

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
M/V WELLWOOD, her engines,)
apparel, appurtenances, etc.,)
in rem, Wellwood Shipping)
Co., Ltd., and Christopher)
Vickers, in personam,)
Defendants)

84-1888 CIV-ATKINS

Civil Action

No. _____

AUG 10 1984

COMPLAINT

The complaint of the United States in a cause of natural resources damage and penalties, statutory, civil and maritime within the meaning of Federal Rule of Civil Procedure 9(h), alleges upon information and belief as follows:

FIRST CAUSE OF ACTION

1. Plaintiff is and was at all pertinent times a sovereign nation.

2. Defendant M/V WELLWOOD is and was at all pertinent times a steel motor cargo vessel of Cypriot registry, Official No. 394348, 400 feet long by 58 feet beam, and is now or during the pendency of process hereunder will be within this District.

3. Defendant Wellwood Shipping Co., Ltd., is and was at all pertinent times a foreign corporation doing business within the District, or otherwise subject to the jurisdiction of this Court, and the owner or operator of defendant M/V WELLWOOD.

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4. Defendant Christopher Vickers is and was at all pertinent times the Master of defendant M/V WELLWOOD, and is now present within this District.

5. Plaintiff through its Secretary of Commerce has designated, pursuant to section 302(a) of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1432(a), the Key Largo National Marine Sanctuary for the purpose of protecting and preserving the coral reef ecosystem in its natural state and to regulate uses within the Sanctuary to ensure the health and well-being of the coral and associated flora and fauna, and has published such designation and applicable regulations in 15 C.F.R. part 929. Plaintiff maintains the Sanctuary in trust for the people of the United States and any who would use and enjoy the Sanctuary for its established purpose.

6. On or about August 4, 1984, defendant M/V WELLWOOD, by reason of her unseaworthiness and the negligence of those in charge of her, including defendant Christopher Vickers, entered the Sanctuary and grounded upon Molasses Reef, damaging and destroying the Reef's coral and associate flora and fauna over an area some 80 by 400 feet, as can now best be estimated, which damage continues and spreads as she lays aground and as her salvage proceeds. The foregoing grounding and consequent damage were not caused or contributed to by plaintiff, its officers, agents or employees, but were caused solely and proximately by the unseaworthiness of defendant M/V WELLWOOD and the negligence of those in charge of her in the following respects among others to be shown at the trial hereof:

(a) Those in charge of her were careless, incompetent, and inattentive to their duties.

(b) Her navigational aids, instruments, and devices were defective in respects material to her grounding.

(c) She had no lookout or no proper lookout.

(d) She was grounded upon a known, charted reef.

(e) Those in charge of her failed to take due account of wind, weather and current in her navigation.

7. By reason of the premises, defendants Wellwood Shipping Co., Ltd., and Christopher Vickers, as well as the defendant vessel M/V WELLWOOD, became subject to penalties of up to \$50,000 for each day defendant M/V WELLWOOD lies aground, pursuant to section 303(a) of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1433(a) and 15 C.F.R. 929.7 and 929.9, and defendant M/V WELLWOOD became liable in rem to such penalties under section 303(c) of the Act, 16 U.S.C. 1433(c), in the following respects among others to be considered by the Secretary of Commerce:

(a) For destroying, disturbing and damaging coral, marine invertebrates, plants, soil and rock on Molasses Reef.

(b) For damaging and removing navigational aids, monuments, buoys, scientific equipment and markers installed by the Sanctuary Manager.

(c) For failing to navigate so as to avoid striking and damaging the natural features of the Sanctuary.

8. Pending assessment by the Secretary and payment by in personam defendants, defendant M/V WELLWOOD became and is liable

to pay penalties of up to \$1,296,000 as of August 8, 1984, and up to \$200,000 per day thereafter until the aforesaid violation ceases with her removal from Molasses Reef.

SECOND CAUSE OF ACTION

9. Plaintiff here realleges paragraphs 1 through 6 hereof, inclusive.

10. By reason of the foregoing grounding and consequent salvage, plaintiff has incurred expenses in protecting the Reef and in monitoring the grounded M/V WELLWOOD and her salvor, and will incur expense in removing destroyed and damaged coral and in protecting, restoring and preserving the remaining damaged coral, flora and fauna, all to its damage in an amount now estimated to be \$750,000, for which defendants and each of them are liable, but no part of which has been paid. Plaintiff reserves the right to amend this claim should increase be needed.

THIRD CAUSE OF ACTION

11. Plaintiff here realleges paragraphs 1 through 6 hereof, inclusive.

12. By reason of the foregoing grounding and consequent salvage, the natural resources of Molasses Reef have been and will be destroyed and damaged, causing in turn damage to the ecosystem of the Sanctuary and surrounding waters, and the loss of use and enjoyment of all the foregoing by residents of the United States and others who would lawfully use and enjoy the same, the value of all the foregoing being \$20,000,000, as best as can now be estimated, for which sum defendants and each of them became and are liable to the United States as public trustee

thereof. Plaintiff reserves the right to increase this claim should the same become necessary.

FOURTH CAUSE OF ACTION

13. Plaintiff realleges paragraphs 1 through 6 hereof, inclusive.

14. Defendant M/V WELLWOOD is and was at all pertinent times a vessel subject to the Intervention on the High Seas Act, 33 U.S.C. 1471 et seq. and the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), 1321(f)(1) and 1321(f)(4).

15. Plaintiff through the Commandant of the United States Coast Guard as delegatee of the Secretary of the Department of Transportation, pursuant to the Intervention on the High Seas Act, 33 U.S.C. 1471 et seq., has determined that the grounding of the M/V WELLWOOD on August 4, 1984, has resulted in an imminent threat of material damage to the vessel and her cargo.

16. Plaintiff has determined that the imminent threat of material damage to the vessel and her cargo creates a grave and imminent danger to the coastline and related interests of the United States from the threat of pollution of the sea which may reasonably be expected to result in major harmful consequences.

17. The foregoing grave and imminent danger to the coastline and related interests of the United States was not caused or contributed to in any way by the fault, neglect, or want of care of the United States, its officers, agents or employees or anyone for whom the United States is responsible, but was caused solely and proximately by the unseaworthiness of defendant M/V WELLWOOD and the negligence of those in charge of

her in the following respects among others to be shown at the trial hereof:

(a) Those in charge of her were careless, incompetent, and inattentive to their duties.

(b) Her navigational aids, instruments, and devices were defective in respects material to her grounding.

(c) She had no lookout or no proper lookout.

(d) She was grounded upon a known, charted reef.

(e) Those in charge of her failed to take due account of wind, weather and current in her navigation.

18. The defendant M/V WELLWOOD and those in charge of her have failed to take proper, timely and adequate steps to prevent, mitigate, or eliminate the grave and imminent danger to the coastline and related interests of the United States.

19. By reason of the premises, the United States pursuant to 33 U.S.C. 1472, undertook necessary action to eliminate the threatened pollution damage caused by the grounding of the defendant M/V WELLWOOD and incurred expenses in excess of \$75,000. Plaintiff reserves the right to amend this claim should increase be needed.

20. By reason of the foregoing, the defendant vessel, her owner, her operator, insurer or any other person providing evidence of financial responsibility became liable to the United States, pursuant to 33 U.S.C. 1321(d), (f)(1), and (f)(4), Federal Water Pollution Control Act, as amended, for the actual expenses and costs of the United States incurred in preventing, mitigating, and eliminating such danger.

21. By reason of the foregoing, the United States has a maritime lien on the defendant M/V WELLWOOD in an amount equal to the actual costs and expenses of said action pursuant to the provisions of 33 U.S.C. 1321(d), (f)(1) and (f)(4).

WHEREFORE, plaintiff prays:

1. That a warrant issue for the arrest of defendant M/V WELLWOOD, her engines, tackle, apparel, appurtenances, etc.

2. That defendants Wellwood Shipping Co., Ltd. and Christopher Vickers be summoned to answer this complaint.

3. That plaintiff have judgment against all defendants upon its first cause of action above, enforcing the penalties to be assessed by the Secretary should the in personam defendants herein fail to pay the same, and against all defendants upon its second, third and fourth causes of action above, with interest and costs.

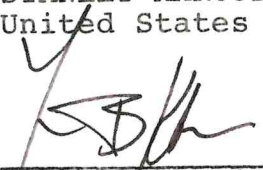
4. That defendant M/V WELLWOOD be condemned and sold to pay such judgment, including any penalties not paid by the individual defendants.

5. For such other and further relief as the Court shall deem appropriate.

Respectfully submitted,

STANLEY MARCUS
United States Attorney

By:


Assistant United States Attorney
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VERIFICATION

I declare under penalty of perjury this 10th day of August, 1984, that the foregoing allegations are true and correct, as based upon information officially furnished me.

A handwritten signature in black ink, appearing to read 'L B Kellner', is written above a horizontal line.

LEON B. KELLNER