

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FEB 02 2021

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

JAMES W. McCORMACK, CLERK
By: _____
~~U.S. DISTRICT CLERK~~

FARMERS GRAIN TERMINAL, INC.

Plaintiff,

v.

AMERICAN RIVER
TRANSPORTATION CO., LLC, and
ARCHER-DANIELS-MIDLAND-
COMPANY.

Defendants.

Case No.: 4:21-cv-88-BSM

**VERIFIED COMPLAINT FOR
DAMAGES**

JURY DEMAND

This case assigned to District Judge Miller
and to Magistrate Judge Volpe

VERIFIED COMPLAINT

COMES NOW PLAINTIFF, Farmers Grain Terminal Inc. ("Farmers Grain"), through undersigned counsel, and for its Verified Complaint against Defendants, American River Transportation Co., LLC ("ARTCO") and Archer-Daniels-Midland-Company ("ADM") (collectively "Defendants"), and stating an admiralty and maritime claim within the meaning of Rule 9(h) of Federal Rules of Civil Procedure, respectfully represents upon information and belief as follows:

I. JURISDICTION AND VENUE

1. This is an admiralty and maritime claim within the meaning of Rule 9(h). Jurisdiction is based on 28 U.S.C. §1333 and 46 U.S.C. §30101. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(b).

II. PARTIES

2. Farmers Grain is a Mississippi corporation, registered to do business in the State of Arkansas, and at all relevant times owned a grain loading facility and dock in Lake Village, Arkansas, on the Mississippi River near Mile 531 LMR (“the Facility”).
3. Upon information and belief, ARTCO, is foreign limited liability company or other business entity, duly organized and existing under the laws of Delaware with its principal place of business in Decatur, Illinois, that is the registered owner of M/V Andrew C. MacMillan and Barge ART45133, and over which the Court has personal jurisdiction.
4. Upon information and belief, ADM, is a foreign corporation or other business entity, duly organized and existing under the laws of Delaware with its principal place of business in Decatur, Illinois, wholly owns ARTCO as a subsidiary, and over which the Court has personal jurisdiction.

IV. FACTUAL ALLEGATIONS

5. At all relevant times ARTCO owned and operated an inland River towing vessel (a/k/a “towboat”) named the M/V Andrew C. Macmillan.
6. At all relevant times here, ARTCO employed such vessel’s crew, including her pilot.
7. On or about February 16, 2019, the M/V Andrew C. MacMillan (“the Andrew”) was downriver bound on the lower Mississippi River towing (actually pushing) a tow of 35 barges.
8. As an incident to the Andrew/her tow’s downriver voyage, her pilot was called upon to maneuver/navigate this vessel/tow in through lower Mississippi River.

9. The Andrew's pilot was navigating far outside of the channel and in high water.
10. The Andrew's pilot was chargeable, as a matter of law, with navigating the Andrew/her tow towards/into/around and through the Mississippi River in high water, on a course/at a speed/in a manner that would allow such vessel to avoid predictable adverse effects on this flotilla's navigation course.
11. This allision – between the Andrew/her tow – and components of Farmers Grain's loading facility occurred as the direct proximate result of the acts of negligence on the part of the Andrew's pilot, who at the time such pilot committed such negligent acts/omissions, was operating the Andrew within the scope of his employment by Defendants.
12. A presumption of fault/negligence that arises in Farmers Grain's favor, as a matter of settled maritime law, as a result of this allision – between a moving vessel/tow (the Andrew/her tow) and a fixed structure (Farmers Grain's grain loading/unloading facility) – which further supports a finding of liability in Farmers Grain's favor against these Defendants.
13. This presumption of fault/negligence, without more and standing alone, if not rebutted, compels a finding of fault/negligence on the part of this pilot – and authorizes this Court to enter judgment against these defendants – in Farmers Grain's favor.

V. CAUSES OF ACTION

14. Upon information and belief, Farmers Grain alleges that Defendants were specifically negligent, and M/V Andrew C. MacMillan and Barge ART45133, were unseaworthy in

the following respects, among others, that will be more fully shown at the trial of this matter:

- a) M/V Andrew C. MacMillan was not manned with a competent, properly trained crew;
- b) Those aboard M/V Andrew C. MacMillan failed to take proper action to avoid an allision between Barge ART45133 as well as other barges and the Facility;
- c) Those aboard M/V Andrew C. MacMillan failed to maintain proper lookout and failed to navigate the vessel and barges in a safe and reasonable manner;
- d) M/V Andrew C. MacMillan was underpowered and/or her engines, equipment, and machinery were deficient or improperly maintained;
- e) M/V Andrew C. MacMillan and her crew violated statutes and regulations which were intended to promote safe navigation and avoid incidents such as this allision.
- f) Any other acts of negligence, fault, or lack of due care, whether presumed or otherwise, to be proven at trial.

15. The negligence of Defendants and the unseaworthiness of M/V Andrew C. MacMillan and Barge ART45133, were, in whole or in part, the cause and proximate cause of the damage to the Facility.

16. The aforesaid allision and resulting damages to the Facility were not caused or contributed to by any fault or neglect on the part of Farmers Grain.

17. As a result of the aforesaid allision, Farmers Grain has suffered and will suffer extensive damages as a result of the incident, as well as increased expenses in its efforts to mitigate those damages, including repair costs, survey expenses, contractor expenses, vessel expenses, employee expenses, business interruption, and other damages. Defendants are indebted to Farmers Grain for the full principal amount in excess of \$1,000,000, or such amount as will be proven at trial, plus pre- and post-judgment interest, attorney's fees, and costs.
18. Under United States federal maritime law, Farmers Grain has a maritime lien on the M/V Andrew C. MacMillan and Barge ART45133, that was impressed upon her at the time of the allision for the entire amount owed to Plaintiff in excess of \$1,000,000, or such amount as will be proven at trial, plus pre- and post-judgment interest, attorney's fees, and costs.
19. All and singular, the foregoing is true and correct and within the admiralty and maritime jurisdiction of this Honorable Court.
20. Plaintiff reserves the right to supplement and amend this Verified Complaint as necessary and appropriate through the discovery of additional information relevant hereto.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Farmers Grain Terminal, Inc., respectfully prays as follows:

- A. That after further proceedings be had, judgment be entered herein in favor of the Plaintiff and against Defendants, American River Transport Co., LLC and Archer-Daniels-Midland-Company, in the amounts to be proven at trial, plus

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