

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 3:21-cv-1125
)	
v.)	
)	
INGRAM BARGE COMPANY LLC;)	
INGRAM MARINE GROUP;)	
THE M/V R. CLAYTON MCWHORTER;)	
ING5801, IB1200, IN085141, TI3894,)	
IN995412, ING096041, ING4791, IN096076,)	
IN164481, IN075046, IN085057, AND)	
IN075184)	
)	
Defendants.)	

UNITED STATES OF AMERICA’S VERIFIED ADMIRALTY COMPLAINT

The United States of America (“United States”), for its Verified Complaint against Ingram Barge Company LLC and Ingram Marine Group (collectively “Ingram”), *in personam*, the M/V R. Clayton McWhorter, *in rem*, and barges, ING5801, IB1200, IN085141, TI3894, IN995412, IN096041, ING4791, IN096076, IN164481, IN075046, IN085057, and IN075184 (collectively referred to as “the Ingram barges”), *in rem*, alleges as follows:

Nature of the Action

1. This is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.
2. The United States brings this action against Ingram, the M/V R. Clayton McWhorter, and the Ingram barges to recover the costs of repairing damage to a

navigational structure owned by the United States.

3. The United States asserts claims in this case under the general maritime law and the Rivers and Harbors Act (RHA), 33 U.S.C. §§ 401-476.

Jurisdiction and Venue

4. The United States is authorized to file this suit by 28 U.S.C. § 1345.

5. This Court has jurisdiction over the subject matter and the parties in accordance with 28 U.S.C. §§ 1331, 1333, and 1345.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because it is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

Facts

7. Plaintiff United States is a sovereign nation authorized to sue under 28 U.S.C. § 1345 (United States as Plaintiff). The United States Army Corps of Engineers is an agency of the United States.

8. The Melvin Price Locks and Dam is a navigation structure located on the Mississippi River near Alton, Illinois. The Melvin Price Locks and Dam is within the geographic boundaries of this District.

9. At all relevant times, the United States owned and operated, through the United States Army Corps of Engineers, the Melvin Price Locks and Dam.

10. At all relevant times, Ingram Barge Company LLC and Ingram Marine Group, Tennessee corporations, owned, operated, chartered, managed, or controlled the M/V R. Clayton McWhorter and the Ingram barges. The M/V R. Clayton McWhorter and the

Ingram barges were within the boundaries of this District at all material times.

11. Ingram uses the M/V R. Clayton McWhorter to tow barges on the inland waters of the United States, including the Upper Mississippi River.

12. On July 17, 2018, the M/V R. Clayton McWhorter and the Ingram barges were southbound on the Mississippi River. As the M/V R. Clayton McWhorter and Ingram barges approached the Melvin Price Locks and Dam's auxiliary lock chamber at about 11:00 a.m., the pilot was unable to control the vessel and its tow and struck the long wall at the facility. The wires connecting the M/V R. Clayton McWhorter and its tow parted, and the lead six barges struck the upstream auxiliary lock's miter gate while in the closed position.

13. The Melvin Price Locks and Dam's auxiliary lock miter gate was damaged as a result of the allision with the M/V R. Clayton McWhorter and the Ingram barges.

Count I - Claim Against Ingram Barge Company LLC, Ingram Marine Group, the M/V R. Clayton McWhorter, and the Ingram barges for Negligence Under the General Maritime Law

14. The United States incorporates by reference Paragraphs 1 through 13 of this Complaint.

15. The accident and resulting damage to the Melvin Price Locks and Dam's auxiliary lock miter gate were proximately caused by the negligence and other fault of Ingram and their employees, including, but not limited to, the crew of the M/V R. Clayton McWhorter, and/or by the negligence and other fault of contractors and/or subsidiaries of one or more of Ingram, and/or by the unseaworthiness of the M/V R. Clayton McWhorter,

all of which were in the privity and knowledge of Ingram, and which negligence and other fault included, but was not limited to:

A. The failure of the captain and crew of the M/V R. Clayton McWhorter to exercise reasonable care in the operation of the vessel;

B. The failure of the captain and crew of the M/V R. Clayton McWhorter to properly navigate and control the vessel;

C. The failure of the captain and crew of the M/V R. Clayton McWhorter to keep a proper lookout;

D. The failure of the captain and crew of the M/V R. Clayton McWhorter to maintain a safe distance from the Melvin Price Locks and Dam;

E. The failure of the captain and crew of the M/V R. Clayton McWhorter to safely navigate past the Melvin Price Locks and Dam;

F. The failure of the captain and crew of the M/V R. Clayton McWhorter to take the necessary evasive maneuvers to avoid allision with the Melvin Price Locks and Dam's auxiliary lock miter gate;

G. Operating the M/V R. Clayton McWhorter in a negligent and/or unseaworthy manner;

H. Operating the M/V R. Clayton McWhorter without a properly trained and competent crew;

I. Failing to ensure that the M/V R. Clayton McWhorter was in all respects fit and seaworthy for its intended purpose and use;

J. Failing to properly vet and investigate the fitness of the pilot; and

K. Other acts of negligence and/or fault, and/or unseaworthiness, to be established at the trial of this matter.

16. Based on currently available information, it is estimated that the cost of repairing the damage to the Melvin Price Locks and Dam's auxiliary lock miter gate proximately caused by the negligence and other fault of Ingram, the M/V R. Clayton McWhorter, and the Ingram barges, including interest and penalties, totals approximately \$3,044,156.44.

Count II – Claim Against Ingram Barge Company LLC, Ingram Marine Group, the M/V R. Clayton McWhorter and the Ingram barges for Strict Liability Under the Rivers and Harbors Act

17. The United States incorporates by reference Paragraphs 1 through 16 of this Complaint.

18. The Melvin Price Locks and Dam is a public work built and maintained for the preservation and improvement of the navigable waters of the United States within the meaning of the RHA, 33 U.S.C. § 408.

19. Ingram, as owner and operator of the M/V R. Clayton McWhorter, and the Ingram barges, is a “person” within the meaning of the Rivers and Harbors Act, as amended, 33 U.S.C. § 408.

20. The Upper Mississippi River in the vicinity of the Melvin Price Locks and Dam is a navigable water of the United States within the meaning of 33 U.S.C. § 408.

21. At all material times, the M/V R. Clayton McWhorter and the Ingram barges it towed were vessels “used and employed” within the meaning of 33 U.S.C. § 412.

22. Under the RHA, 33 U.S.C. §§ 408 and 412, Ingram Barge Company LLC, Ingram Marine Group, the M/V R. Clayton McWhorter, and the Ingram barges are strictly liable, and jointly and severally liable, to the United States for the full costs to repair the damage to the Mel Price Locks and Dam's auxiliary lock miter gate proximately caused by the Accident.

23. Based on currently available information, it is estimated that the cost of repairing the damage to the Melvin Price Locks and Dam's auxiliary lock miter gate proximately caused by the allision, including interest and penalties, totals approximately \$3,044,156.44.

WHEREFORE, the United States prays that a judgment be entered in its favor against Ingram Barge Company LLC and Ingram Marine Group, *in personam*, the M/V R. Clayton McWhorter, *in rem*, and Ingram's barges ING5801, IB1200, IN085141, TI3894, IN995412, IN096041, ING4791, IN096076, IN164481, IN075046, IN085057, and IN075184, *in rem*, jointly and severally, for the total amount of the United States' damages proximately caused by the accident, plus interest and costs, and for such other relief as the Court deems proper.

Dated: September 13, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General, Civil Division

STEVEN D. WEINHOFET
United States Attorney

/s/ Jessica G. Sullivan

JESSICA G. SULLIVAN

Trial Attorney

United States Department of Justice

Civil Division, Torts Branch

Post Office Box 14271

Washington, DC 20044-4271

Telephone: (202)616-4044

Facsimile: (202) 616-4002

Email: jessica.sullivan@usdoj.gov

Attorneys for the United States

VERIFICATION

Based upon information officially furnished to me, I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on September 13, 2021.

/s/ Jessica G. Sullivan
JESSICA G. SULLIVAN
Trial Attorney
U.S. Department of Justice
Torts Branch, Civil Division

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.)

I. (a) PLAINTIFFS

The United States of America

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jessica G. Sullivan, U.S. Dept. of Justice, 175 N Street, N.E., 8th Fl., Washington, D.C. 20002; tel. 202-616-4044

DEFENDANTS Ingram Barge Company LLC, Ingram Marine Group, M/V R. Clayton McWhorter, Barges ING5801, IB1200, IN085141, T13894, IN995412, IN096041, ING4791, IN096076, IN164481, IN075046, IN085057, IN075184

County of Residence of First Listed Defendant: Davidson (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known) James K Mondl, Mondl Law Firm LLC, 1524 Legacy Circle, Fenton, MO 63026; tel. 314-282-2999

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 US Government Plaintiff, 2 US Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): The Rivers and Harbors Act of 1899, 33 U.S.C. 401-76

Brief description of cause: Recovery of damages resulting from Ingram's vessel and barges colliding with a federal lock and dam.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 3,044,156.44 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: September 13, 2021 SIGNATURE OF ATTORNEY OF RECORD: /s/ Jessica G. Sullivan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)

Civil Action No.

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: _____
(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within _____ days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

Signature of the attorney or unrepresented party

Printed name

Address

E-mail address

Telephone number



U.S. Department of Justice

Civil Division, Torts Branch
Aviation, Space & Admiralty Litigation
P.O. Box 14271
Washington, DC 20044-4271

(202) 616-4044
(202) 616-4002 Facsimile

Jessica.Sullivan@usdoj.gov

Overnight Delivery:
Three Constitution Square
175 N Street, NE, Room 8.1805
Washington, DC 20002-3371

September 13, 2021

Via Email and Certified Mail

Mr. Jim Mondl
Mondl Law Firm LLC
1524 Legacy Circle
Fenton, Missouri 63026
jim@mondllaw

Re: *United States of America v. Ingram Barge Company LLC, et al.*,
C.A. No. 3:21-cv-1125, U.S.D.C., S.D. Illinois

Dear Jim:

I write to advise that the United States has filed a lawsuit against Ingram Barge Company LLC and Ingram Marine Group on an *in personam* basis; and against the M/V R. CLAYTON MCWHORTER, and Barges ING5801, IB1200, IN085141, T13894, IN995412, IN096041, ING4791, IN096076, IN164481, IN075046, IN085057, and IN075184, *in rem*.

This is not a summons or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days from the date shown below. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope, or other prepaid means for returning one copy. You may keep the other copy.

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent to answer the complaint. If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you and ask the court to require Ingram pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.
I certify that this request is being sent to you on the date below.

September 13, 2021

Best regards,

/s/ Jessica G. Sullivan

Enclosures

WAIVER OF SERVICE OF SUMMONS

To: Jessica G. Sullivan, Trial Attorney
Counsel for the United States of America

I have received your request to waive service of a summons in this action, along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from September 13, 2021, the date when this request was sent. If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date _____

(Signature of the attorney or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good for the failure.

“Good cause” does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant’s property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.