Case Nos. **062114** and **062115**

In the Admiralty

CORPORATE STATE OF TEXAS,	§	IN THE MUNICIPAL COURT
Plaintiff,	§	
	§	CORPORATE
vs.	§	CITY OF ROWLETT
	§	
John Henry Doe, sui juris	§	COUNTY OF DALLAS
In Propria Persona	§	

DEMAND TO DISMISS AND CROSS LIBEL AND BRIEF IN SUPPORT THEREOF (Complaint / claim in Admiralty)

John Henry Doe files this DEMAND TO DISMISS AND CROSS LIBEL and hereby demands that the "Municipal Court" of the CITY OF ROWLETT dismiss the above styled and numbered cases. The Cross Libel brought forward by John Henry Doe, sui juris, in the pending action in STATE COURT, case numbers 062114 and 062115 is a proper action as is evidenced by the following:

I. PROPER FORUM OF CROSS LIBEL

In an action titled Cross Libel, the proper court to bring forward the cross libel is the court in which the original action was initiated.

1.1 CROSS-ACTION. An action brought by one who is defendant in a suit against the party who is plaintiff in such suit, upon a cause of action growing out of the same transaction which is there in controversy, whether it be a contract or a tort. An independent suit brought by defendant against plaintiff. National Stock Yards Nat Bank v. Valentine, Tex. Civ. App., 39 SW 2d 907. 908. As found in Black's Law Dictionary, 4th Edition.

1.2 Only if a claim arises out of the same contract or cause of action for which the original libel was filed may it be consolidated by cross-libel with the original claim. U.S. v. Isthmian S.S. Co., 359 US 314, 1959 AMC 1332; Solomon v. The Honorable Bruchhausen, 1963 AMC-, 305 F2d 941 CA2.

2. "SAVING TO SUITORS" CLAUSE

2.1 The "saving to suitors" clause was designed to permit a damaged party to bring a federal action (in conjunction with a state action), into a state court. The "saving to suitors" clause also enables the cross-libelant/plaintiff to chose the remedy. The liability of the defendant remains in admiralty.

2.2 "Savings to suitors" clause of 28 USCS. 1331(1) enables maritime litigants to pursue available common law remedies, if they prefer them to those supplied in admiralty; it affords litigants choice of remedies, not forums. Pacific Far East Line, Inc v. Ogden Corp., (1977, ND Cal) 425 F Supp 1239.

2.3 A state court trying maritime causes of action under the "saving" clause does not sit as an admiralty court. Istre v. Diamond M. Drilling Co. (1969, La App 3d Cir) 226 So 2d 779. cert den 254 La 929, 228 So 2d 485, and cert dismd 225 La 1089, 234 So. 2d 191.

2.4 .... jurisdictional act leaves state court competent to adjudicate maritime causes of action in proceedings "in personam", that is, where defendant is a person, not a ship or some other instrument of navigation. Madruga v. Superior Court of California (1954) 346 US 55s, 98 L Ed 290, 74 S Ct 31.

2.5 28 USCS. 1333 is broad enough to allow appending of state tort claim to maritime claim since statute is receptive to exercise of jurisdiction over related claims against closely related parties. Wood v. Standard Products Co. (1978. ED Va) 456 F Supp 1098.

2.6 .... suitor who holds in personam claim which might be enforced by suit in personam under admiralty jurisdiction of federal courts may also bring suit at his election, in state court. Lavergne v. Western Co. of North America. Inc. (1979, La) 371 So 2d 801

3. CONSIDERATION OF NONMARITIME CLAIMS

3.1 Where issue of fraud arises incidental to exercise of its judicial power, court of admiralty may deal with question of fraud though intrinsically nonmaritime. Putnam v. Lower (1956, CA9 Wash) 236 F 2d 561.

3.2 .... in case of piratical taking, court could have jurisdiction, though retaking was on land. Davison v. Sealskins (1835, CC Conn) F. Cas No 3361.

3.3 Court of admiralty jurisdiction, could not, as court of equity, dispose of nonmaritime subjects for purpose of doing complete justice. The Ciano (1945, DC Pa) 63 F Supp 892.

4. GENERALLY

4.1 Trial in admiralty cases is ordinarily by judge without a jury. The Margaret (1824) 22 US 421, 6 L Ed 125; The Sarah (1823) 21 US 391, 1 L Ed 644, U.S. v. La Vengence (1796) 3 US 297; 1 L Ed 610

4.2 Suit was not limited to rights recognized by maritime law when savings clause was first adopted in 1789. Panama R. Co. v. Vasquez (1926) 271 US 557; 70 L Ed

1085, 46 S Ct 596.

4.3 Saving provision forbade any interference by federal courts with suit in state court, when whole subject matter and all rights of both parties could be preserved and adjudicated in common-law suit. The Rosa (1892, DC NY) 53 F 132.

4.4 "Saving to Suitors" clause in 28 USCS 1333 has long been construed to afford litigant choice of remedies, not forums. Crispin Co. v. Lykes Bros. S.S. Co. (1955, DC Tex) 134 F Supp 704.

5. COMBINING FEDERAL AND STATE CLAIMS

5.1 The federal courts have developed the theory of "ancillary jurisdiction" or "pendent jurisdiction", under which the federal court sometimes may exercise jurisdiction over a non federal claim. In such cases, the court's jurisdiction over the state law is said to be an "ancillary" to the federal claim.

5.2 The majority of the courts which have faced the issue have held that "ancillary" or "pendent" jurisdiction applies to a state claim joined with a matter brought as an admiralty claim. ADMIRALTY IN A NUTSHELL, Ch. 19, Section G., p. 352, 353 (1981), Frank L. Maraist, West Pub.

6. DEFENDANT'S LIABILITY IS IN ADMIRALTY

6.1 Clause saving common-law remedy to suitors did not mean that defendant's liability should be measured by common law instead of maritime law standards. Chelentis v. Luckenbach S.S. Co. (1918) 247 US 372, 62 L. Ed 1171, 38 S Ct 501.

6.2 Defendant's Liability was measured by maritime law, and not common law, regardless of the remedy chosen by plaintiff. Carlisle Packing Co. v. Sandanger (1922) 259 US 255, 66 L Ed 927, 42 S Ct 475; Philadelphia & R.R. Co. v. Berg (1921, CA3 Pa) 274 F 534, cert den 257 US 638, 66 L. Ed 410, 42 S Ct 50.

7. SUBSTANTIVE LAW IN STATE COURT, GENERALLY

7.1 State court is not free to apply its own substantive law to maritime cause of action simply because state court has subject matter jurisdiction. Blevens V Sfetku (1968 2d Dist) 259 Cal App 2d 527, 66 Cal ptr 486.

7.2 Prevailing rule under "saving to suitors" clause of 28 USCS 1333 is that regardless of forum, federal substantive law applies. Baptiste v. Superior Court of Los Angeles County (1980, 2d Dist) 106 Cal App 3d 87, 164 Cal Rptr 789, cert den 449 US 1124, 67 L Ed 2d 110, 101 S Ct 940.

7.3 State court hearing admiralty case under "saving to suitors" clause of 28 USCS § 1333 must employ substantive law which federal courts would apply were they to

entertain case. Alton & S.R. Co. v. Alton Transp Co. (1979) 79 Ill App 3d 591, 35 Ill Dec 339, 339 NE 2d 173.

7.4 If action in tort is cognizable in admiralty, maritime law governs with respect to rights and liabilities of parties even though suit is brought in state court by virtue of "saving to suitors" clause. Pfeiffer v. Weiland (1975, Iowa) 226 NW 2d 218.

7.5 .... generally the "savings to suitors" clause means that a suitor asserting an in personam admiralty claim may elect to sue in a "common law " state court through an ordinary civil action; however the state courts must apply the same substantive law as would be applied had the suit been instituted in admiralty in a federal court. Shannon v. Anchorage (1970, Alaska) 478 P 2d 815.

7.6 Regardless of in which Court action is brought under saving to suitors clause of 28 USCS. 1333, federal substantive admiralty or maritime law applies if claim is cognizable in admiralty. Lavergne v. Western Co. of North America, Inc. (1979, La) 56 2d 807.

7.7 State hearing case within federal admiralty jurisdiction pursuant to "saving to suitors" clause of 28 USCS. 1333 is required to apply federal substantive admiralty or maritime law if claim is cognizable in admiralty. Bordelon v. T. L. James and Co. (1980, La App 3d Cir) 380 2d 226.

7.8 Where action within federal maritime jurisdiction is brought in state court under "saving to suitors" clause of 28 USCS § 1333, state court ordinarily must apply federal maritime law. Pine Street Trading Corp. v. Farrell Lines, Inc. (1976) 278 Md 363, 364 A2d 1103.

7.9 Although the statute provides that suitors may also pursue their remedies in the state courts, the state courts are bound to apply federal law in such disputes. A/S J. Ludwig Mowinckles Rederi v. Dow Chemical Co. (1970) 25 NY 576, 307 NYS2d 660, 255 NE2d 774, cert den 398 US 939, 26 L Ed 2d 272, 90 S Ct 1844.

8. REMOVABILITY

The cross libel under the saving to suitors clause brought forward in a state court may be removed to a district court, upon motion of defendant.

8.1 Even though state court may have concurrent jurisdiction of action under that section, action originally filed in state court may, upon proper motion be removed to federal court, and it is not necessary that usually required diversity of citizenship or amount in controversy qualifications be present. Crispin Co. v. Lykes Bros. S.S. Co. (1955. DC Tex) 134 F Supp 704.

8.2 Action brought in state court pursuant to "saving to suitors" clause of 28 USCS. 1333 can be removed to federal court on ground of diversity of citizenship. Camacho v.

Cove Trader Inc. (1985, ED Pa) 612 F Supp 1190.

Whereas no one representing the STATE OF TEXAS has stepped forward to challenge the lawful status of Cross-Libelant, (which is a matter of public record and in the court documents), the STATE OF TEXAS and its actors have acquiesced to and accepted that lawful status. Cross-Libelant will, when appropriate, remove this whole action to federal district court, on diversity of citizenship.

9. TORT ACTIONS AND BREACH OF CONTRACT ACTIONS

9.1 Term "tort" when used in reference to admiralty jurisdiction, was not confined to wrongs or injuries committed by direct force, but included wrongs suffered in consequence of negligence or malfeasance of others, where remedy at common law was by an action on the case. Philadelphia W. & B.R. Co. v. Philadelphia & Havre de Grace Steam Towboat Co. (1860) 64 US 209, 16 L Ed 433: Leathers v. Blessing (1860) 105 US 626, 26 L Ed 1192.

9.2 Saving to suitors clause in 28 USCS § 1333 preserves to plaintiff right to institute common law actions in state courts seeking in personam judgments for damages arising from maritime torts and contracts. Still v. Dixon (1976, Fla App D2) 337 So 2d 1033.

9.3 Suitor with in personam claim arising out of maritime tort may elect to sue In state court or in federal court on law side on authority of savings to suitor clause of 28 USCS § 1333. Sanders v. Richmond (1979, Mo App) 579 SW 2d 401.

10. THE ELEMENT OF ADMIRALTY

This cross libel is brought under admiralty for the following cause:

1) Arresting officer, M.D. GIBBS, working in collusion with co-conspirators alleged Chief of Police POSEY, City Manager GIBSON (all agents of the alleged CITY OF ROWLETT), all ROWLETT City Council Members, and alleged attorney THOMAS MIGHELL, operated on the presumption that John Henry Doe was under contract for "the transportation of persons or property for hire." All contracts for "TRANSPORTATION" are under admiralty.

10.1 Contract for transportation of passengers is maritime contract within admiralty jurisdiction. Archawski v. Hanioti (1956) 350 US 532, 100 L Ed 676, 76 S Ct 617.

See the following definitions:

> VEHICLE - Any contrivance used for TRANSPORTATION of persons or property on public highways. See in Texas Vernon's Civil Statutes Art. 6675a-1(a).
>
> TRANSPORTATION - The removal of goods or persons from one place to another, by a CARRIER. As found in Black's Law Dictionary, 3rd Edition.

> CARRIER - In common speech, "carriers" means transportation systems as distinguished from corporations owning or operating them. Virginian Ry. Co. v. Mullens, 271 U.S. 220, 46 S Ct 526, 529, 70 L Ed 915.
>
> Private carriers are those who, without being engaged in such business as a public employment, undertake to deliver goods or passengers in a particular case for hire or reward. Rathbun v. Ocean Accident & Guarantee Corp., 299 Ill 562, 132 N.E. 754, 755, 19 ALR 140; et al. See Black's Law Dictionary p.283, 3rd ed. 1933.
>
> "DRIVER. One employed in conducting or operating a coach, carriage, wagon, or other...." As found in Black's Law Dictionary, 3rd Edition, 1933,

2) The STATE OF TEXAS is attempting to require and enforce insurance policies which are all under admiralty.

10.2 Insurance policies are maritime contracts, and federal district court has jurisdiction of action in personam to enforce them. Grow v. Steel Gas Screw Loraine K (1962, CA6 Mich) 310 F 2d 547; Ed & Fred Inc. v. Puritan Marine Ins. Underwriters Corp. (1975, CA5 Fla) 506 F 2d 757.

10.3 "A policy of Insurance is a maritime contract and therefore of Admiralty Jurisdiction." DeLovio v. Boit 7 Fed. Case no. 3766 (1815).

3) THE STATE OF TEXAS and its actors have engaged in piratical actions, which fall under admiralty.

11. 18 U.S.C. § 1652 CITIZENS AS PIRATES

Whosoever, being a citizen of the United States, commits any murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince, or state, or on pretense of authority from any person, is a pirate, and shall be imprisoned for life.

In the above law, the term "high seas extends also to where admiralty jurisdiction extends. Therefore, anyone acting under admiralty jurisdiction is subject to 18 U.S.C. 1652.

12. 18 U.S.C. § 1661 ROBBERY ASHORE

Whosoever, being engaged in any piratical cruise or enterprise, or being of the crew of any piratical vessel, lands from such vessel and commits robbery on shore, is a pirate, and shall be imprisoned for life.

Reconstruct the above sentence to fit the instant case and you get: Whosoever, being engaged in any piratical enterprise commits robbery on shore, is a pirate, and shall be imprisoned for life.

13. 28 USC § 2461

(b) .... in cases of seizures on land the forfeiture may be enforced by a proceeding by libel which shall conform as near as may be to proceedings in admiralty.

14. 28 USC § 1333 ADMIRALTY, MARITIME AND PRIZE CASES

The district courts shall have original jurisdiction, exclusive of the courts of the States, of: (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled,

(2) Any Prize brought into the United States and all proceedings for the condemnation of property taken as prize.

15. "PRIZE" DEFINED

15.1 Prize was generally used as technical term to express legal capture. Miller v. The Ship Resolution (1781, F CC Pa) 2 US 1, 1 L Ed 263, later op (F CC Pa) 2 US 19, 1 L Ed 271.Words "prize and capture" referred to property taken on land, as well as water, by civil process. Union Ins. Co. v. United States (1868) 73 US 759, 18 L Ed 879.

15.2 Question of prize or no prize must be determined by courts of Admiralty, belonging to the power whose subjects make the capture. Ling v. 1689 Tons of Coal (1942, CC Wash) 78 F SUPP 57.

15.3 Questions of prize were exclusively of admiralty jurisdiction. Bingham v. Cabbot (1795) 3 US 19, 1 L Ed 491.

16. APPLICABLE FEDERAL LAW

16.1 Rule 13. Counterclaim and Cross-Claim

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross claim in accordance with the provisions of Rules 19 and 20.

(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b) judgment on a counterclaim or cross claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if

the claims of the opposing party have been dismissed or otherwise disposed of.

17. 28 USC § 1332 Diversity of citizenship; amount of controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of or value of $50,000, exclusive of the interest and costs, and is between -

(1) Citizens of different States;

(2) Citizens of a State and citizens or Subjects of a foreign state;

(3) Citizens of different States and in which citizens or subjects of a foreign state are additional parties;

18. OTHER APPLICABLE LAW AND POINTS

Federal rules of civil procedure allow four months to complete process of service.

19. 28 USC RULES OF CIVIL PROCEDURE RULE 4(j) Summons

Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

20. SUMMATION

Cross Libelant has brought a civil action for criminal acts committed against him by state actors (in their private capacity). Dismissal of cross-libel by this court would deny a remedy by the Cross Libelant, and would result in discharge of all charges against him in the original libel (alleged criminal complaint).

21. True Nature of Proceedings

This court, in regard to the original complaint, is moving in either:

a) Common Law,

b) Equity, or

c) Admiralty.

Regarding a): There is no evidence of complaint supported by sworn affidavit of a damaged party to bring action under the common law.

Regarding b): There is no evidence of breach of contract with a bona fide signature, (of John Henry Doe), to hold John Henry Doe to an equity jurisdiction.

As this court must be moving under the rules of Admiralty, John Henry Doe's demand to

dismiss is substantiated on the following grounds:

1. There is no evidence of the original contract to substantiate a breach of contract action;
2. There is no verified complaint supported by affidavit to substantiate a tort action;
3. There is no evidence adduced from John Henry Doe to substantiate a capture of prize as a belligerent or contraband; and the captor is barred from entering evidence in support of a claim against the booty captured.

WHEREFORE, for the foregoing, John Henry Doe a free natural born sentient human being, with no attachments to government, respectfully demands that the original complaint be dismissed, and the cross-libel timely proceed against these "criminal elements in government." John Henry Doe seeks $100,000.00 in damages, $100,000.00 in compensatory damages, and $100,000.00 in punitive damages per person and any and all additional and just action that this court deems appropriate.

DATED this the ____ day of September, 1997

Respectfully submitted,

_____
John Henry Doe

STATE OF TEXAS §
COUNTY OF DALLAS §

John Henry Doe, the Cross-plaintiff, above-named, being duly sworn, says:

“I have read the foregoing DEMAND TO DISMISS AND CROSS LIBEL AND BRIEF IN SUPPORT THEREOF (Complaint / claim in Admiralty) and do hereby affirm that the contents thereof are true. The use of a notary on this document does not constitute any adhesion, nor does it alter my status in any manner.”

_____
John Henry Doe

_____
Notary Public for the People of Texas

My Commission expires:

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing document was sent via U.S. Postal Service, First Class Mail, to the alleged prosecutor attorney LARRY SCHISTER, 901 Main St. #4000, Dallas, Texas on or about the ____ day of September, 1995.

_____
John Henry Doe

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ORDER

The above-entitled cause came on for hearing before this court on the _____ day of _____, 199__. Defendant John Henry Doe appeared in his proper person. It is adjudged that defendant John Henry Doe have judgment against plaintiff STATE OF TEXAS on the claim asserted.

IT IS ORDERED, ABJUDGED AND DECREED that this cause of action is DISMISSED with prejudice.

SO ORDERED.

SIGNED on this the ___ day of _____ , 199___.

_____

Judge

ENTERED on this the ____ day of _____ , 199___.

_____

Clerk