a statute of the United States the property shall be disposed of as provided by statute.

(b) INTERLOCUTORY SALES. If property that has been attached or arrested is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action, or if the expense of keeping the property is excessive or disproportionate, or if there is unreasonable delay in securing the release of property, the court, on application of any

party or of the marshal, may order the property or any portion thereof to be sold; and the proceeds, or so much thereof as shall be adequate to satisfy any judgment, may be ordered brought into court to abide the event of the action; or the court may, on motion of the defendant or claimant, order delivery of the property to him, upon the giving of security in accordance with these rules.

(c) SALES; PROCEEDS. All sales of property shall be made by the marshal or his deputy, or other proper officer assigned by the court where the marshal is a party in interest; and the proceeds of sale shall be forthwith paid into the registry of the court to be disposed of according to law.

RULE F. LIMITATION OF LIABILITY

(1) TIME FOR FILING COMPLAINT; SECURITY. Not later than six months after his receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of his interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at his option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, his interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs and, if he elects to give security, for interest at the rate of 6 per cent per annum from the date of the security.

(2) COMPLAINT. The complaint shall set forth the facts on the basis of which the right to limit liability is

asserted, and all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited. The complaint may demand exoneration from as well as limitation of liability. It shall state the voyage, if any, on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort or otherwise, arising on that voyage, so far as known to the plaintiff, and what actions and proceedings, if any, are pending thereon; whether the vessel was damaged, lost, or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreck, strippings, or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If the plaintiff elects to transfer his interest in the vessel to a trustee, the complaint must further show any prior paramount liens thereon, and what voyages or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

(3) CLAIMS AGAINST OWNER; INJUNCTION. Upon compliance by the owner with the requirements of subdivision (1) of this rule all claims and proceedings against the owner or his property with respect to the matter in question shall cease. On application of the plaintiff the court shall enjoin the further prosecution of any action or proceeding against the plaintiff or his property with respect to any claim subject to limitation in the action.

(4) NOTICE TO CLAIMANTS. Upon the owner's compliance with subdivision (1) of this rule the court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing

them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at his last known address, and also to any person who shall be known to have made any claim on account of such death.

(5) CLAIMS AND ANSWER. Claims shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of his claim, the items thereof, and the dates on which the same accrued. If a claimant desires to contest either the right to exoneration from or the right to limitation of liability he shall file and serve an answer to the complaint unless his claim has included an answer.

(6) INFORMATION TO BE GIVEN CLAIMANTS. Within 30 days after the date specified in the notice for filing claims, or within such time as the court thereafter may allow, the plaintiff shall mail to the attorney for each claimant (or if the claimant has no attorney to the claimant himself) a list setting forth (a) the name of each claimant, (b) the name and address of his attorney (if he is known to have one), (c) the nature of his claim, i. e., whether property loss, property damage, death, personal injury, etc., and (d) the amount thereof.

(7) **INSUFFICIENCY OF FUND OR SECURITY.** Any claimant may by motion demand that the funds deposited in court or the security given by the plaintiff be increased on the ground that they are less than the value of the plaintiff's interest in the vessel and pending freight. Thereupon the court shall cause due appraisement to be made of the value of the plaintiff's interest in the vessel and pending freight; and if the court finds that the deposit or security is either insufficient or excessive it shall order its increase or reduction. In like manner any claimant may demand that the deposit or security be increased on the ground that it is insufficient to carry out the provisions of the statutes relating to claims in respect of loss of life or bodily injury; and, after notice and hearing, the court may similarly order that the deposit or security be increased or reduced.

(8) **OBJECTIONS TO CLAIMS: DISTRIBUTION OF FUND.** Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled.

(9) **VENUE; TRANSFER.** The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced against the owner, the proceedings may be had in the district in which the vessel may be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may

be filed in any district. For the convenience of parties and witnesses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought. If the vessel shall have been sold, the proceeds shall represent the vessel for the purposes of these rules.

