

## **APPENDIX**

**APPENDIX**

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**APPENDIX A**

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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

**[Filed: March 5, 2020]**

CIVIL ACTION NO.: 19-cv-13688

SECTION "T" (3)

JUDGE: LANCE M. AFRICK

MAGISTRATE: DANA DOUGLAS

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STEPHEN DOUGLASS, *et al.* )  
 )  
v. )  
 )  
NIPPON YUSEN KABUSHIKI KAISHA )  
 )

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CIVIL ACTION NO.: 19-cv-13691

SECTION "T" (3)

JUDGE: LANCE M. AFRICK

MAGISTRATE: DANA DOUGLAS

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JHON ALCIDE, *et al.* )  
 )  
v. )  
 )



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corporate organization, reporting line and corporate rules, and those related to litigation, arbitration, settlement and other dispute resolution of maritime cases.

4. NYK Line is a Japanese company, which provides global logistics services, including liner trade (up until March 2018), air cargo transportation, and logistics, as well as bulk shipping, and is involved in real estate. NYK Line's main office and address is located at 3-2, Marunouchi 2-chome, Chiyoda-ku, Tokyo, Japan 100-0005, and this is the address where I work.

5. In 2017, the ACX CRYSTAL was under timecharter to NYK Line for its container line service. The ACX CRYSTAL'S trade both past and present is limited to intra-Asia, and it has never made port calls in the United States.

6. On June 17, 2017 while underway off of Izu Peninsula, south of Tokyo, and within Japanese territorial waters, the ACX CRYSTAL was involved in a collision with the USS FITZGERALD.

7. I reviewed the amended complaints and the attachments thereto filed by Plaintiffs in the following litigations: *Douglass, et al. v. Nippon Yusen Kabushiki Kaisha*, 2:19-cv-13688, and *Alcide, et al. v. Nippon Yusen Kabushiki Kaisha*, 2:19-cv-13691, both of which were filed in the United States District Court for the Eastern District of Louisiana on November 18, 2019 and amended on February 10, 2020.

8. Plaintiffs' allegations in both amended complaints are based on a collision between the USS

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FITZGERALD and the ACX CRYSTAL in Japanese waters on June 17, 2017.

9. NYK Line was incorporated in Japan on September 29, 1885. See NYK Line's certificate of incorporation,<sup>1</sup> which is attached hereto as Exhibit 3, along with a certified English translation attached hereto as Exhibit 4. NYK Line has never been incorporated in the United States. Since its incorporation, NYK Line has maintained its principal place of business and headquarters in Japan. NYK Line has never, even for a temporary time period, relocated its principal place of business and headquarters from Japan to the United States. Additionally, NYK Line has never maintained a *de facto* principal place of business or headquarters in the United States. NYK Line's shareholder and board of directors meetings take place in Japan. In all aspects of corporate operation, Tokyo, Japan has always been and continues to be the center of NYK Line's operations, business, and corporate decision making.

10. NYK Line's board of directors direct, control, and coordinate NYK Line's global activities solely from Japan.

11. NYK Line itself maintains no physical offices in the United States. See NYK Line's Certificate of All

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<sup>1</sup> The literal translation of this document from Japanese is "The Certificate of All Present Matters" which was issued by the Registrar of Tokyo Legal Affairs Bureau in Japan.

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Historical Matters,<sup>2</sup> which is attached hereto as Exhibit 5, along with a certified English translation attached hereto as Exhibit 6. The certificate includes a record of NYK Line's corporate status and branch offices from January 1, 2016 to December 17, 2019. As the certificate shows, none of NYK Line's offices are located in the United States.

12. NYK Line has not operated a physical office in the United States for over 25 years. NYK Line's New York branch office closed in 1988, and its Resident Representative Office closed in 1993. The liner functions of the branch office were subsequently taken over by NYK Line (North America) Inc., discussed below. In the absence of express authorization, NYK Line's subsidiaries may not bind NYK Line. NYK Line exercises control over and monitors compliance of its subsidiaries.

13. NYK Line wholly owns NYK Group Americas Inc. ("NGA"), which is a holding company for other United States entities. NGA is incorporated in Delaware. *See* NGA's state corporate filings, which are attached hereto as Exhibit 7.

14. NYK Line (North America) Inc. ("NYK NA") is a subsidiary of NGA. NYK NA is incorporated in Delaware. *See* NYK NA's state corporate filings attached hereto as Exhibit 8. NYK NA has offices in New Jersey, California, Texas, Maryland, Florida, and Illinois. NYK NA performs business activities for NYK

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<sup>2</sup> Like the Certificate of All Present Matters, the Certificate of All Historic Matters was issued by the Registrar of Tokyo Legal Affairs Bureau in Japan.

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Line's North America business, including trade, marketing, sales, and operations services for North American RoRo business and, until 2018, NYK Line's North American container liner business. As the subsidiary and subordinate entity to NYK Line, NYK NA, absent express authority from NYK Line, cannot bind NYK Line because such authority is exclusively vested in NYK Line.

15. In Plaintiffs' amended complaints, there are allegations related to several entities, none of which is NYK Line. I will now address those entities in which NYK Line had or has a direct or indirect ownership interest and which relate to the United States.

- a. Ceres Terminals: *Douglass* Am. Compl. at ¶ 30, *Alcide* Am. Compl. at ¶ 66. Plaintiffs' amended complaints refer to "Ceres Terminal" without specifying which, if any, corporate entity the allegations relate to. At present, NYK Line no longer owns, directly or indirectly, any Ceres Terminal entities aside from the Canadian-based Ceres Halifax Inc. See Exhibit 9, which is an extract from NYK Line's Annual Securities Report, along with a certified English translation attached hereto as Exhibit 10. The annual securities report is entitled "Yuka Shoken Hokoku Sho," which is often abbreviated as "Yuhou," and it lists NYK Line's consolidated subsidiaries as of the end of March 2019. It is publicly available:  
<https://www.nyk.com/ir/library/yuho/2018/>



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icsFiles/afieldfile/2019/06/20/20190620\_yuhou.pdf.

- b. Maher Terminals: *Douglass* Am. Compl. at ¶ 32, *Alcide* Am. Compl. at ¶ 68. The link to a webpage is provided in Plaintiffs' amended complaints (<https://www.nyk.com/english/news/2016/004529.html>), the contents of which are attached hereto as Exhibit 11). Maher Terminals is a Delaware corporation. See Maher Terminals' state corporate filings attached hereto as Exhibit 12. In 2016, NYK Ports LLC acquired indirectly a minority share of Maher Terminals.
- c. NYK Ports LLC is not mentioned in Plaintiffs' amended complaints. NYK Ports LLC is a Delaware corporation. See NYK Ports LLC's state corporate filings attached hereto as Exhibit 13. NYK Line owns indirectly a majority share of NYK Ports LLC. As to Ceres Terminal in the United States and Maher Terminals, NYK Line's interest was limited to an indirect interest by way of its subsidiary, NYK Ports LLC.
- d. Natural Gas facility: *Douglass* Am. Compl. at ¶ 31, *Alcide* Am. Compl. at ¶ 67. NYK Line does not operate any facilities in Louisiana, including any natural gas facilities. The natural gas facility referenced in Plaintiffs' amended complaints is operated by Cameron LNG LLC, whose partners and shareholders include Japan LNG Investment, LLC ("JLI"). NYK Line owns indirectly a minority share of

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JLI. JLI is incorporated in Delaware. *See* JLI's state corporate filings attached hereto as Exhibit 14.

- e. *Douglass Am. Compl.* at ¶ 29, *Alcide Am. Compl.* at ¶ 65. Plaintiffs refer to "NYK Line's Group Americas." There is no such entity related to NYK Line by that name. The closest named entity related to NYK Line is NYK Group Americas Inc., which I addressed above in paragraph no. 13.

16. The vast majority of the people employed by NYK Line and its subsidiaries are not located in the United States. *See* NYK Line's 2019 annual report at p. 86, which is attached hereto as Exhibit 15. These figures which represent employees of both NYK Line and its subsidiaries are summarized as follows.

- a. At the end of the 2016 fiscal year<sup>3</sup>, NYK Line and its subsidiaries employed 35,935 people worldwide, 8,336 of whom were in Japan, 2,779 of whom were in North America, and 24,820 in other global regions.
- b. At the end of the 2017 fiscal year, NYK Line and its subsidiaries employed 37,820 people worldwide, 8,156 of whom were in Japan, 2,667 of whom were in North America, and 26,997 in other global regions.

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<sup>3</sup> NYK Line's fiscal year is from April each year to March the next year. This is the data at the end of fiscal year. Other data in this Declaration making reference to fiscal year is made on the same basis.

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- c. At the end of the 2018 fiscal year, NYK Line and its subsidiaries employed 35,711 people worldwide, 7,968, of whom were in Japan, 2,106 of whom were in North America, and 25,637 in other global regions.<sup>4</sup>

17. NYK Line itself employs only a fraction of this number, a total of 1,732 at the end of the 2018 fiscal year. Of these 1,155 are in Japan, 24 in the United States, 230 in other regions, and 323 mariners at sea.

18. A small fraction of NYK Line's employees are transferred to United States subsidiaries and other affiliated companies for temporary employment from time to time. These secondments are as follows.

- a. At the end of the 2016 fiscal year, NYK Line employed 1,697 people, 26 of whom were seconded to and working in the United States.
- b. At the end of the 2017 fiscal year, NYK Line employed 1,710 people, 26 of whom were seconded to and working in the United States.
- c. At the end of the 2018 fiscal year, NYK Line employed 1,732 people, 24 of whom were seconded to and working in the United States.

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<sup>4</sup> These figures include people employed in North America as a whole. Consequently, the actual number of people employed in the United States specifically is less than those provided.

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19. In their amended complaints, Plaintiffs make reference to Mr. Hiroshi Kubota. He was once President of NYK NA but resigned from that position effective November 16, 2017. He returned to Japan in April 2018 and resides in Japan since then. He is now a Corporate Officer of NYK Line in charge of NYK Line's Corporate Planning Group and Group Management Promotion Group in Japan. As President of NYK NA, Mr. Kubota made decisions for that subsidiary company. NYK Line in Japan provided direction and control over NYK NA and Mr. Kubota in operating that subsidiary.

20. Over 90% of NYK Line's annual revenue is earned from business conducted outside of North America. *See* Tables from NYK Line's annual reports 2017 and 2019, attached hereto as Exhibit 16. For the fiscal year ending on March 31, 2017, NYK Line's consolidated revenue that originated from North American entities was USD 1.36 billion, which represents approximately 7.91% of NYK Line's worldwide consolidated revenue for the same time period. For the fiscal year ending on March 31, 2019, NYK Line's consolidated revenue that originated from North American entities was USD 1.47 billion, which represents approximately 8.91% of NYK Line's worldwide consolidated revenue for the same time period.<sup>5</sup> A full copy of NYK Line's 2017 annual report is publicly available and can be found at

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<sup>5</sup> These figures include revenue earned from North American entities as a whole. Consequently, the actual annual revenue generated from United States entities specifically is less than the amounts provided.

[https://www.nyk.com/english/ir/pdf/2017\\_nykreport\\_all.pdf](https://www.nyk.com/english/ir/pdf/2017_nykreport_all.pdf).

21. NYK Line owned and/or chartered vessels made 2,053 calls at United States ports in 2017, 1,496 calls in 2018, and 1,025 calls in 2019. They respectively represent approximately 7.72% of 26,595 calls at worldwide ports in 2017, 7.14% of 20,957 calls in 2018, and 6.33% of 16,195 calls in 2019.

22. I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

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**APPENDIX B**

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**STATUTORY PROVISIONS AND RULES  
INVOLVED**

**28 U.S.C. § 2072.**

**Rules of procedure and evidence; power to  
prescribe**

- (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates [magistrate judges] thereof) and courts of appeals.
- (b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.
- (c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title [28 USCS § 1291].

**Federal Rule of Civil Procedure 4. Summons**

- (k) Territorial Limits of Effective Service.
- (1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:
- (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

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(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) *Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

**Federal Rule of Civil Procedure 82.  
Jurisdiction and Venue Unaffected**

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is governed by 28 U.S.C. § 1390.

USCS Fed Rules Civ Proc R 82

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**APPENDIX C**

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**U.S.C.S. Fed. R. Civ. Proc. R. 4**

**Notes of Advisory Committee on 1993  
amendments.**

SPECIAL NOTE: Mindful of the constraints of the Rules Enabling Act, the Committee calls the attention of the Supreme Court and Congress to new subdivision (k)(2). Should this limited extension of service be disapproved, the Committee nevertheless recommends adoption of the balance of the rule, with subdivision (k)(1) becoming simply subdivision (k). The Committee Notes would be revised to eliminate references to subdivision (k)(2).

Purposes of Revision. The general purpose of this revision is to facilitate the service of the summons and complaint. The revised rule explicitly authorizes a means for service of the summons and complaint on any defendant. While the methods of service so authorized always provide appropriate notice to persons against whom claims are made, effective service under this rule does not assure that personal jurisdiction has been established over the defendant served.

First, the revised rule authorizes the use of any means of service provided by the law not only of the forum state, but also of the state in which a defendant is served, unless the defendant is a minor or incompetent.



Second, the revised rule clarifies and enhances the cost-saving practice of securing the assent of the defendant to dispense with actual service of the summons and complaint. This practice was introduced to the rule in 1983 by an act of Congress authorizing “service-by-mail,” a procedure that effects economic service with cooperation of the defendant. Defendants that magnify costs of service by requiring expensive service not necessary to achieve full notice of an action brought against them are required to bear the wasteful costs. This provision is made available in actions against defendants who cannot be served in the districts in which the actions are brought.

Third, the revision reduces the hazard of commencing an action against the United States or its officers, agencies, and corporations. A party failing to effect service on all the offices of the United States as required by the rule is assured adequate time to cure defects in service.

Fourth, the revision calls attention to the important effect of the Hague Convention and other treaties bearing on service of documents in foreign countries and favors the use of internationally agreed means of service. In some respects, these treaties have facilitated service in foreign countries but are not fully known to the bar.

Finally, the revised rule extends the reach of federal courts to impose jurisdiction over the person of all defendants against whom federal law claims are made and who can be constitutionally subjected to the jurisdiction of the courts of the United States. The present territorial limits on the effectiveness of service

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to subject a defendant to the jurisdiction of the court over the defendant's person are retained for all actions in which there is a state in which personal jurisdiction can be asserted consistently with state law and the Fourteenth Amendment. A new provision enables district courts to exercise jurisdiction, if permissible under the Constitution and not precluded by statute, when a federal claim is made against a defendant not subject to the jurisdiction of any single state.

The revised rule is reorganized to make its provisions more accessible to those not familiar with all of them. Additional subdivisions in this rule allow for more captions; several overlaps among subdivisions are eliminated; and several disconnected provisions are removed, to be relocated in a new Rule 4.1.

The Caption of the Rule. Prior to this revision, Rule 4 was entitled "Process" and applied to the service of not only the summons but also other process as well, although these are not covered by the revised rule. Service of process in eminent domain proceedings is governed by Rule 71A. Service of a subpoena is governed by Rule 45, and service of papers such as orders, motions, notices, pleadings, and other documents is governed by Rule 5.

The revised rule is entitled "Summons" and applies only to that form of legal process. Unless service of the summons is waived, a summons must be served whenever a person is joined as a party against whom a claim is made. Those few provisions of the former rule which relate specifically to service of process other than a summons are relocated in Rule 4.1 in order to simplify the test of this rule.

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Note to Subdivision (k). This subdivision replaces the former subdivision (f), with no change in the title. Paragraph (1) retains the substance of the former rule in explicitly authorizing the exercise of personal jurisdiction over persons who can be reached under state long-arm law, the “100-mile bulge” provision added in 1963, or the federal interpleader act. Paragraph (1)(D) is new, but merely calls attention to federal legislation that may provide for nationwide or even world-wide service of process in cases arising under particular federal laws. Congress has provided for nationwide service of process and full exercise of territorial jurisdiction by all district courts with respect to specified federal actions. See 1 R. Casad, *Jurisdiction in Civil Actions* (2d Ed.) chap. 5 (1991).

Paragraph (2) is new. It authorizes the exercise of territorial jurisdiction over the person of any defendant against whom is made a claim arising under any federal law if that person is subject to personal jurisdiction in no state. This addition is a companion to the amendments made in revised subdivisions (e) and (f).

This paragraph corrects a gap in the enforcement of federal law. Under the former rule, a problem was presented when the defendant was a non-resident of the United States having contacts with the United States sufficient to justify the application of United States law and to satisfy federal standards of forum selection, but having insufficient contact with any single state to support jurisdiction under state longarm legislation or meet the requirements of the Fourteenth

Amendment limitation on state court territorial jurisdiction. In such cases, the defendant was shielded from the enforcement of federal law by the fortuity of a favorable limitation on the power of state courts, which was incorporated into the federal practice by the former rule. In this respect, the revision responds to the suggestion of the Supreme Court made in Omni Capital Int'l v. Rudolf Wolff & Co., Ltd., 484 U.S. 97, 111 [98 L. Ed. 2d 415] (1987).

There remain constitutional limitations on the exercise of territorial jurisdiction by federal courts over persons outside the United States. These restrictions arise from the Fifth Amendment rather than from the Fourteenth Amendment, which limits state-court reach and which was incorporated into federal practice by the reference to state law in the text of the former subdivision (e) that is deleted by this revision. The Fifth Amendment requires that any defendant have affiliating contacts with the United States sufficient to justify the exercise of personal jurisdiction over that party. Cf. Wells Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 418 (9th Cir. 1977). There also may be a further Fifth Amendment constraint in that a plaintiff's forum selection might be so inconvenient to a defendant that it would be a denial of "fair play and substantial justice" required by the due process clause, even though the defendant had significant affiliating contacts with the United States. See DeJames v. Magnificent Carriers, 654 F.2d 280, 286 n.3 (3rd Cir.), cert. denied, 454 U.S. 1085 [70 L. Ed. 2d 620] (1981). Compare World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293–294 [62 L. Ed. 2d 490] (1980); Insurance Corp. of Ireland v. Compagnie des Bauxites

de Guinee, 456 U.S. 694, 702–03 [72 L. Ed. 2d 492] (1982); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476–78 [85 L. Ed. 2d 528] (1985); Asahi Metal Indus. v. Superior Court of Cal., Solano County, 480 U.S. 102, 108–13 [94 L. Ed. 2d 92] (1987). See generally R. Lusardi, *Nationwide Service of Process: Due Process Limitations on the Power of the Sovereign*, 33 *Vill. L. Rev.* 1 (1988).

This provision does not affect the operation of federal venue legislation. See generally 28 U.S.C. § 1391. Nor does it affect the operation of federal law providing for the change of venue. 28 U.S.C. §§ 1404, 1406. The availability of transfer for fairness and convenience under § 1404 should preclude most conflicts between the full exercise of territorial jurisdiction permitted by this rule and the Fifth Amendment requirement of “fair play and substantial justice.”

The district court should be especially scrupulous to protect aliens who reside in a foreign country from forum selection so onerous that injustice could result. “[G]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.” Asahi Metal Indus. v. Superior Court of Cal., Solano County, 480 U.S. 102, 115 [94 L. Ed. 2d 92] (1987), quoting United States v. First Nat’l City Bank, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting).

This narrow extension of the federal reach applies only if a claim is made against the defendant under federal law. It does not establish personal jurisdiction if the only claims are those arising under state law or the law of another country, even though there might be

diversity or alienage subject matter jurisdiction as to such claims. If, however, personal jurisdiction is established under this paragraph with respect to federal claim, then 28 U.S.C. § 1367(a) provides supplemental jurisdiction over related claims against that defendant, subject to the court's discretion to decline exercise of that jurisdiction under 28 U.S.C. § 1367(c).