

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

In the Matter of the Petition :
 :
 of : CIVIL ACTION NO.: 22-7383
 :
 : **PETITION FOR EXONERATION**
 NEW YORK CITY BOAT TOURS, LLC and : **FROM OR LIMITATION OF**
 EDWARD MATTIACE, as Owner of the 36' : **LIABILITY**
 uninspected passenger vessel "HONCHO" :
 bearing Hull Number HEB00069G585 :

Petitioners New York City Boat Tours, LLC, and Edward Mattiace, as Owners of a 36-foot uninspected passenger vessel HONCHO, bearing official Hull Identification number HEB00069G585 (the "Vessel"), bring this action for exoneration from and limitation of liability pursuant to Title 46 U.S.C. §30501 et seq. (formerly 46 U.S.C. App. §183) and Supplemental Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, and alleges the following upon information and belief:

JURISDICTION & VENUE

1. This Court has jurisdiction over this cause of action pursuant to the provisions of Article III, Section 2, of the United States Constitution and Title 28 U.S.C. §1333. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

2. Venue is properly laid in this district in accordance with Supplemental Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, inasmuch as the Vessel's homeport and intended destination on the subject voyage was Brooklyn, New York, and the Vessel has not been arrested or attached, and no suit has yet been filed against Petitioners or the Vessel for the matters contained in this Complaint within the meaning of the statutes of the United States.

THE PARTIES

3. At all relevant times, Petitioner New York City Harbor Tours, LLC, was the owner of the Vessel and had a place of business in Suffolk County, New York.

4. At all relevant times, Petitioner Edward Mattiace was the sole member of Petitioner New York City Harbor Tours, LLC, and has a place of residence in Suffolk County, New York.

5. No written claims have been received to date by Petitioners. However, the City of New York is an anticipated claimant.

6. The Estate of Johnny Beernaert, who has already filed a Notice of Claim with the City of New York, is also an anticipated claimant.

THE LIMITATION PETITION

7. On June 17, 2022, at approximately 10 PM, the Vessel was operating in a lawful manner in the East River with six (6) passengers aboard in the vicinity of Brooklyn Bridge Park Pier 2.

8. The East River is a navigable body of water within the meaning of 33 C.F.R. Section 329 and within this Court's admiralty and maritime jurisdiction, and subject to the Inland Rules of Navigation.

9. Petitioner Edward Mattiace was at the helm of the Vessel and traveling at approximately five (5) miles per hour in a south-westerly direction on the East River with his running, navigation, and all-around white mast lights on and functioning properly, while maintaining a proper look out, and in full compliance of the Inland Rules of Navigation.

10. During this same time, FDNY vessel MARINE 1 BRAVO, a 31-foot rigid hull inflatable vessel, was being operated in a dangerous and unsafe manner and at a high rate of speed and without all available navigation equipment in use in a north-easterly direction on the East River, without the proper lighting being displayed aboard this emergency response vessel, and

with four civilian passengers aboard, including a visiting firefighter from Belgium, Johnny Beernaert. The MARINE 1 BRAVO was also operating without the proper permission and authority being granted by the FDNY to take out civilians on a “harbor tour,” and without the vessel having the proper crew.

11. In the moments before the collision, the MARINE 1 BRAVO and the Vessel were approaching on a near reciprocal course. Without any negligence on the part of the Vessel, the MARINE 1 BRAVO struck the Vessel on her portside bow at a high rate of speed of over 22 miles per hour in violation of the Inland Rules of Navigation.

12. The MARINE 1 BRAVO violated the Inland Rules of Navigation by operating at an excessive speed under prevailing conditions, failing to illuminate all required running and navigation lights, failing to have a proper look out, failing to use all available means to avoid a collision, and failing to give way, reduce speed and/or alter course to avoid a collision with the Vessel.

13. As a result of the foregoing collision, Johnny Beernaert was fatally injured. It is unknown if other passengers onboard the MARINE 1 BRAVO were also injured. There were no reported injuries to any of the passengers on the Vessel.

14. At all times material herein, Petitioners New York City Boat Tours, LLC, and Edward Mattiace exercised due diligence to make the Vessel seaworthy in all respects.

15. If any loss, damage, injury or death was sustained in the subject incident, such loss, damage, injury or death, was in no way caused by the fault, negligence, recklessness or want of due care, on the part of Petitioners New York City Boat Tours, LLC, and Edward Mattiace or the Vessel or parties for which he may be held responsible. Rather, any such loss, damage, injury or death, was occasioned, incurred and caused wholly by the negligent operation of MARINE 1

BRAVO and without the fault, privity or knowledge of Petitioners New York City Boat Tours, LLC, and Edward Mattiace.

16. It is anticipated that the Estate of Johnny Beernaert, the City of New York and/or other unknown claimants may seek damages in an amount that will exceed the total sum or sums for which Petitioners may be legally responsible or may be required to pay under applicable statutes and laws governing exoneration from and limitation of liability.

17. The Vessel had a post-casualty value of no more than \$25,000 following the subject incident.

18. Petitioners claim exoneration from and/or limitation of liability for any alleged loss, damage, injury or death occasioned by the aforesaid incident and for all claims which may hereafter be made and allege that they have valid defenses thereto both on the facts and on the law.

19. Petitioners claim the benefits of the limitation of liability provided in Title 46, United States Code, §30501 *et seq.* (formerly Title 46 United States Code, §183 *et seq.*), and pursuant to Supplemental Rule F(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims, will deposit with the Court, for the benefit of Claimants, security equal to the post-casualty value of the Vessel and then pending freight.

WHEREFORE, Petitioner prays that this Honorable Court:

1. Issue an Order directing the issuance of a Notice to all persons claiming damages for any and all loss, damage, injury or death caused by or resulting from the aforesaid incident, directing each of them to appear and make due proof of their respective claims, and also to appear and answer the allegations of this Complaint according to the law and practice of this Court on or before a certain time to be fixed by said monition;

2. Issue an Order restraining the further prosecution of any and all actions, suits and legal proceedings to be commenced or already begun, if any, to recover damages from the

Petitioners for any and all loss, damage, injury or death, caused by or resulting from the aforesaid incident and restraining the commencement or prosecution thereafter of any such action, suit or legal proceeding of any nature or description whatsoever in any jurisdiction, except in the proceeding herein, against the Petitioners, their agents or representatives, or against the Vessel in respect of any claim or claims arising out of the aforesaid incident;

3. Adjudge and decree that the Petitioners are not liable to any extent, for any loss, damage, injury or death, or for any claim therefor in any way arising out of the aforesaid incident;

4. That if the Petitioners should be adjudged liable to any extent in the premises, then such liability should be limited to the amount or value of the Vessel immediately following said incident, and that the Petitioners be discharged therefrom upon the surrender of said value and that the money surrendered, paid or secured to be paid as aforesaid, be divided pro rata according to the pertinent federal statutes among such claimants as may duly prove their claims in accordance with the aforesaid provisions, saving to all parties any priorities to which they may legally be entitled and that a decree may be entered discharging the Petitioners and the Vessel from all further liability; and

5. That the Petitioners may have such other, further and different relief, as may be just and proper.

Dated: New York, New York
December 6, 2022

NICOLETTI HORNIG & SWEENEY
Attorneys for Petitioners



BY: _____

Gueric S.D.L. Russell
88 Pine Street, 7th Floor
New York, New York 10005-1801
Tel: 212-220-3830
Fax: 212-220-3780
Email: grussell@nicolettihornig.com
Our File No.: 10000720 GSR/JJH

JS 44 (Rev. 4-29-21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p style="text-align: center;">New York City Boat Tours, LLC and Edward Mattiace</p> <p>(b) County of Residence of First Listed Plaintiff <u>Suffolk County, NY</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p> <p style="text-align: center;">Nicoletti Hornig & Sweeney, 88 Pine Street, 7th Floor, New York, New York 10005; 212-220-3830</p>	<p>DEFENDANTS</p> <p style="text-align: center;">The City of New York and the Estate of Johnny Beernaert</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p> <p>Does this action include a motion for temporary restraining order or order to show cause? Yes <input type="checkbox"/> No <input type="checkbox"/></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
 Title 46 U.S.C. § 30501 et seq.

Brief description of cause:
 Petitioners bring this action for exoneration from and limitation of liability for a collision between 2 vessels in the East River, New York

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE: December 6, 2022 SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Guerric S.D.L. Russell, counsel for Petitioners, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

-
-
-

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
 the complaint seeks injunctive relief,
 the matter is otherwise ineligible for the following reason Action seeks Equitable Relief

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 1(c)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 