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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, ROYAL
& SUN ALLIANCE INSURANCE
COMPANY OF CANADA, STATE
NATIONAL INSURANCE COMPANY,
LIBERTY MUTUAL INSURANCE
COMPANY, ACE AMERICAN
INSURANCE COMPANY, SOVEREIGN
GENERAL INSURANCE COMPANY,
ARCH INSURANCE (UK) LIMITED, AND
CERTAIN UNDERWRITERS AT LLOYD'S
OF LONDON SUBSCRIBING TO POLICY
NO.'S ENSAM1900387, ENSAM1900206,
ENSAM1900393, and ENSAM1900398, as
subrogees of Petrogas Energy Corp. and its
related entities, and PETROGAS ENERGY
CORP.

Plaintiffs,

v.

M/T LEVANT, *in rem*; AVANCE LEVANT,
LTD c/o AVANCE GAS, LTD, EXMAR
SHIP MANAGEMENT NV, M/T LINDSEY
FOSS, *in rem*, M/T GARTH FOSS, *in rem*,
and FOSS MARITIME CO.

Defendants.

IN ADMIRALTY

CASE NO.: 2:21-cv-01670

**M/T LEVANT, *in rem*; AVANCE
LEVANT, LTD c/o AVANCE GAS,
LTD, AND EXMAR SHIP
MANAGEMENT NV ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT AND THIRD-PARTY
COMPLAINT**

1. M/T LEVANT, *in rem*; AVANCE LEVANT,
2. LTD and EXMAR SHIP MANAGEMENT NV,

3. Third-Party Plaintiffs.

4. v.

5. BRIAN HENSHAW, an individual,

6. Third-Party Defendant.

7. Defendants MT LEVANT, *in rem*; AVANCE LEVANT, LTD, incorrectly sued as “AVANCE
8. LEVANT, LTD c/o AVANCE GAS, LTD,” and EXMAR SHIP MANAGEMENT NV (collectively
9. “Defendants”) answer Plaintiffs’ First Amended Complaint as follows:

10. **PARTIES**

11. 1. Answering paragraph 1, Defendants lack sufficient information or knowledge sufficient
12. to form a belief about the truth of the allegations and therefore deny same.

13. 2. Answering paragraph 2, Defendants lack sufficient information or knowledge sufficient
14. to form a belief about the truth of the allegations and therefore deny same.

15. 3. Answering paragraph 3, Defendants lack sufficient information or knowledge sufficient
16. to form a belief about the truth of the allegations and therefore deny same.

17. 4. Answering paragraph 4, Defendants lack sufficient information or knowledge sufficient
18. to form a belief about the truth of the allegations and therefore deny same.

19. 5. Answering paragraph 5, Defendants lack sufficient information or knowledge sufficient
20. to form a belief about the truth of the allegations and therefore deny same.

21. 6. Answering paragraph 6, Defendants lack sufficient information or knowledge sufficient
22. to form a belief about the truth of the allegations and therefore deny same.

23. 7. Answering paragraph 7, Defendants lack sufficient information or knowledge sufficient
24. to form a belief about the truth of the allegations and therefore deny same.

25. 8. Answering paragraph 8, Defendants lack sufficient information or knowledge sufficient
26. to form a belief about the truth of the allegations and therefore deny same.

1. 9. Answering paragraph 9, Defendants lack sufficient information or knowledge sufficient
2. to form a belief about the truth of the allegations and therefore deny same.

3. 10. Answering paragraph 10, Defendants lack sufficient information or knowledge
4. sufficient to form a belief about the truth of the allegations and therefore deny same.

5. 11. Answering paragraph 11, Defendants lack sufficient information or knowledge
6. sufficient to form a belief about the truth of the allegations and therefore deny same.

7. 12. Answering paragraph 12, Defendants lack sufficient information or knowledge
8. sufficient to form a belief about the truth of the allegations and therefore deny same.

9. 13. Answering paragraph 13 of the Amended Complaint, deny that M/T LEVANT is
10. "operating in the United States." Except as denied, the allegations in paragraph 13 are admitted.

11. 14. Answering paragraph 14 of the Amended Complaint, admit that Avance Levant Ltd. at
12. all times relevant to this matter was and is a foreign organization with its principal place of business
13. located in Norway, and was/is the owner of the M/T LEVANT. Except as admitted, the allegations of
14. paragraph 14 are denied.

15. 15. Admit.

16. 16. Answering paragraph 16, Defendants lack sufficient information or knowledge
17. sufficient to form a belief about the truth of the allegations and therefore deny same.

18. 17. Answering paragraph 17, Defendants lack sufficient information or knowledge
19. sufficient to form a belief about the truth of the allegations and therefore deny same.

20. 18. Answering paragraph 18, Defendants lack sufficient information or knowledge
21. sufficient to form a belief about the truth of the allegations and therefore deny same.

22. **JURISDICTION**

23. 19. Paragraph 19 contains legal conclusions that do not require an answer. If an answer is
24. required, admit that the claims asserted by plaintiffs are admiralty and maritime claims.

25. 20. Paragraph 20 contains legal conclusions that do not require an answer. If an answer is
26. required, admit that this Court has venue.

1. 21. Answering paragraph 21 of the Amended Complaint, admit that at the time of the
2. events set forth in the Complaint, December 15, 2019, the M/T LEVANT was located in waters within
3. the Western District of Washington. Except as admitted, the allegations of paragraph 21 are denied

4. **FACTUAL ALLEGATIONS**

5. 22. Answering paragraph 22 of the Amended Complaint, admit that Petrogas Pacific LLC
6. owns a terminal that is situated on submerged lands owned by the State of Washington through the
7. Department of Natural Resources, and leased to Petrogas Pacific LLC, that the terminal extends into the
8. Strait of Georgia, and that it is located at 4050 Mountain View Road, Ferndale, WA 98248. Except as
9. admitted, the remaining allegations of paragraph 22 are denied because Defendants lack information or
10. knowledge sufficient to form a belief about their truth.

11. 23. Answering paragraph 23 of the Amended Complaint, Defendants admit that on
12. December 15, 2019, at approximately 4:06 am local time, the M/T LEVANT, while being assisted by
13. tug boats, the M/T LINDSEY FOSS and the M/T GARTH FOSS struck the terminal's southern mooring
14. dolphin and the catwalk connected to it. Except as admitted, the allegations of paragraph 23 are denied.

15. 24. Denied.

16. 25. Answering paragraph 25, Defendants lack sufficient information or knowledge
17. sufficient to form a belief about the truth of the allegations and therefore deny same.

18. 26. Answering paragraph 26, Defendants lack sufficient information or knowledge
19. sufficient to form a belief about the truth of the allegations and therefore deny same.

20. 27. The allegations of paragraph 27 do not require a response.

21. **I. COUNT I**
22. **NEGLIGENCE**
23. **Defendant, M/T LEVANT**

24. 28. Defendants assert their answers to paragraphs 1 – 27 as though fully set forth here.

25. 29. Denied.

26. 30. Denied.

31. Denied.

1. 32. Denied.

2. **II. COUNT II**
3. **NEGLIGENCE**

4. **Defendant, Avance Levant, LTD c/o Avance Gas LTD**

5. 33. Defendants assert their answers to paragraphs 1 – 32 as though fully set forth here.

6. 34. Denied.

7. 35. Denied.

8. 36. Denied.

9. 37. Denied.

10. 38. Denied.

11. **III. COUNT III**
12. **NEGLIGENCE**

13. **Defendant, Exmar Ship Management NV**

14. 39. Defendants assert their answers to paragraphs 1 – 38 as though fully set forth here.

15. 40. Denied.

16. 41. Denied.

17. 42. Denied.

18. **IV. COUNT IV**
19. **NEGLIGENCE**

20. **Defendants, M/T LINDSEY FOSS and M/T GARTH FOSS**

21. 43. Defendants assert their answers to paragraphs 1 – 42 as though fully set forth here.

22. 44. The allegations in paragraph 44 concern defendant vessels LINDSEY FOSS and
23. GARTH FOSS and are not directed at the Defendants, consequently no answer is required.

24. 45. The allegations in paragraph 45 concern defendant vessels LINDSEY FOSS and
25. GARTH FOSS and are not directed at the Defendants, consequently no answer is required.

26. 46. The allegations in paragraph 46 concern defendant vessels LINDSEY FOSS and
GARTH FOSS and are not directed at the Defendants, consequently no answer is required.

1. **V. COUNT V**
2. **NEGLIGENCE**
3. **Defendant, Foss Maritime, Co.**

4. 47. Defendants assert their answers to paragraphs 1 – 46 as though fully set forth here.

5. 48. The allegations in paragraph 48 concern defendant Foss Maritime, Co. and are not
6. directed at the Defendants, consequently no answer is required.

7. 49. The allegations in paragraph 49 concern defendant Foss Maritime, Co. and are not
8. directed at the Defendants, consequently no answer is required.

9. 50. The allegations in paragraph 50 concern defendant Foss Maritime, Co. and are not
10. directed at the Defendants, consequently no answer is required.

11. 51. The allegations in paragraph 51 concern defendant Foss Maritime, Co. and are not
12. directed at the Defendants, consequently no answer is required.

13. 52. The allegations in paragraph 52 concern defendant Foss Maritime, Co. and are not
14. directed at the Defendants, consequently no answer is required.

15. **DAMAGES**

16. 53. Defendants assert their answers to paragraphs 1 – 52 as though fully set forth here.

17. 54. Denied.

18. **AFFIRMATIVE DEFENSES**

19. 1. If plaintiffs are not subrogated as alleged, then plaintiffs have failed to assert claims for
20. which relief can be granted.

21. 2. Plaintiffs' damages, if any, were caused in whole or in part by the negligence or other
22. breach of duty of Petrogas Energy Corp. and/or its corporate affiliates, Petrogas Inc. and/or Petrogas
23. Pacific LLC.

24. 3. Plaintiffs' have failed to reasonably mitigate their damages.

25. 4. The proper measure of plaintiffs' damages, if any, is the cost to repair to pre-
26. allision value. Simply basing an award on repair and related costs without considering value
and age of the damaged property would violate the "new-for-old" rule applicable in admiralty.

1. 5. Plaintiffs' damages were caused in whole or in part by the negligence and/or gross
2. negligence of the Pilot, Capt. Brian Henshaw, which constitutes a superseding cause.

3. **THIRD-PARTY COMPLAINT**

4. By way of Third-Party Complaint against BRIAN HENSHAW, Third-Party Plaintiffs M/T
5. LEVANT, *in rem*; AVANCE LEVANT, LTD and EXMAR SHIP MANAGEMENT NV, allege as
6. follows:

7. **A. PARTIES**

8. 1. The M/T LEVANT is a liquefied petroleum gas carrier registered in the Marshall
9. Islands under IMO No. 9686388 and at all times relevant to this matter was operating within the
10. navigable waters of the United States and within this District.

11. 2. Avance Levant, LTD was at all times relevant to this matter, and is, a foreign limited
12. liability company with its principal place of business located in Norway. It was and is the owner of the
13. M/T LEVANT.

14. 3. Exmar Ship Management NV is a foreign corporation with its principal place of
15. business located in Belgium. At all times relevant to this matter, Exmar Ship Management NV was the
16. operator and manager of the M/T LEVANT.

17. 4. BRIAN HENSHAW is a resident of Poulsbo, WA. At all times material to this lawsuit
18. he was a Washington State Pilot, and was the pilot of record on the M/T LEVANT on December 14 and
19. 15, 2019, when the events that are the subject of this Third-Party Complaint occurred.

20. **B. JURISDICTION**

21. 5. This is an admiralty and maritime law claim within the meaning of Rule 9(h) of the
22. Federal Rules of Civil Procedure and this Court has jurisdiction pursuant to 28 U.S.C. § 1333.

23. 6. Venue is proper in this district inasmuch as third-party defendant, Mr. Henshaw, resides
24. in this district, and the events or omissions giving rise to this third-party claim occurred within the
25. district, satisfying 28 U.S.C. § 1391(b)(1) and (2).

26.

1. **C. FACTS**

2. 7. On December 14, 2019, at about 7:22 p.m. Third-Party Defendant Brian Henshaw
3. boarded the M/T LEVANT in order to maneuver the vessel away from the terminal where she had been
4. moored loading butane and propane. The terminal was and is owned by Petrogas Pacific LLC, is located
5. at 4050 Mountain View Road, Ferndale, WA 98248, and extends out into the Strait of Georgia. Due to
6. the limitations of its draft and the oncoming low tide, the vessel had to be move away from the berth in
7. order to keep her from grounding.

8. 8. At approximately 8:18 p.m., under the guidance of Captain Henshaw, the vessel
9. maneuvered away from the terminal to a position about 0.7 nautical miles to the southwest of the
10. terminal, where she anchored to await more favorable tidal conditions that would allow her to return to
11. the terminal and complete loading. After the vessel was anchored, Captain Henshaw remained on board,
12. anticipating the vessel's need to maneuver back to the terminal.

13. 9. On December 15, 2019 at about 3:38 a.m. Capt. Henshaw returned to the bridge of the
14. M/T LEVANT. At 3:54 a.m. the anchor was heaved and, with assist from two Foss tugs, Captain
15. Henshaw gave speed and rudder commands for the vessel, as well as commands to the tugs.

16. 10. The crew of the M/T LEVANT and the assisting tugs followed the commands of
17. Captain Henshaw.

18. 11. On December 15, 2019 at about 4:06 a.m., while Brian Henshaw was the pilot of record
19. on the M/T LEVANT and was providing the speed and rudder commands for the vessel, the M/T
20. LEVANT struck the south mooring dolphin and its catwalk.

21. 12. M/T LEVANT is a vessel that is subject to compulsory pilotage under Washington state
22. law when operating in state waters and was therefore subject to compulsory pilotage when it
23. maneuvered way from the Petrogas terminal on December 14 and back to the Petrogas terminal on
24. December 15, 2019.

1. 13. Third-party defendants have been sued by Petrogas Energy Corporation and its insurers
2. in this lawsuit for recovery of damages proximately caused by the M/T LEVANT striking the terminal's
3. south mooring dolphin and its catwalk (the "main lawsuit").

4. **D. CAUSES OF ACTION: NEGLIGENCE AND GROSS NEGLIGENCE**

5. 14. Third-Party Plaintiffs reallege paragraphs 1.1 – 3.7 as though fully set forth.

6. 15. The damages allegedly suffered by the plaintiffs in the main lawsuit, if any, were
7. proximately caused by the negligent acts or omissions of Brian Henshaw, including but not limited to:

8. a. His failure to remain aware of the location of the terminal and specifically the
9. south mooring dolphin;
10. b. His approach to the terminal and an excessive speed under the circumstances;
11. c. His approach to the terminal at an excessive angle;
12. d. His failure to issue orders to the tugs to assist in preventing the allision with the
13. terminal.

14. 16. In addition to being negligent, Captain Henshaw's acts or omissions constituted gross
15. negligence under Washington state law, as used in RCW 88.16.118 (1)(a), in that it was substantially
16. and appreciably greater than ordinary negligence given that at the time he was piloting a tanker that was
17. partially loaded with propane and butane, towards a terminal where propane and butane are loaded onto
18. ships such as the M/T LEVANT, requiring care considerably greater than he demonstrated at the time of
19. the incident.

20. 17. Consequently, third-party defendant Brian Henshaw should be held responsible for all
21. loss or damage that resulted from his gross negligence, without the benefit of the limitation of liability
22. he would be afforded for loss due to ordinary negligence under RCW 88.16.118(1)(a).

23. **PRAYER FOR RELIEF**

24. WHEREFORE, Defendants/Third-Party Plaintiffs request the following relief:

25. 1. For an order dismissing Plaintiffs' Amended Complaint with prejudice;
26. 2. For costs and disbursements incurred defending this lawsuit;

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 20212, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

<p>David Denton DENENBERG TUFFLEY PLLC (CA) 1900 AVENUE OF THE STARS STE 300 LOS ANGELES, CA 90067 310-356-4684 ddenton@dt-law.com <i>Attorney for Plaintiffs</i></p>	<p>Adil Aziz Siddiki LAW OFFICE OF JAMES R. VAUGHAN PC 1416 NW 46TH ST STE 105-436 SEATTLE, WA 98107 206-935-8077 adil@recoveryatty.com <i>Attorney for Plaintiffs</i></p>
<p>Colin Jeffrey Folawn Molly J. Henry Philip Raoul Lempriere SCHWABE WILLIAMSON & WYATT (OR) 1211 SW FIFTH AVE STE 1900 PORTLAND, OR 97204 206-407-1500 206-292-0460 (fax) cfolawn@schwabe.com mhenry@schwabe.com plempriere@schwabe.com <i>Attorneys for Foss Maritime Co</i></p>	

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on April 12, 2022, at Seattle, Washington.

/s/ Christopher W. Nicoll
Christopher W. Nicoll, WSBA No. 20771