

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF MARQUETTE  
TRANSPORTATION GULF-INLAND,  
LLC, AS OWNER OF THE  
M/V ST. THOMAS, OFFICIAL NO.  
1050938, FOR EXONERATION FROM OR  
LIMITATION OF LIABILITY

\* CIVIL ACTION:  
\* 2:14-cv-01961-ILRL-MBN  
\*  
\*  
\*  
\* JUDGE IVAN L.R. LEMELLE  
\*  
\* MAGISTRATE MICHAEL B. NORTH  
\*

\*\*\*\*\*

**DOTD'S ANSWER AND CLAIM TO THE VERIFIED COMPLAINT FOR  
EXONERATION FROM, OR LIMITATION OF LIABILITY, OF  
MARQUETTE TRANSPORTATION GULF-INLAND, LLC,  
AS OWNER OF THE M/V ST. THOMAS**

**NOW INTO COURT**, through undersigned counsel, comes claimant-in-limitation, the Louisiana Department of Transportation and Development (hereinafter referred to as "DOTD"), who in answer to Limitation Petitioner's, Marquette Transportation Gulf-Inland, LLC's ("Marquette") Verified Complaint for Exoneration From or Limitation of Liability, respectfully avers as follows:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

Limitation Petitioner is not entitled to exoneration from, or limitation of, liability in these proceedings because the unseaworthiness of the M/V ST. THOMAS and the negligent conduct by her master and crew occurred with the privity and knowledge of

Limitation Petitioner, which itself was negligent in the management and operation of the M/V ST. THOMAS.

**THIRD DEFENSE**

The DOTD respectfully avers that the security posted by the Limitation Petitioner is legally insufficient, the limitation fund is therefore inadequate, as the value of the Limitation Petitioner's interest in the M/V ST. THOMAS and her pending freight is greater than the security and any ad interim stipulation, and therefore, that the limitation fund should be increased.

**FOURTH DEFENSE**

The DOTD, as claimant-in-limitation, avers that all insurance coverage insuring Limitation Petitioner, and the M/V ST. THOMAS, for the events and occurrences of February 28, 2014, must be included in the limitation fund in the event that Limitation Petitioner prevails in this limitation of liability proceeding, which the DOTD denies is appropriate for all the reasons stated herein.

**FIFTH DEFENSE**

AND NOW, answering more particularly the allegations contained in the numbered paragraphs of the Verified Complaint, the DOTD respectfully avers as follows:

I.

The allegations as to jurisdiction contained in Paragraph I are admitted; however, the DOTD specifically reserves, and does not hereby waive, its entitlement to sovereign immunity under the Eleventh Amendment of the United States Constitution and the Constitution of the State of Louisiana.

II.

The allegations as to jurisdiction and procedure contained in Paragraph 2 are admitted; however, the DOTD specifically reserves, and does not hereby waive, its entitlement to sovereign immunity under the Eleventh Amendment of the United States Constitution and the Constitution of the State of Louisiana.

III.

The DOTD admits that admiralty and maritime jurisdiction is proper; however, the DOTD denies that Limitation Petitioner may plead or avail itself to the benefits of the Limitation of Liability Act, 46 U.S.C. §30501, *et seq.*

IV.

The allegations contained in Paragraph IV are denied for lack of sufficient information to justify a belief therein.

V.

The allegations contained in Paragraph V are denied for lack of sufficient information to justify a belief therein.

VI.

The allegations contained in Paragraph VI are denied. Specifically, the DOTD avers that the loss, damage and/or injuries sustained as a result of this allision were caused by the fault, neglect, design or want of due care on the part of the Limitation Petitioner, its agents, servants, or employees, including the master, officers or crew of the M/V ST. THOMAS and/or the unseaworthiness of the M/V ST. THOMAS, and her tow, negligence and/or unseaworthy conditions of which Limitation Petitioner had "privity and knowledge"

sufficient to preclude Limitation Petitioner from availing itself of the benefits of the Limitation of Liability Act, 46 USC §30501, *et seq.*

VII.

The allegations contained in Paragraph VII are denied for lack of sufficient information to justify a belief therein.

VIII.

The allegations contained in Paragraph VIII are denied for lack of sufficient information to justify a belief therein.

IX.

The allegations contained in Paragraph IX are admitted only insofar as to confirm that the M/V ST. THOMAS allided with the Grosse Tete Bridge and its fender system on February 28, 2014. In addition, the M/V ST. THOMAS is presumed to be at fault for the allision.

X.

The allegations contained in Paragraph X are admitted only insofar as to confirm that the DOTD has incurred damages, including, but not limited to, property damage to the Grosse Tete Bridge and its fender system. In addition, the M/V ST. THOMAS is presumed to be at fault.

XI.

The allegations contained in Paragraph XI are denied for lack of sufficient information to justify a belief therein.

XII.

The allegations contained in Paragraph XII are denied for lack of sufficient information to justify a belief therein.

XIII.

The allegations contained in Paragraph XIII are admitted only insofar as to confirm that the DOTD has a claim for damages, including, but not limited to, property damage to the Grosse Tete Bridge and its fender system. In addition, the M/V ST. THOMAS is presumed to be at fault.

XIV.

The allegations contained in Paragraph XIV are denied. Specifically, the DOTD avers that the loss, damage and/or injuries sustained as a result of this allision were caused by the fault, neglect, design or want of due care on the part of the Limitation Petitioner, its agents, servants, or employees, including the master, officers or crew of the M/V ST. THOMAS and/or the unseaworthiness of the M/V ST. THOMAS, and her tow, negligence and/or unseaworthy conditions of which Limitation Petitioner had "privity and knowledge" sufficient to preclude Limitation Petitioner from availing itself of the benefits of the Limitation of Liability Act, 46 USC §30501, *et seq.* Further, the M/V ST. THOMAS is presumed to be at fault for the February 28, 2014 allision between the M/V ST. THOMAS and the Grosse Tete Bridge's fender system.

XV.

The allegations contained in Paragraph XV are denied. Specifically, the DOTD avers that the loss, damage and/or injuries sustained as a result of this allision were caused by

the fault, neglect, design or want of due care on the part of the Limitation Petitioner, its agents, servants, or employees, including the master, officers or crew of the M/V ST. THOMAS and/or the unseaworthiness of the M/V ST. THOMAS, and her tow, negligence and/or unseaworthy conditions of which Limitation Petitioner had "privity and knowledge" sufficient to preclude Limitation Petitioner from availing itself of the benefits of the Limitation of Liability Act, 46 USC §30501, *et seq.* Further, the M/V ST. THOMAS is presumed to be at fault for the February 28, 2014 allision between the M/V ST. THOMAS and the Grosse Tete Bridge's fender system.

XVI.

The allegations contained in Paragraph XVI are denied for lack of sufficient information to justify a belief therein.

XVII.

The allegations contained in Paragraph XVII are denied for lack of sufficient information to justify a belief therein.

XVIII.

The allegations contained in Paragraph XVIII are denied for lack of sufficient information to justify a belief therein.

XIX.

The allegations contained in Paragraph XIX do not require a response from the DOTD, nevertheless, the allegations contained in Paragraph XIX are denied for lack of sufficient information to justify a belief therein. The DOTD avers that Petitioner in Limitation is not entitled to the benefits of the Limitation of Liability Act, 46 USC §30501, *et seq.*

XIX

A.

The allegations contained in the WHEREFORE paragraph, including subpart (A), does not require a response from the DOTD, nevertheless, the allegations are denied for lack of sufficient information to justify a belief therein.

B.

The allegations contained in the WHEREFORE paragraph, including subpart (B), does not require a response from the DOTD, nevertheless, the allegations are denied for lack of sufficient information to justify a belief therein.

C.

The allegations contained in the WHEREFORE paragraph, including subpart (C), does not require a response from the DOTD, nevertheless, the allegations are denied. Specifically, the DOTD avers that the loss, damage and/or injuries sustained as a result of this allision were caused by the fault, neglect, design or want of due care on the part of the Limitation Petitioner, its agents, servants, or employees, including the master, officers or crew of the M/V ST. THOMAS and/or the unseaworthiness of the M/V ST. THOMAS, and her tow, negligence and/or unseaworthy conditions of which Limitation Petitioner had "privity and knowledge" sufficient to preclude Limitation Petitioner from availing itself of the benefits of the Limitation of Liability Act, 46 USC §30501, *et seq.* Further, the M/V ST. THOMAS is presumed to be at fault for the February 28, 2014 allision between the M/V ST. THOMAS and the Grosse Tete Bridge's fender system.

D.

The allegations contained in the WHEREFORE paragraph, including subpart (D), does not require a response from the DOTD, nevertheless, the allegations are denied for lack of sufficient information to justify a belief therein.

E.

The allegations contained in the WHEREFORE paragraph, including subpart (E), does not require a response from the DOTD, nevertheless, the allegations are denied for lack of sufficient information to justify a belief therein.

F.

The allegations contained in the WHEREFORE paragraph, including subpart (F), does not require a response from the DOTD, nevertheless, the allegations are denied. Specifically, the DOTD avers that the loss, damage and/or injuries sustained as a result of this allision were caused by the fault, neglect, design or want of due care on the part of the Limitation Petitioner, its agents, servants, or employees, including the master, officers or crew of the M/V ST. THOMAS and/or the unseaworthiness of the M/V ST. THOMAS, and her tow, negligence and/or unseaworthy conditions of which Limitation Petitioner had "privity and knowledge" sufficient to preclude Limitation Petitioner from availing itself of the benefits of the Limitation of Liability Act, 46 USC §30501, *et seq.* Further, the M/V ST. THOMAS is presumed to be at fault for the February 28, 2014 allision between the M/V ST. THOMAS and the Grosse Tete Bridge's fender system.



G.

The allegations contained in the WHEREFORE paragraph, including subpart (G), does not require a response from the DOTD, nevertheless, the allegations are denied.

H.

The allegations contained in the WHEREFORE paragraph, including subpart (H), does not require a response from the DOTD, nevertheless, the allegations are denied.

#### **SIXTH DEFENSE**

The DOTD conducted its affairs in a safe and lawful manner, adhering to all applicable state and federal guidelines, laws, rules and regulations, and was free from fault, negligence, gross negligence, strict liability or any other comparable conduct.

#### **SEVENTH DEFENSE**

The M/V ST. THOMAS was guilty of statutory fault or violation of the Rules of the Road and has the burden of proving such fault or violation could not have contributed to the allision.<sup>1</sup>

#### **EIGHTH DEFENSE**

The M/V ST. THOMAS, under its own power, allided with the Grosse Tete Bridge, and is therefore presumed to be at fault for the allision.<sup>2</sup>

#### **NINTH DEFENSE**

The DOTD avers all defenses available to it under the Federal Rules of Civil Procedure, as well as applicable federal or state law.

---

<sup>1</sup> See *The Pennsylvania*, 6 U.S. 125 (1873).

<sup>2</sup> See *The Oregon*, 158 U.S. 186, 15 S. Ct. 804, 39 L.Ed. 943 (1895).

**TENTH DEFENSE**

The DOTD reserves the right to file additional answers, third-party complaints, counter claims or cross claims such as the facts may later disclose and require.

**ELEVENTH DEFENSE**

The DOTD specifically reserves its right to amend this pleading as discovery progresses.

**THE LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT'S  
CLAIM IN LIMITATION**

**AND NOW**, through undersigned counsel, the Louisiana Department of Transportation and Development ("DOTD") asserts the following claim in limitation against Marquette Transportation Gulf-Inland, LLC ("Marquette"), in accordance with the provisions of Supplemental Rule F(5) of the Supplemental Rules for Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, as amended, as follows:

I.

Jurisdiction over this claim-in-limitation exists under this Honorable Court's general maritime jurisdiction, 28 U.S.C. §1333. Further, this claim is being filed pursuant to Rule F(5) of the Supplemental Rules for Admiralty or Maritime Claims of the Federal Rules of Civil Procedure, as amended. However, the DOTD specifically reserves, and by filing this claim does not hereby waive, its entitlement to sovereign immunity under the Eleventh Amendment of the United States Constitution and the Constitution of the State of Louisiana.

II.

The State of Louisiana, through its Department of Transportation and Development, was at all times hereinafter mentioned the owner of the Grosse Tete Bridge, Structure No. 61242190107251, a swing bridge carrying LA Highway 77 over Bayou Grosse Tete in Iberville, Louisiana.

III.

At all pertinent times, the Grosse Tete Bridge was a structure duly constructed pursuant to all applicable statutes and regulations.

IV.

On February 28, 2014, the M/V ST. THOMAS, owned and operated by Marquette, and its tow of six barges allided with the Grosse Tete Bridge, causing extensive damages to the bridge, including its fender system.

V.

The DOTD seeks recovery against Marquette for all damages incurred, or that will be incurred, by the DOTD in this case. Specifically, the DOTD claims reimbursement for all repairs necessitated by the February 28, 2014 allision between the M/V ST. THOMAS and the Grosse Tete Bridge, including damages to the bridge itself, the fender system, and any and all additional damages which may be identified through the course of this litigation.

VI.

The DOTD, nor anyone for whose actions the DOTD may be responsible, did not cause or contribute to the February 28, 2014 allision involving the M/V ST. THOMAS and the Grosse Tete Bridge or the resulting damage. Any and all damage to the Grosse Tete

Bridge was caused solely by the negligence of Marquette, its agents, servants and employees, or the M/V ST. THOMAS, its tow, captain or crew.

VII.

The DOTD further avers the allision and resulting damages were caused by the negligence of Marquette, M/V ST. THOMAS, their employees, agents, captain or crew in the following, non-exclusive, particulars:

- a) failure to keep a proper lookout;
- b) failure to maintain control of the motor vessel;
- c) failure to take proper evasive action to avoid the resulting collision;
- d) failure to stop or slow the motor vessel in time to avoid the resulting collision;
- e) operating the M/V ST. THOMAS, and her tow, in a generally careless and reckless manner without due regard for the safety and property of others;
- f) improper or negligent navigation;
- g) the M/V ST. THOMAS and her tow were unseaworthy;
- h) the M/V ST. THOMAS was improperly and insufficiently manned;
- i) the M/V ST. THOMAS improperly approached the Grosse Tete Bridge and failed to heed instructions, or properly keep her tow in control so as to avoid an allision; and
- j) any and all other acts and omissions which will be shown prior to or at the trial of this matter.

VIII.

The DOTD further avers the February 28, 2014 allision was caused, or contributed to by, violation of statutes and regulations by the M/V ST. THOMAS, including but not limited to statutes commonly referred to as The Inland Navigation Rules and regulations issued by the United States Coast Guard. Accordingly, the M/V ST. THOMAS was guilty of statutory fault or violation of the Rules of the Road and has the burden of proving such fault or violation could not have contributed to the collision.<sup>3</sup>

---

<sup>3</sup> *The Pennsylvania*, 6 U.S. 125 (1873)

IX.

Further, the M/V ST. THOMAS allided with the Grosse Tete Bridge and her fender system. Accordingly, and pursuant to *The Oregon*, Marquette and the M/V ST. THOMAS are presumed to be at fault for the allision.<sup>4</sup>

X.

The DOTD has sustained damages and, as a result, hereby makes a claim for the cost of repairs to the Grosse Tete Bridge, including, but not limited to, loss of use, incidental charges and expenses, cost of surveys, pedestrian transportation costs, and any unknown, unexpected or additional amounts which may later be determined, together with applicable legal interest and court costs. The DOTD further prays the Verified Complaint for Exoneration From or Limitation of Liability be denied, and that Limitation Petitioner not be granted limitation of liability or exoneration pursuant to 46 USC §30501, *et seq.*, or Rule F of the Supplemental Rules for Admiralty or Maritime Claims of the Federal Rules of Civil Procedure, as amended.

**WHEREFORE**, claimant herein, the Louisiana Department of Transportation and Development, hereby demands judgment against Limitation Petitioner, Marquette Transportation Gulf-Inland, LLC, together with all applicable interest and costs, as well as all general and equitable relief afforded to the Louisiana Department of Transportation and Development at law.

---

<sup>4</sup> *The Oregon*, 158 U.S. 186, 15 S.Ct. 804, 39 L.Ed. 943 (1895).

Respectfully submitted:

/s/JOSÉ R. COT

JOSÉ R. COT, T.A. (LSBA #18852)

SHANNON A. KELLY (LSBA #34616)

**HURLEY & COT, APLC**

One Canal Place

365 Canal Street, Suite 2750

New Orleans, Louisiana 70130

Telephone: (504) 524-5353

Telefax: (504) 524-5403

**ATTORNEYS FOR CLAIMANT IN LIMITATION,**

**LOUISIANA DEPARTMENT OF**

**TRANSPORTATION AND DEVELOPMENT**

**CERTIFICATE OF SERVICE**

I do hereby certify that I have, on this 23rd day of September, 2014, electronically filed the above and foregoing document with the clerk of court using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/JOSÉ R. COT\_\_\_\_\_