PROCEDURES IN ADMIRALTY FOR UNITED STATES MARSHALS

U. S. Department of Justice

Jurisdiction.—Admiralty jurisdiction is a Constitutional grant (Article III, Section 2). Admiralty and maritime jurisdiction is part of the judicial power conferred upon the courts of the United States by the Constitution, which provides that: "The judicial power shall extend *** to all cases of admiralty and maritime jurisdiction." The jurisdiction is exclusively in the federal courts. The purpose of the grant federal courts is to make and keep maritime law essentially uniform and harmonious throughout the international and interstate relations of the nation.

The Judiciary Act of 1789 extended concurrent jurisdiction over a maritime claim to the state courts, but such courts are not competent to give admiralty remedies such as *in rem* arrest and "foreign attachment" (the process of maritime attachment and garnishment to secure personal jurisdiction of a defendant in a maritime claim).

Briefly, the admiralty jurisdiction of the United States extends to all waters, salt or fresh, with or without tides, natural or artificial, which are in fact navigable in interstate or foreign water commerce; whether or not the particular body of water is wholly within a state, and whether or not the occurrence or transaction that is the subject matter of the suit is confined to one state. Thus, the Erie Canal is within the jurisdiction, though wholly within the State of New York, for it is navigated in interstate water commerce. The status of the Great Lakes and the Mississippi and its tributaries is clear; they are within the jurisdiction. What decisions there are point to the common sense conclusion that small bodies of water, wholly in one state and not navigable in interstate or foreign water commerce, are not included in the admiralty jurisdiction of the United States.

Marshal's Authority.—The United States Marshals Service becomes involved in admiralty matters by carrying out orders of the Federal courts. (28 U.S.C. § 569.) Several of the Federal Rules of Civil Procedure and sections of the United States Code outline the duties and responsibilities of the marshal in execution of all lawful writs, process and orders issued under authority of the United States. (See Supplemental Rules of Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure.)

Types of Maritime Actions.—There are two types of maritime actions, and two ways the plaintiff may proceed to satisfy his claim. They are proceedings "in rem" and "in personam."

(a) Proceeding "in rem"—"In rem" actions are brought to enforce any maritime lien, which is a right against a particular vessel or cargo. It could have stemmed from a ship mortgage, repairs, the supplying of necessaries, crew wages, collision liability, loss of or damages to cargo, bodily injury or wrongful death. Execution of a Warrant of Arrest of the vessel or cargo is necessary to acquire jurisdiction in an in rem action.

(b) Proceeding "in personam"—The words "in personam" mean "against a person or persons." e.g., the owner or owners of a vessel where the vessel has not come into the district. An action in personam is used to secure a judgment against the person rather than against the vessel or other property. Often an action will be brought both in personam and in rem. Such is necessary where the claim is in excess of the value of the vessel.

The writ of maritime attachment and/or garnishment is used not only to obtain security for payment of any judgment that may be recovered in the in personam action, but also a means to acquire jurisdiction over a defendant not found in the district.

Venue.—Venue is location (district) where the case is filed. If the seizure is made in a foreign jurisdiction or outside the three-mile territorial limit, the court of the district to which the vessel is brought has jurisdiction. If the seizure is made within a judicial district of the United States, the district court of that district has jurisdiction.

An in rem suit must be started in the district where the vessel is located. (Supplemental Rule C(2) and E(3)(a).) However, if the vessel cannot be found or located, then the complaint may be filed in any district of the United States and the allegation made that she is expected within the district within the pendency of the action. Of course, the court will not acquire jurisdiction until the vessel is actually arrested within that district.

When process in rem or of maritime attachment or garnishment has been issued, the vessel can be seized only in the district issuing the process. Supplemental Rule E(3).

Basis for Seizure.—Upon the filing of the complaint, the Clerk is required to 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. The Warrant of Arrest is directed to the marshal and commands him to arrest the vessel as described in the complaint and to hold her pending further order of the court.

A Writ of Maritime Attachment or Garnishment is served in the same manner as a Warrant for Arrest. No summons is issued with a Warrant for Arrest, but a summons must be issued and served with a Writ of Maritime Attachment. (Supplemental Rule B(1).) (The complaint must include a prayer for issuance of the Writ of Maritime Attachment and must be accompanied by an affidavit by plaintiff or his attorney that the in personam defendant cannot be found in the district. (Supplemental Rule B(1).)

Marshal's Responsibility ("Live Ship").—Generally the Federal Rules of Civil Procedure and the Supplemental Rules for certain Admiralty and Maritime Claims outline the requirements for pursuing admiralty actions in the Federal courts. However, these same procedures give little attention or direction to the United States Marshals Service, except to indicate the marshal is required to execute service of process in these matters. The following is a step-by-step procedure for handling admiralty problems that is applicable to all districts that are involved with admiralty actions.

Receipt of Process.—Upon receipt of a Warrant or Arrest or Writ of Maritime Attachment of a vessel, the marshal should insure: (1) that the proper documents have been filed with or issued by the Clerk of the United States district court in his district; (2) that he has received two certified copies of the warrant of arrest or writ of attachment with a copy of the complaint attached to the copy for service; (3) that adequate instructions are included therewith; (4) that appropriate advance fees are received; and (5) that the duties, obligations and responsibilities of the marshal and attorney for plaintiff are discussed and understood by all concerned and reduced to writing on the USM Form 285.

Documents.—The Warrant of Arrest or Seizure must state whether the vessel may or may not receive or discarge cargo. The Warrant for Arrest should also be checked to insure that no additional required information has been inadvertently omitted. (See Supplemental Rule E(4)(a).) Beyond form, however, the position of the Justice Department in these matters is that if the Warrant or Writ is valid on its face and all other conditions concerning the process's issuance have been met, then the marshal has no alternative but to execute same.

Instructions to Marshal.—The attorney for plaintiff shall complete USM Form 285, giving complete detailed

instructions for service of process to include exact location of vessel to be seized and other actions required of the marshal subsequent thereto. The USM Form 285 must also include any special instructions or relate extraordinary circumstances pertinent to the seizure, if applicable. Occasionally it may be necessary for the marshal to assist with the preparation of these instructions to insure that all things being requested by the attorney are spelled out in detail on the USM Form 285.

Advance Deposits for Costs.—Pursuant to 28 U.S.C. § 1921 the marshal shall collect in advance sufficient fees to cover cost of service of the process, marshal's insurance, and ten days keeper fees. (See Supplemental Rules E(4)(e).) Due to local labor situations and prevailing work conditions, some districts are required to pay a higher hourly or daily rate for keepers than other districts. But regardless of the going rate, the marshal shall insist on a ten-day advance for his keeper fees. The custody and safekeeping of vessels pursuant to civil, admiralty or bankruptcy actions on behalf of private litigants rests with the marshal effecting the seizure and are conditioned upon the advance of sufficient funds by the moving party to cover the costs incidental to the safekeeping and custody requirements. The amount of funds deemed sufficient shall be determined by the U.S. Marshal. The responsibility for preserving and safekeeping of a vessel extends to its hull, engines, apparel, furniture and accouterments. It is legally presumed that the vessel, etc., will be kept and preserved in essentially the same condition as when it was arrested or attached. (The keeper is aboard the vessel to protect her and the United States, and the vessel is insured to protect the marshal and United States, not the attorney or moving party having the vessel seized.) Periodically, following seizure of the vessel, the party initiating such action shall be requested to deposit such additional funds in advance with the the United States marshal as may be necessary to cover costs until the litigation is concluded. (Upon failure of the party initiating such action to deposit additional sums as requested, the marshal shall seek relief from the district court including, without limitation, the right to request the release of the property from arrest or attachment.) Such expenses shall be taxed as costs as the district court may determine. Remember, in accordance with the law (31 U.S.C. § 665) no employee, including the marshal, has the right to obligate government funds to defray costs or expenses incurred in seizures on behalf of private litigants. The private litigant must pay—and pay in advance. (When the United States requests the arrest or attachment, no deposit is, of course, required. However, if custody is to last longer than a few days, the U.S. Attorney

or Admiralty and Shipping Section Office involved will usually be able to get the "client agency" to turn over funds for the marshal in advance or arrange for a substantial custodian to be paid by the "client agency.")

Time chartered vessels.—Ascertain from the attorney if possible, whether the vessel is under time charter to the U.S. Government. The nearest office of the Admiralty and Shipping Section of the Department of Justice will assist in this matter. Vessels owned by the United States, or demise chartered by it (bareboat charter), are not subject to seizure (Title 46, Section 741). However, vessels under time charter may be seized (Title 46, Section 742) although the U.S. Attorney may intervene and, per court order, prevent the seizure or cause her early release depending on the need for the ship and the request of the agency acting as charterer. Therefore, when possible, early notification to the U.S. Attorney or Admiralty and Shipping Section Office of all impending vessel seizures may well eliminate the necessity for considerable later work concerning the seizure and inconvenience for all concerned.

Public Notice of Arrest or Attachment.—Prepare sufficient copies of the Notice of Arrest or Attachment to adequately post the vessel (Original of notice to accompany the complaint and Warrant of Arrest or Writ of Maritime Attachment).

Appointment of Custodian (Keeper).—In selecting a keeper or keepers for an arrested or attached vessel, reasonable care should be taken to secure a person for the appointment who has a knowledge of vessels of the type involved and their safekeeping. In addition, the keeper or keepers selected shall be sufficiently bonded and shall not be members or relatives of the family of the U.S. Marshal or his employees. At the time of appointment, a certificate of appointment as custodian will be accomplished. This certificate serves as identification of the keeper and clearly establishes his position in relation to the United States Marshals Service. The keeper represents the interests of the United States Marshals Service to insure that the vessel is safely kept in custody. Keepers are to be thoroughly oriented to the effect that they are strictly responsible to the marshal and are not to accept instructions, orders, etc. from any other source.

Responsibility of Arresting Deputy.—The arresting deputy should insure that he has complete knowledge of all his responsibilities, duties, and obligations concerning the seizure prior to departing his headquarters. He should make a personal check of all documents to be used in the seizure to insure they are complete in every respect, and he should make certain that he has sufficient prior knowledge of the

area of the seizure which will enable him to proceed directly to the location where the seizure (arrest or attachment) is to be effected.

(a) The arresting deputy will go over the duties, responsibilities, and United States Marshals Service liabilities with the keeper to insure that the keeper is well acquainted with his duties and responsibilities.

(b) Vessels will only be seized that are secured to a dock or in tandem with another vessel secured to a dock or berth within the port. Any exceptions to this policy will be accomplished only upon court order and upon receipt of a written indemnity agreement acceptable to the marshal.

(c) In the event water transportation is necessary to reach the vessel, the deputy will insure that these arrangements have been made prior to his departure from headquarters. To this extent, the U.S. Coast Guard, where available, will assist with water transportation requirements. If Coast Guard facilities are not conveniently available, the moving party may be requested to provide all necessary transportation to and from vessels that cannot be reached by land transportation.

(d) Upon arrival at the vessel, the deputy should serve a copy of the Warrant of Arrest or Writ of Maritime Attachment or Garnishment, the complaint, and copy of the Public Notice of Arrest or Attachment upon the Captain or person having custody of the vessel, and by fixing a copy of the Public Notice of Arrest thereof in a conspicious place on the vessel—"preferably the wheel house." In the event the Captain or person having custody of said vessel is not found aboard same, the deputy will post a copy of these documents as stated above.

(e) The Captain or person having custody of the vessel is to be informed that the vessel is under seizure and is not to be moved from her present location without the express permission of the marshal. The marshal may not give such permission except under order of the U.S. District Court, or to safeguard or preserve such property, or to otherwise fulfill his legal liabilities toward the vessel or cargo; or to prevent or lessen a loss, damage, liability or claim under the policy of insurance.

(f) The Captain or person having custody of said vessel will be further advised that the warrant of

arrest stipulates whether the vessel may receive or discharge cargo. The marshal or his keeper will not interfere with repairs, activities normal to a vessel in operation, or the arrival or departure of the crewmembers, longshoremen, or other personnel working on or having business at the vessel.

(g) At this time, arrangements should be made to insure that the keeper has adequate shelter aboard or, if there is only one keeper and he is to remain aboard at night, lodging. Also, the question of meals should be resolved before the deputy returns to headquarters. If the Captain fails to produce a suitable place for the keeper, there is no alternative to calling plaintiff's attorney to put up enough money for several keepers each of whom will be aboard eight hours and will require relief for meals ashore.

(h) Communication with Headquarters.—Prior to leaving the vessel, the deputy should endeavor to locate the nearest telephone or arrange for other means of communication and instruct the keeper to contact headquarters once or twice daily, for further instructions and to make status reports. Upon return to headquarters, the seizing deputy should immediately complete his return indicating exact time, date, and place of seizure, and all other pertinent information required on the USM Form 285, including identity of United States Marshals Service keeper placed on the vessel. When a vessel is not immediately released by the posting of a bond, Customs should be informed of the seizure and requested to deny clearance to depart the port without notification of release from the United States Marshals Service. See Supplemental Rule E(4)(b).

(i) Publication of Notice of the Action and Arrest.—The publication of seizures on behalf of private litigants is the responsibility of the plaintiff, though the marshal may still do the job if he wishes. Seizures on behalf of the United States, however, continue to be advertised by the marshal. The local newspaper (previously designated by the court to handle all offical court publications) will be used for this purpose.

The notice, to be published once, must provide the title and court number of the suit, the date of the arrest, the identity of the property arrested, the name of the marshal and the name and address of the attorney for the plaintiff. It shall also contain a statement that claims of persons entitled to possession (i.e., the "claimant") must be filed with the Clerk of the

District Court and served on the attorney for plaintiff within 10 days after the date process was executed, or within such additional time as may be allowed by the court; that answer to the complaint must be filed and served within 20 days after the claim is filed; that in lieu thereof, default may be noted and condemnation ordered.

Marshal Responsibility, "Dead" Ship.—The procedures for seizure of a "dead" ship are the same as the receiving and executing of a Warrant of Arrest on a live ship.

A "dead" ship is a vessel the engines of which are not working so that she has neither motive power nor power to generate electricity. In such case she may have no crew aboard. Where the owner has no representative aboard a dead ship to maintain responsibility for him, as where the owner's representative walks off when the marshal walks aboard to arrest or attach the ship, the full level of responsibility for the care and safekeeping of the vessel rests upon the court. The marshal acts for the court, of course, but he should not assume the custody of a dead ship without full and adequate instructions from the court. Where an owner's representative is aboard, the United States Marshals Service representative needs only to follow the usual routine for maintaining custody of the vessel.

Because of the greater level of responsibility and liability involved, the arrest or attachment of a "dead" ship should be approached with carefully programmed actions (much of which will have to be covered by court instructions —See Supplemental Rule E(4)(d))—which should encompass the following:

(a) Determination of the exact location of the vessel to be seized and the amount and status of the charges for moorage or wharfage. Advances should be obtained to cover same in futuro. (Charges accrued before seizure should be made the subject to suit by the facility providing the service. The marshal need not concern himself with collecting same as part of the advances.)

(b) Evaluation of the place of moorage or wharfage should be made to determine whether the vessel should be moved to a more secure or less costly facility. All reasonable precautions should be taken to insure that the vessel is not hazarded where she lies nor does she unreasonably hazard the persons or property of others.

(c) Evaluation of the minimum reasonable requirements for keepers and custodians should be made. The size, value and condition of the vessel should be

taken into consideration in making this determination. An additional factor for consideration is the cargo, equipment and furnishings aboard the vessel.

Arrangements will have to be made through a regular ship's agent or ship repair company to periodically inspect the vessel and her lines and to pump the bilges as required. Periodically, the lines may have to be shortened, lengthened or even changed. Large vessels require periodic turning of the propeller shaft and heat to keep the electric motors from getting damp. Failure to properly and reasonably maintain the engines and equipment could result in unnecessary litigation against the United States—and even possible liability.

In the case of large vessels, where it is reasonably expected that a high level of care and maintenance will be required, the services of a steamship agency or ship repair company should be obtained (upon application of the marshal to the court for authorization thereof) to take over the duties for such care and maintenance on behalf of the marshal. The steamship agency or repair company may even be willing to act as substitute custodian entirely, rather than merely provide their services as an adjunct to the marshal's exercise of custody through a keeper. (In the absence of an emergency situation, care should be taken to obtain court approval prior to embarking upon any actions relative to a seized vessel beyond the initial arrest or attachment and provision of a keeper.)

An inventory of the property and cargo of a seized or attached "dead" ship should be accomplished under the direction of United States Marshals Service personnel. In the case of large vessels, it may be advisable to secure the services of a steamship agency, or a company specializing in such inventories, to conduct the inventory. This is especially appropriate where United States Marshals Service personnel are not available who have the necessary technical knowledge to conduct a valid inventory. A camera with flash attachment is a tool which is invaluable when an inventory is being taken. A photographic record of the tools, equipment, cargo, and other property aboard the vessel is of value, should claims be made against the United States Marshals Service for lost, stolen, or damaged property. In the taking of the inventory, care should be exercised to describe the articles which do not have serial numbers in general terms. The inventory should specify the article and its location aboard the vessel. Sealed areas and rooms should be clearly noted in the inventory. Where possible, it is advisable to get the parties (i.e., plaintiff and claimant) to agree on the results of the inventory, thus estopping them from contesting the correctness of the inventory.

When a dead ship is to be visited by persons for purposes of inspection prior to sale, the United States Marshals Service personnel holding custody of the vessel should require the signature of all such persons boarding the vessel. The signature should appear on a statement acknowledging that the person is aware that the United States Marshals Service makes no representations or warranties as to the seaworthiness or safety of the vessel and that in consideration of their being given permission to board and inspect the vessel, they specifically agree to assume all liability for any and all damage or injury which might be sustained during their period aboard and, further, that they agree to indemnify the United States Marshals Service for any damage which might be sustained by the vessel and its appurtenances which they might cause during their visit.

When a dead ship is seized, it is a good policy to contact the U.S. Coast Guard and have a mark painted on the vessel at bow and stern to indicate her present water line. This will enable the keeper to determine whether the vessel is taking water. In addition to frequent checks by the keeper, the Coast Guard will, upon request, have its regular harbor patrol note the position of the water in relation to the above-mentioned painted mark during their routine patrol of the area.

Value of Vessel.—Value of the vessel is a factor which must be established for purposes of insurance and statistical reports. The owner or operator of the vessel can often provide a "guesstimation" of the value. It is generally preferable to be high rather than low in this estimate of value, since it will be used for insurance coverage and results in greater insurance protection to the United States. Of course, it should not be so high as to be unreasonable.

Vessel (Both Live and Dead) Movement After Seizure.—Other than in emergencies, vessels which require movement to another dock or berth after seizure will only be allowed to shift after proper order from the court specifying the exact location of the movement from point A to point B is tendered to the marshal with USM Form 285 (Instructions to Marshal). If the vessel is shifted with assistance of tugs and/or under her own power, the marshal will require an indemnity agreement be executed by the parties requiring the shift. This agreement must indemnify and hold harmless the U.S. Marhsal and the United States of America from any third-party action that may result from shifting the vessel.

Vessel Operation During Seizure.—The marshal, deputies and keepers of a vessel arrested or attached shall not interfere with the conduct of cargo and other operations normal to a vessel in berth, nor repair work, drydocking or undrydocking in the case of a vessel in a shipyard, unless the

court so orders. Neither the United States nor the marshal shall be liable for the consequences of the continuation of any such activities during the arrest or attachment. Upon motion of any interested party (which may be made ex parte, i.e., by the marshal—when the urgency of the matter requires) and for good cause shown, the court may, of course, order the marshal to prevent the conduct of any operation of a vessel under arrest or attachment.

Release of Vessel.—The following are ways the vessel may be released:

(a) Special Bond.—Except in cases of seizures for forfeiture under any law of the United States, whenever process of maritime attachment and garnishment of 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 any appellate court. The parties may stipulate to the amount and nature of such security. In the event of the liability or refusal of the parties to so 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 (1) twice the amount of the plaintiff's claim or (2) 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 six percent (6%) 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 may be 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. Such bond or stipulation shall be endorsed 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.

(c) Stipulation and Order to Release.—Release by Consent, Stipulation or Order of Court: Any vessel, cargo or other property in the custody of the marshal

may be released forthwith upon (1) the clerk's 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; (2) if all costs and charges of the court and its officers such as the marshal shall have first been paid. (Supplemental Rule E(5)(a) 2(c)). If there is any question concerning the form or amount of the security, an order of the court will be required before the release. Of course, the Clerk can order the release upon the dismissal or discontinuance of the action, but the marshal shall not deliver any property so released until his costs and charges shall first have been paid.

(d) Court Rule.—Local district court rules may provide for other types of releases. The marshal shall acquiesce in said rules. The order or stipulation for release of the vessel or other property may be presented to the U.S. Marshal in many forms. However, within the writ or stipulation it must state that the marshal must release the vessel. If the writ or stipulation does not state for the marshal to release the vessel, then it is necessary for the Clerk of the Court to issue an Order for Release.

Upon release of a "dead" ship, the party receiving custody from the United States Marshals Service should receipt for the vessel and the items of property shown on the inventory. Failure to accomplish this exposes the United States to claims for any losses or damage. The release from custody will in most cases entail a re-inventory of the vessel and its property by the party assuming custody from the United States Marshal Service. If the party agrees to sign for the property without benefit of a re-inventory, he should be allowed to do so inasmuch as he is thereby estopped from effectively exerting claims for loss or damage.

Substitute Custodian.—An alternative to placing a keeper aboard a small, easily moved vessel, such as a yacht, is to have a repair yard or marina accept the responsibility and liability for her safekeeping and custody during the pendency of the action. (The arrangement is an alternative for ocean-going vessels too, but a steamship agency or repair company should be the substitute custodian, since such firms are used to handling vessels regularly.) This is a choice the plaintiff makes and is accomplished by his attorney's approaching the court with a motion and order specifically appointing a substitute custodian. The appointment is conditioned upon the acceptance by the substitute custodian of all responsibility including insurance for any

liability arising during or incidental to the appointment and on the moving party's agreement to hold the United States and the marshal harmless from any and all claims arising during such substitute custodianship.

Upon grant by the court of the motion and signing of the order in response thereto, the marshal may then deliver custody of the vessel to the court-appointed custodian. (Where this alternative is resorted to, the vessel is, of course, seized by the marshal and custody is then turned over to the court-appointed custodian.) The court-appointed custodian is provided with a copy of the motion and order, and the order serves as his authority to undertake the custody of the vessel.

All costs and expenses incidental to the keeping of the vessel in this manner should be clearly set forth in the order and include a statement that these costs, etc., will or will not be paid through the marshal out of deposits made by the moving party. When costs are to be handled through the marshal, United States Marshals Service personnel should clearly outline a procedure for the control thereof to insure that said costs do not exceed the funds on deposit. Should the moving party fail to maintain a deposit sufficient to cover costs, the marshal should inform the court-appointed custodian of that fact and make a written demand of the attorney for the plaintiff for more funds. Failing response, the marshal will petition the court, through the U.S. Attorney's Office or the Department of Justice, for release of the vessel. It should be made clear to all parties concerned that the marshal does not assume liability for any costs incurred incidental to a court-appointed custodianship. In such cases, the marshal may serve only as disbursing officer for the action. It is re-emphasized that no funds have been appropriated nor are available for obligation or payment of costs incidental to the safekeeping of property on behalf of private litigants.

Upon arrest or attachment of a vessel which is to be turned over to the custody of a court-appointed custodian, arrangements should be made to release the vessel to said custodian at the place of seizure. The same provisions which apply to the marshal's movement of the vessel shall apply to the court-appointed custodian.

Sale of Vessels and Property.—

Action 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.

Interlocutory Sales.—Frequently, prior to final disposition of a case, the court may authorize the sale of the vessel or other property under arrest or attachment. This authorization is termed "Interlocutory Order of Sale." Interlocutory sale may be ordered due to the perishable nature of the property concerned, or because the property or vessel may be liable to deterioration, decay or injury pending final disposition of the action. Also, if the expense of keeping the property or vessel is excessive or disproportionate to its value, or if there is unreasonable delay in securing the release of said property or vessel, interlocutory sale may be ordered. In these cases the order authorizing interlocutory sale of the vessel or other property is based upon application of any party to the action, or on application of the marshal. Supplemental Rule E(9)(b).

The order authorizing sale of the vessel is issued after a hearing on the motion for interlocutory sale, or may follow entry of the judgment after trial on the merits. The marshal may set reasonable conditions for the remainder of the actions and requirements in carrying out the auction if not outlined or specified in the order directing the sale. The marshal is usually contacted prior to all sales, to see what date and time for the sale is convenient to him and what conditions or requirements he would like to see included in the order authorizing the sale.

Notice of Sale.—Upon receipt of the Order to Sell from the Clerk, the marshal will prepare and publish a Notice of Sale. This notice should contain the date, location, time of sale and all conditions connected therewith as outlined in the order authorizing sale of the vessel. Publication of the Notice of Sale will be by the marshal in accordance with local procedure (usually set out in the local rules of the District). If more than the minimum publication set by the particular local rule is requested by moving party, the Order of Sale will so provide. The marshal will, of course, publish accordingly. (The marshal should remind the newspapers of the need to mail in to him the affidavits of publication needed for confirmation of the sale. After the sale, he should check to see whether these affidavits have been received.)

Marshal's Sale.—The Marshal's Sale is conducted in the same manner as any public auction. The public is notified of the sale and invited to attend and bid. The auction will be opened at the place, date and time of sale as specified in the Order and Notice of Sale. The deputy conducting the auction will read aloud the requirements specified in the Order of Sale, including the Notice of Sale. After all necessary documents have been read, the deputy will announce

the auction is now open for bids. If there is a minimum amount set by the court, the deputy must state the amount set and that all bids must be over that amount. To avoid confusion, the deputy or an assistant should write down each bid as received. The selling deputy should repeat three times the highest bid, and if there are no further bids, announce that the property is sold to the highest bidder.

Prior to the sale, the name of the prospective buyers and the company the represent should be taken. This listing should be placed in the marshal's file and be available to verify, at a later date, that persons other than the buyer attended the sale. The name and address of the second highest bidder should be taken. In the event the highest bidder withdraws or is unable to meet his financial obligation pertaining to his bid, then the sale will revert to the second highest bidder. This will eliminate the necessity of a second sale.

Bill of Sale.—Upon receipt of the balance of the purchase price and after confirmation of the sale by the Court (if confirmation by the court is required), the marshal will issue to the buyer a Bill of Sale. (Dept. of Transportation Form CG-1356) The Bill of Sale is completed in original and at least three copies. The original and a certified copy (for filing with the Coast Guard or State agency, depending on the type of vessel involved) is given to the new owner, one copy filed with the Clerk of the Court, and a second copy kept for United States Marshals Service files. Additional copies may be made as requested or considered necessary.

Proceeds of Sale.—As indicated in the foregoing sections, the proceeds of sales are usually paid into the registry of the court, unless the order authorizing the particular sale directs otherwise. In any event, in accordance with 28 U.S.C. § 1921, the marshal is entitled to his commission (except where the sale is pursuant to order of sale obtained by the United States, as where it is foreclosing a preferred ship mortgage). See 28 U.S.C. § 1921, for the statutory formula.

When the proceeds of the sale are turned in to the Clerk of the Court, they will be accompanied by a Marshal's Bill of Cost. The Bill of Cost must show the complete listing of all marshal's fees, expenses, and same commission. The party moving for confirmation of the sale should have included in his motion a request for approval of the Marshal's Bill of Costs. If confirmation was automatic, a separate motion to approve the marshal's fees and expenses should have been made. The Bill of Cost and the U.S. marshal's check, made payable to the Clerk of the Court, will be forwarded to the Clerk with a cover letter showing that

the marshal's fees, expenses and commission have been deducted from the proceeds of the sale.

Return on Writs.—Each writ must be returned to the Court with the marshal's return as to execution of the writ, indicating the date, time, by whom, and how accomplished.

Marshal's Liability Insurance.—The need for liability coverage is made obvious by the requirement that the United States marshal shall "take and safely keep" the vessel seized pending further order of the court. Thus, if a vessel under arrest or attachment by the marshal is damaged or causes damage due to the marshal's negligence, there is a possibility that liability on the part of the United States may lie under the Suits in Admiralty Act (46 U.S.C. §§ 741-752). The fact that the plaintiff's attorney has given the marshal a "hold-harmless" agreement in order to get him to leave a keeper off the vessel does not relieve the United States, as the marshal's employer, from possible liability to the owners of the vessel or to third parties who may be damaged by her.

To meet this legal liability and in the interest of uniformity throughout the United States Marshals Service, insurance coverage for vessels under arrest or attachment by the marshal has been obtained through the firm of Johnson & Higgins, marine insurance brokers. The insurance policy available is in the traditional hull and machinery port risk form with P & I (Protection and Indemnity) coverage. Specifically, the policy covers "the legal liability of the United States of America and the marshal insured thereunder arising out of the seizure and detention of vessels, as ordered by the courts, and is limited to indemnity against loss, damage, or expense which results from liabilities, risks, events, occurrences, and expenditures as set forth in the printed policy form and additions and amendments thereto attached." Additionally, P & I (which gives protection against personal injury and death claims) and hull and machinery (protection against hull damage, claims of others and for the cost of repairs of the insured vessel) are also included in the coverage. It should be emphasized that the policy does not cover the vessel's owner, the plaintiff or any interest whatsoever except the United States and the marshal insofar as they may be liable for loss or damage to the vessel, damage to other property caused by the vessel, and for injury to or deaths of those usually covered by the regular P & I policy. It should also be emphasized that employees of the marshal are excepted, since they (including the keepers) are covered by the Federal Employees Compensation Act. The insurance extends coverage up to $5,000,000 limit per vessel.

Premium Computation.—

If there is a court-appointed substitute custodian, the custodian must have proof of insurance acceptable to the U.S. Marshal or may avail himself of coverage provided by Johnson & Higgins. The Johnson & Higgins premiums for such custodians are as follows:

The use of a substitute custodian is for the benefit of the plaintiff who desires to reduce litigation expenses by eliminating the 24-hour a day keeper. However, the marshal should not comply with a request for a substitute custodian unless plaintiff first gets an order of court appointing a substitute custodian.

APPOINTED CUSTODIANS' LEGAL LIABILITY INSURANCE

MONTHLY DECLARATION FORM

Declaration under Subscription Policy J&H–JP–SF 84H2

U.S. Marshal District:_____ Date:_____

ASSURED:_____

Vessel:_____

Check as appropriate:

- ☐ Vessel (not previously reported) seized on (date)_____
- ☐ Vessel (not previously reported) released on (date)_____
- ☐ Vessel previously reported and released on (date)_____
- ☐ Vessel previously reported and remains under seizure.

Limit of Liability	Premium per Day or part thereof		No. of Days to Date of Declaration or Release		Premium Earn
$ 250,000	$ 4.50	×	_____	=	
500,000	9.00	×	_____	=	
1,000,000	18.00	×	_____	=	
Excess Coverage					
1,000,000 excess 1,000,000	6.00	×	_____	=	
3,000,000 excess 2,000,000	6.00	×	_____	=	_____
				Total Premium	$

Minimum premium each seizure $50.00

SEND TO: Johnson & Higgins of California, 601 California Street, San Francisco, CA 94108

Monthly Reporting.—Under the terms of the insurance policy, all admiralty seizures on behalf of private litigants (such insurance is not obtained when the United States is plaintiff) are automatically insured from the actual time and date of seizure until the vessel is released from custody of the marshal or substitute custodian. This automatic provision is accorded by the terms of the policy and is granted in consideration of each marshal's making a monthly declaration by the 8th day of each following month of all vessels seized during the preceding month.

This monthly report shall reflect the name of each vessel seized, the limit of liability (that is, the value of the vessel), the hour and date seized, and the hour and date released if applicable. If the vessel is still under seizure at the end of the month, the words "still under seizure," "still in custody of U.S. Marshal," "still in custody of substitute custodian," etc., may be used to indicate the status of the vessel on the monthly report. No further reports on said vessel should be made until it is released. Reports of release should be reported in the same manner as reports of seizures, i.e., not later than the 8th day of each month for the preceding month.

This monthly report shall be sent to Johnson & Higgins in San Francisco, California.

Checks to cover bills are to be made payable to Johnson & Higgins of San Francisco, California.

All districts are cautioned to insure that sufficient monies are maintained on deposit to cover the insurance premium billings.

The statute (28 U.S.C. § 1916) relieving a seaman from prepayment of fees and costs of suit does not give seamen a right to avoid prepayment of vessel custodial costs such as those expenses necessary for dockage, keepers, maintenance, and insurance against legal liability of the United States and the marshal for damage and injury done by a vessel while in custody. Cohn v. George, 1968 A.M.C. 2152, 297 F.Supp. 527 (E.D.Ill. 1968). In cases filed under the so-called Seaman's Act cited above, the marshal shall not seize a vessel without first receiving a deposit of monies sufficient to cover expenses necessary for dockage, keepers, maintenance and insurance.*

Seizures of vessels on behalf of the United States are not to be reported under the Admiralty Insurance Program, since such seziures are not insured. The United States is self-insured as a matter of general policy.

* See contrary holding by the U.S. Court of Appeals for the Second Circuit in Thielebeule v. Nordsee Pilot, 1972 A.M.C. 50, 452 F.2d 1230.