FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AUG 19 1979

JOE R. ROMANE, Clerk
By _____ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

In the Matter of the Local Rules for the Western District of Washington	ORDER

The local rules for the Western District of Washington are hereby amended by repealing the present Supplemental Rules for Certain Admiralty and Maritime Claims and adopting new Supplemental Admiralty Rules as follows:

LAR 100

TITLE AND SCOPE OF THESE RULES

These rules are entitled Supplemental Admiralty Rules and may be cited as "Local Admiralty Rules." They apply to admiralty and maritime proceedings defined in Supplemental Rule A of the Federal Rules of Civil Procedure. The General Rules and Civil Rules apply to all civil cases, including admiralty and maritime proceedings, but if in any instance one of those rules is inconsistent with an Admiralty Rule, the Admiralty Rule shall control

LAR 105

VERIFICATION OF PLEADINGS AND CLAIMS TO PROPERTY

Verification of pleadings and claims to property, as required by the rules, shall be by the parties, or one of them,

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and, if a corporate party, by an officer, or by the attorney for said party or corporation. If the personal oath or the solemn affirmation of a party be demanded, the Court may on good cause require the same and stay the proceedings a reasonable time for the securing thereof.

LAR 110

PROCESS GENERALLY

(a) Instructions to Issue. A party who files a pleading and requires process to be issued by the Clerk shall also state, on the form furnished by the Clerk for such purpose, that party's instructions to the Marshal specifying the process to be issued.

(b) Process Held in Abeyance. If a party files a pleading seeking relief in rem or quasi in rem, which would require the Clerk to issue process, and the party does not wish the process to be issued at that time, the party shall request, on the form referred to in (a), that issuance of process be held in abeyance.

(c) Intangible Property.

(1) Issuance and effect of summons. The summons issued pursuant to Supplemental Rule C(3) shall direct the person having control of the funds or other intangible property to show cause, no later than 10 days after service, why the funds or other property should not be delivered to the Court to abide the judgment. The Court for good cause shown by plaintiff may shorten the time to a period of less than 10 days. Service of the summons has the effect of an arrest of the property and brings it within the control of the Court.

(2) Payment to Marshal. The person who is served may deliver or pay over to the Marshal the property or funds proceeded against or a part thereof sufficient to satisfy

plaintiff's claim. If such payment is made, the person served is excused from any duty to show cause.

(3) Manner of showing good cause. The claimant of the property may show cause why the property should not be delivered to the court by serving and filing a claim as provided in Supplemental Rule C(6), within the time allowed to show cause, and serving and filing an answer to the complaint within 20 days thereafter.

(4) Effect of failure to show cause. If a claim is not filed within the time stated in the summons, or an answer is not filed within the time allowed under this rule, the person who was served shall deliver or pay over to the marshal the property or funds proceeded against or a part thereof sufficient to satisfy plaintiff's claim.

(d) Marshal's Return. The person executing process shall file proof of service with the Clark, and the Marshal shall mail a copy of the return to the attorney at whose request the execution was effected.

(e) Seizure of Property Already in Custody of an Officer of the United States. Where property in the custody of an officer or employee of the United States is to be arrested or attached, the Marshal shall deliver a copy of the complaint and warrant for arrest or summons and process of attachment to such officer or employee or, if the officer or employee is not found within the district, then to the custodian of the property within the district. The Marshal shall notify such officer, employee or custodian not to relinquish such property from custody until ordered to do so by the Court.

LAR 115

PROCESS FOR ATTACHMENT AND GARNISHMENT

(a) Verification of complaint. The affidavit verifying

a complaint which includes a prayer for process under Supplemental Rule B, if made by a person who does not have personal knowledge of the facts alleged as grounds for plaintiff's claim, shall state the circumstances making it necessary for that person to make the verification and shall also state the sources of that person's information.

(b) Affidavit showing defendant's absence. The affidavit required by Supplemental Rule B, accompanying the complaint, shall state with particularity the efforts made to locate the defendant in the district.

(c) Order authorizing Clerk to issue process. Before the Clerk will issue a summons and process of attachment and garnishment under Supplemental Rule B, the complaint and accompanying affidavit must be reviewed by a judge. If the judge finds that probable cause has been shown, the judge will sign an order authorizing the clerk to issue process. Alias process may thereafter be issued by the Clerk upon application without further order of the Court.

(d) Hearing. Whenever property is attached, any person claiming an interest in the property shall be entitled to a hearing before a judge on not less than 3 days written notice to plaintiff. The person claiming the interest shall be entitled to an order vacating the attachment forthwith and granting other appropriate relief unless plaintiff shows cause at the hearing why such an order should not be granted.

LAR 120

SECURITY FOR COSTS AND MARSHAL'S FEES

(a) Costs Generally. In an action governed by Supplemental Rule E, a party may serve upon an adverse party and file a demand for security for costs. Unless otherwise ordered by the Court, the amount thereof shall be $500. The party noti-

fied shall post security within 5 days after service. A party who fails to post security when demanded may not participate further in the proceedings, except for the purpose of seeking relief from this rule.

(b) Costs in Action for Limitation of Liability. The amount of the security for costs required by Supplemental Rule F(1) is $500. Unless otherwise ordered by the Court, the security for costs may be combined with the security for value and interest.

(c) Marshal's Fees

(1) Deposit required before seizure. A party who seeks arrest or attachment of property in an action governed by Supplemental Rule E shall deposit a sum with the Marshal sufficient to cover the Marshal's estimated fees and expenses of seizing and keeping the property for at least 10 days. The Marshal is not required to execute process until the deposit is made.

(2) Additional deposit required after seizure. A party who has caused the Marshal to arrest or attach property shall advance additional sums from time to time as requested, to cover the Marshal's estimated fees and expenses until the property is released or disposed of as provided in Supplemental Rule E. Any party who fails to make an advance when demanded may not participate further in the proceedings, except for the purpose of seeking relief from this rule.

(b) Judicial relief. A party may apply to the Court for an order increasing the amount of security for costs. The Marshal shall notify the court if a party fails to advance sums as requested, after property has been seized, and may apply to the Court for directions if a question arises concerning the obligation of a party to advance moneys required under this rule.

A party may also apply to the Court for an order relieving that party from the requirement to (1) give security for costs, or (2) make a deposit before seizure, or (3) make an additional deposit. An application to the Court for relief under this rule shall be made by motion with notice to the Marshal and the other parties who have appeared. The motion may be heard summarily.

LAR 125

PUBLICATION OF NOTICE OF ACTION AND ARREST

The notice required by Supplemental Rule C(4) shall be published once, in accordance with Rule 150. The notice shall contain the following:

(a) Title and number of the action;

(b) Date of the arrest;

(c) Identity of the property arrested;

(d) Name and address of the attorney for plaintiff;

(e) A statement that claims of persons entitled to possession pursuant to Supplemental Rule C(6) must be filed with the Clerk and served on the attorney for plaintiff within 10 days after the date of publication; and

(f) A statement that answers to the complaint must be filed and served within 20 days after the filing of claims, and that in lieu thereof default may be noted and condemnation ordered.

LAR 130

DEFAULT IN ACTION IN REM

(a) Notice required. A party seeking a default judgment in an action in rem must show to the satisfaction of the Court that due notice of the action and arrest of the property has been given:

(1) By publication, as required in Rule 125;

(2) By service, on the master or other person having custody of the property;

(3) By delivery, to every other person who has not appeared in the action and is known to have an interest in the property.

The party seeking a default judgment may be excused, however, for failing to give notice to such "other person" upon a showing to the satisfaction of the Court that diligent effort was made to give the notice, without success.

(b) Persons with Recorded Interests. (1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must obtain a current certificate of ownership from the Coast Guard and give notice to the persons named therein who appear to have an interest. (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must obtain information from the issuing authority and give notice to the persons named in the records of such authority who appear to have an interest.

(c) Manner of Giving Notice. A required notice, other than by publication, of the action and arrest of the property shall be given by delivering a copy of the complaint and warrant of arrest. The delivery may be made by personal service or, where such personal service has been excused, by certified mail with return receipt requested.

(d) Motion for Default Judgment. Upon a showing that no one has appeared to claim the property and give security and that due notice of the action and arrest of property has been given, plaintiff may move for judgment at any time after the time for answer has expired. If no one has appeared,

plaintiff may have an ex parte hearing and judgment without notice. If any person has appeared and does not join in the motion for judgment, such person shall be given 5 days notice of the motion.

LAR 135

CUSTODY OF PROPERTY

(a) Safe Keeping of Property When Seized. When a vessel or cargo is seized the Marshal shall take custody and arrange for adequate and safe moorage and necessary security for the safe keeping of the vessel, which may include in the Marshal's discretion the placing of keepers on the vessel, or the appointment of a shipyard, terminal, yacht club, marina, or similar facility as custodian of the vessel for the Marshal.

(b) Petition for Change in Arrangements. After a vessel or cargo has been taken into custody by the Marshal, any party then appearing may petition the Court to dispense with keepers, or to remove to or place the vessel or cargo at a specified shipyard, terminal, yacht club, marina or similar facility, to designate a substitute custodian for the vessel or cargo, or for similar relief. Notice of the petition shall be given to the Marshal and to counsel for all parties who have appeared. The petition may be brought on for summary hearing, at which time the Court will determine whether such a facility or substitute custodian is capable of and will safely keep the vessel or cargo. The order entered by the Court after hearing the petition may fix reasonable towage, storage, moorage and any other authorized fee or charge incurred by or through the Marshal in arranging for keepers, for shifting or movement of the vessel or cargo, or for a substitute custodian. The order may also provide for the deposit in advance with the Marshal by the party seeking such order of funds enabling payment of any such charges when and

as incurred.

(c) Insurance. The Marshal may order insurance to protect the Marshal, his deputies, keepers, and custodians from liability assumed in seizing a vessel or cargo and performing whatever services are undertaken to protect the vessel or cargo and maintain the Court's custody. The party applying for seizure of the vessel shall reimburse the Marshal for premiums paid to effect the insurance. The party applying for removal of the vessel to another location, designation of a substitute custodian, or other relief which will require an additional insurance premium shall reimburse the Marshal therefor. The premiums charged for the liability insurance are taxable as costs.

(d) Claim by Supplier for Payment of Charges. A person who furnishes services or supplies to a vessel or cargo in custody, and has not been paid, and claims the right to payment as an expense of administration, should submit an invoice to the Marshal without delay. The Marshal may decline to pay an invoice unless it is ordered paid by the Court. The supplier has a right to submit the invoice to the Court for approval, in the form of a verified claim, at any time before the vessel is released. The supplier must serve copies of the claim on the Marshal and the attorneys for all parties appearing in the action. The Court may decline to consider the claim until a hearing is conducted to decide other claims against the property.

LAR 140

RELEASE OF PROPERTY

(a) Appraisal. An order for appraisal of property so that security can be given will be entered by the Clerk at the request of any interested party. If the parties do not

agree in writing upon an appraiser, the Court will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to the attorneys who have appeared in the action. The appraiser shall file the appraisal with the Clerk as soon as it is made.

(b) Proof that fees have been paid. Before any vessel or other property is released by the Marshal the party seeking dismissal of the action or release of the property before sale shall obtain an endorsement by the Marshal on the paper being presented to the Clerk or the judge showing that all expenses and fees due the Marshal have been paid or provided for.

LAR 145

SALE OF PROPERTY

(a) Notice. Unless otherwise ordered as provided by law, notice of sale of property in an action in rem shall be published daily, in accordance with Rule 150, for a period of 6 days prior to the day of sale.

(b) Payment of bid. The person whose bid is accepted shall immediately pay the Marshal the full purchase price, if the bid is no more than $500, or a deposit of at least $500, or 10% of the bid, whichever sum is greater, if the bid exceeds $500. The bidder shall pay the balance of the purchase price within 3 days thereafter, excluding Saturdays, Sundays, and holidays. If an objection to the sale is filed within that time, the bidder is excused from paying the balance of the purchase price until the sale is confirmed, and for a period of 3 days thereafter. Payments to the Marshal shall be made in cash, or by certified check or cashier's

check. The Court may specify different terms in any order of sale.

(c) Penalty for failing to pay balance of bid.

(1) Late payment. A successful bidder who fails to pay the balance of the bid within the time allowed under these rules, or a different time specified in an order by the Court, shall also pay the Marshal the cost of keeping the property, from the date payment of the balance was due to the date the bidder takes delivery of the property. The Marshal may refuse to release the property until this additional charge is paid.

(2) Default. A person who fails to pay the balance of a bid within the time allowed is deemed to be in default, and the Court may at any time thereafter order a sale to the second highest bidder, or order a new sale, as seems appropriate. Any sum deposited by the bidder in default shall be forfeited and applied to pay any additional costs incurred by the Marshal by reason of the forfeiture and default, including costs incident to a resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the Court.

(d) Accounting by Marshal. At the conclusion of the sale the Marshal shall forthwith file a written report to the Court of the fact of sale, the date thereof, the price obtained, and the name and address of the buyer.

(e) Confirmation.

(1) Without order of Court. A sale shall stand confirmed as of course, without any affirmative action by the Court, unless (a) a written objection is filed within the time allowed under these rules, or (b) the purchaser is in default for failing to pay the balance due the Marshal.

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(2) On motion. If an objection has been filed, or if the successful bidder is in default, the Marshal, the objector, the successful bidder, or a party may move the Court for relief. The motion will be heard summarily. The person seeking a hearing shall apply to the Court for an order fixing the date of the hearing and directing the manner of giving notice, and shall give written notice of the motion to the Marshal and all persons who have an interest. The Court may confirm the sale, order a new sale, or grant such other relief as justice requires.

(f) Objection to Sale.

(1) Manner and time for objecting. A person may object to the sale by filing a written objection with the Clerk and depositing a sum with the Marshal which will pay the expense of keeping the property for at least 10 days. Payment to the Marshal shall be made in cash, or by certified check or cashier's check. The objector must give written notice of the objection to the successful bidder and the parties to the action. The written objection must be endorsed by the Marshal with an acknowledgment of receipt of the deposit prior to filing. The objection must be filed within 3 days after the sale, excluding Saturdays, Sundays, and holidays.

(2) Disposition of deposits. (a) If the objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the Marshal in keeping the property until it is resold, and any balance remaining will be returned to the objector without delay. The objector will be reimbursed for the expense of keeping the property from the proceeds of a

subsequent sale. (b) If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day sale is confirmed, and any balance remaining will be returned to the objector forthwith.

(g) Title to property sold. Failure of a party to give required notice of the action and arrest of the vessel, or required notice of the sale, may afford grounds for objecting to the sale, but does not affect the title of the purchaser of the property.

LAR 150

PUBLICATION OF NOTICES

Every notice required to be published in a newspaper, by any statute of the United States or any rule applying to admiralty and maritime proceedings, including these rules, shall be published in the Seattle Daily Journal of Commerce unless the Court directs otherwise.

LAR 155

RATE OF PREJUDGMENT INTEREST ALLOWED

Unless the Court directs otherwise, an award of prejudgment interest shall be computed at the same rate authorized in 28 U.S.C. §1961, providing for interest on judgments.

These rules shall be effective September 1, 1979.

Walter T. McGovern, Chief Judge
United States District Court

Morell E. Sharp, Judge
United States District Court

Donald S. Voorhees, Judge
United States District Court

Jack E. Tanner, Judge
United States District Court