F/V Chin Mien Yu v. F/V Zhong Yuan 601, 4 ROP Intrm. 312 (Tr. Div. 1994)

F/V CHIN MIEN YU, et al.,
Plaintiffs,

v.

F/V ZHONG YUAN 601, et al.,
Defendants.

CIVIL ACTION NO. 385-93

Supreme Court, Trial Division
Republic of Palau

Decision
Decided: February 24, 1994

LARRY W. MILLER, Justice:

This action began with the issuance, at the request of plaintiffs, of a warrant calling for the arrest of the defendant vessel, F/V Zhong Yuan 601 (the "601"). A hearing was thereafter commenced on defendant's motion to vacate the warrant of arrest and the Court heard testimony from the captain of the plaintiff vessel, F/V Chin Mien Yu (the"CMY"). That hearing was suspended by the parties' stipulation of September 8, 1993. Trial on the merits went forward in late September and early October, 1993, with the CMY captain's testimony at the prior hearing deemed part of the trial record. Written closing arguments were submitted by plaintiffs on October 18, 1993, and by defendants on October 29, 1993.

This opinion constitutes the Court's findings of fact and conclusions of law. Part I of this opinion addresses the question of liability. Part II addresses the appropriate measure of damages.

⊥313 I.

The incident giving rise to this action was a 2-day encounter at sea between the CMY and the 601, each engaged in long-line fishing in and around the territorial waters of Palau. It is undisputed that the ships were in close proximity to each other from sometime in the morning of July 12 until sometime in the afternoon of July 13; that a dispute arose between them concerning the 601's accusation that the CMY had cut the 601's fishing line; that there was at least one collision between the two vessels resulting in damage to the CMY; that a document was signed by the captains of both vessels relating to the 601's fishing line and purporting to absolve the 601 of liability for the damage caused to the CMY; and that, three days later, the members of the CMY's crew were rescued from the CMY, which was at the time taking on water, and which was thereafter abandoned at sea. Beyond these bare facts, the parties disagree about most everything else, as set forth principally in the testimony of the two captains, the only crew members of either vessel to testify at trial.

The CMY captain testified, in substance, that it was minding its own business when it was set upon by the 601. According to him, over the thirty hours or so when the ships were in the same area, the 601's captain accused the CMY of cutting its line and stealing its fish, threatened to sink the CMY and kill its crew unless the CMY confessed to its wrongdoing, and at various intervals made good its threats by deliberately ramming the CMY on ⊥314 four separate occasions. After the fourth such occasion, the captain of the CMY swam over to the 601 and, in fear for his life and the lives of his crew, agreed to sign a written confession that the CMY had indeed stolen the 601's line and would compensate it for its lost catch. Then, taking on water and fighting a losing battle to bail the ship, the CMY attempted to return to Koror, eventually abandoning the effort when the sinking of the ship appeared inevitable.

The captain of the 601, by contrast, denied that he had intentionally rammed the CMY at any time. According to him, he discovered that the 601's line was cut, came upon the CMY acting in a suspicious manner, leveled his accusation and demanded the opportunity to search the CMY for proof, and subsequently found such proof in the form of a broken buoy allegedly thrown overboard from the CMY. When confronted with this proof, the captain of the CMY confessed orally in the evening of July 12 that it had cut the 601's line. On the following day, the 601's captain demanded -- and the CMY's captain agreed -- that the confession should be put in writing. He then attempted to bring the 601 alongside the CMY, so that the captain of the CMY could board the 601 and sign an agreement. However, the rough seas caused the 601 to list so that the upper portion of the 601 collided with the CMY causing what appeared to be minor damage. After the 601 pulled away to a safe distance, the captain of the CMY swam over and signed the agreement and the two ships parted without any indication that the CMY was in distress.

⊥315 From these substantially divergent accounts, the Court is called upon to discern the facts and the law applicable to them. There is reason to be skeptical of both accounts. On the one hand, the efforts (or lack of same) of the CMY's captain to escape or seek assistance do not seem commensurate with the mortal danger in which he now says he and his crew found themselves. On the other hand, the Court cannot accept defendants' version that the CMY's captain simply confessed to having committed the wrongs charged by the 601, and then volunteered to swim 20-30 meters in open sea for the privilege of signing an "agreement" that would amply compensate the 601 for its losses but would let bygones be bygones with respect to the damage sustained by the CMY. The Court believes that the truth lies somewhere between these two accounts, and that the law requires that the 601 be found liable for the CMY's damage.

Central to the Court's conclusion is the statement of the 601's captain that, early on July 12, he prevented the CMY from leaving the area by seizing its fishing line. Although he later let the line go, he admitted in response to a question by the Court that it was his intention to re-seize it should the CMY attempt to depart. Essentially, the 601 had determined to hold the CMY hostage until a resolution satisfactory to it was achieved regarding the 601's fishing line. See Defendants Closing Arguments at 8 ("The intention of the 601's captain in doing this was to prevent the Taiwanese vessel from continuing its operation and from leaving the scene until the matter had been settled.") This was ⊥316 duress, which surely vitiates the agreement signed by

the CMY,[1] and which requires that the damage caused the CMY be viewed in a harsh light. In the Court's view, even accepting that the collision between the 601 and the CMY was not intentional but rather accidental, the fault for the accident still must be laid at the 601's door. [2] It was only because the 601 insisted on forcing the issue at sea -- against the wishes of the CMY and its representatives in Koror that the dispute be resolved after both vessels had returned to port -- that there was any opportunity for the "accident" to happen. At least as to those disputes for which there is a legal remedy in damages (and a court available to provide such a remedy), a party who attempts self-help on the open ⊥317 sea does so at his own risk.

Although the limited resources available to the Court have not yielded any case setting forth precisely this principle, the Court believes that its conclusion is in accordance with two well-accepted general principles of maritime law. First is the principle, as enunciated by the celebrated Judge Learned Hand, that "it is the risk of collision, not the collision itself, that masters must avoid." *Ocean S.S. Co. v. United States* , 38 F.2d 782, 784 (2d Cir. 1930); see also 70 Am. Jur. 2d, Shipping § 617 ("the paramount duty rests upon those on board to adopt every necessary and practicable precaution to prevent a collision"). On defendants' version of the facts, the actions of the 601's captain in attempting to pull alongside the CMY may have been undertaken with all of the care exercised by captains in similar situations and may have been faultless from a maneuvering standpoint. But such faultlessness cannot obscure the fact that the collision could not have happened at all if he had not needlessly insisted upon bringing the boats together there.

A second principle that the Court believes has some bearing is the doctrine of "inevitable accident". The general rule in the event of collision is that both vessels should bear the responsibility for damages in proportion to the amount each was at fault. *United States v. Reliable Transfer Co.* , 421 U.S. 397, 411, 95 S.Ct. 1708, 1715-16 (1975). Thus, even were the

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[1] See generally Restatement (2d) of Contracts, § 175(1) ("If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim."); see also id., Comment a ("If one person . . . imprisons another, the conduct may amount to duress because of the threat of . . . continued imprisonment that is implied.").

[2] The Court rejects defendants' suggestion that it cannot rule in plaintiffs' favor except by accepting their theory that the collision (or collisions) was intentional. The case, as tried by both parties, presented the Court with an ample record to decide what the Court believes to be the ultimate issue -- whether the collision was the fault of defendants. See generally ROP Civ. Pro. R. 15(b) (Amendments to Conform to the Evidence). The Court notes that long before the liberalization of pleading rules at common law, the rules of pleading in admiralty were described as "exceedingly simple and free from technical requirements":

> "The proofs of each party must correspond substantially with his allegations so as to prevent surprise. But there are no technical rules of variance, or departure in pleading, like those in the common law, nor is the court precluded from granting the relief appropriate to the case appearing on the record, and prayed for by libel, because that entire case is not technically stated in the libel." *DuPont v. Vance*, 60 U.S. 162, 172-73, 15 L.Ed. 584, 587 (1857).

601 and the CMY to be found equally at fault, the 601 would still be responsible for half of the CMY's damages. There are some ⊥318 collisions, however, which simply cannot be avoided and as to which neither vessel can be said to be at fault. That is essentially defendants' argument here: Having no basis to cast blame for the collision on the CMY, and wishing to avoid blame itself, it attributes the collision to rough seas. But

> "[i]t is well-settled that the burden of proving inevitable accident is 'heavily' upon the party asserting that defense; that a finding of inevitable accident is 'not to be lightly arrived at'; that the respondent must affirmatively establish that the accident '. . . could not have been prevented by the use of that degree of reasonable care and attention which the situation demanded'." *Swenson v. The Argonaut*, 204 F.2d 636, 640 (3d Cir. 1953) (citations omitted).

But again, even on their own version of the facts, defendants can hardly call this collision "inevitable". While it may have been inevitable that an attempt to bring the boats alongside each other in rough seas would result in a collision, it was by no means inevitable -- but rather plainly the fault of defendants -- that the attempt was made at all.[3]

There are occasions when self-help is permitted by the law. But where a party resorts to self-help, he should bear the risk of any injury that follows. Especially is that true where, as here, self-help was plainly not necessary. This was not a situation ⊥319 where one ship was headed to the North Pole and one to the South and there was no possibility of obtaining redress by any other means. The 601 knew that it and the CMY were both fishing out of Palau in association with Palau-based companies and that there would be an opportunity to resolve the dispute over the lost fishing line, whether between themselves or in this court, when they returned to port.[4] Having chosen instead to act in rough seas, it cannot disclaim responsibility for the damage that occurred.

Having determined that the 601 should be found to have been at fault with respect to its collision with the CMY, a final issue arises on the question of liability: Did the collision lead to the sinking of the CMY? In its closing argument, the 601 raises questions both about the seriousness of the damage caused (i.e., was it enough to cause the vessel to take on water and sink?) and the inevitability of the sinking (could the vessel have been saved?). The Court believes that the record is sufficient to find for the CMY on both of these issues.

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[3] See *Creevy v. The Eclipse Tow-Boat Co.*, 81 U.S. 199, 203, 20 L.Ed. 873, 875 (1872):

> "Most collisions are inevitable at the moment they occur. But . . . it is no valid defense to say that nothing could be done at the moment to prevent the two vessels from coming together. Inability to prevent a collision usually exists at the time it occurs, but it is generally an easy matter to trace the cause of the disaster to some negligent or unskillful act, or to some antecedent omission of duty on the part of one or the other or both of the colliding vessels."

[4] The 601 having asserted no counterclaim with respect to the fishing line, the Court is not called upon to resolve that dispute. It suffices to say that even if the 601 were right, it would not be absolved of its liability to the CMY.

Taking the second question first, the Court has before it the unrebutted testimony of the CMY's captain to the effect that the efforts of his crew to bail were a losing battle; of Xue Xia Fen, the captain of another vessel that assisted in the rescue, who said that it looked like the CMY would sink soon; and of Sebastian ⊥320 Shiro, an employee of the Palau Environmental Quality Protection Board, who said that he would have vetoed any attempt to tow the CMY back into Malakal Harbor. With the last testimony, especially, there seems little reason to doubt that the CMY was in extremis and bound to sink.

The first question is perhaps a closer one, but the Court believes that it should also be resolved in favor of plaintiffs. Against the testimony of the 601's captain that the collision did not damage the hull of the CMY and could not have led to its sinking must be weighed the CMY captain's testimony that it did a series of photographs showing, and the testimony of Mr. Shiro describing, extensive damage, and the ineluctable fact that the CMY began taking on water. Bearing in mind that "[t]he fact of causation is incapable of mathematical proof," Restatement (2d) of Torts, § 433B, Comment b, the Court finds that plaintiffs have met their burden:

> "If, as a matter of ordinary experience, a particular act or omission might be expected to produce a particular result, and if that result has in fact followed, the conclusion may be justified that the causal relation exists." Id.

Two vessels collided; the smaller of the two began to take on water and eventually sank. Having been presented with no other explanation for the CMY's demise, the Court believes that causation has been adequately demonstrated.

II. DAMAGES

Having determined the 601 should be held liable for the sinking of the CMY, the Court must determine the appropriate measure of damages to be awarded. Plaintiffs have broken their ⊥321 damages request into six elements, which are discussed seriatim below. The Court first addresses the question of who should be held liable to pay those damages.

Plaintiffs seek that damages be assessed jointly and severally against four parties: the 601, its captain, Li Song Liang, its owner, Bei Hai City Ocean Developing Company, and the master of the Zhong Yuan fishing fleet, Hong Xia Quei. As a jurisdictional matter, while the case was initially commenced as in rem action by seizure of the vessel, Captain Li and Bei Hai subsequently appeared in answer to the complaint. See 2 Am. Jur. 2d, Admiralty § 99 at 779 (court's jurisdiction "may be acquired . . . by voluntary appearance of the party on whom process would otherwise have to be served"); see also id. § 100 at 779-80 (plaintiff's "election to proceed according to the principles of libel in rem does not preclude the seeking of relief in personam in the same suit").

As a substantive matter, defendants do not contest the potential liability of Captain Li, but suggest that Bei Hai, as his employer, cannot be held liable to the extent Captain Li is found to have acted intentionally. The Court believes the law is otherwise:

> "The now generally recognized rule is that an employer is liable for the reckless, wilful, intentional, wanton or malicious acts of his employee while the servant is acting in the execution of his authority and within the course of his employment or with a view to the furtherance of his employer's business, and not for a purpose personal to the employee." 53 Am. Jur. 2d, Master and Servant § 438 at 456 (footnotes omitted).

Plainly, all of Captain Li's actions to recover the lost line and to obtain compensation therefor were taken for a business, and not ⊥322 a personal, purpose. Damages will accordingly be assessed, jointly and severally, as against the 601, Captain Li and Bei Hai.

No damages will be assessed against Mr. Hong. Mr. Hong does not appear to have been served nor did he appear by answer, and the Court is unaware of any legal basis for holding him individually liable in any event.

A. Value of Vessel

The basic measure of recovery where a vessel has been totally lost is the vessel's market value at the time of its destruction. *Standard Oil Co. v. Southern Pacific Co.*, 263 U.S. 146, 155, 45 S.Ct. 465, 467 (1925). Neither the absence of direct evidence of market value nor uncertainty generally is a bar to recovery. What is required for the Court to make an award are "facts . . . which afford a reasonable basis for measuring the plaintiff[s'] loss." 22 Am. Jur. 2d, Damages § 489 at 573; see also id. § 488 at 570-71 ("where it is reasonably certain that damage has resulted, mere uncertainty as to the amount will not preclude the right of recovery"). "In situations where market value cannot readily be established, the Court should consider any and all evidence before it to establish a fair valuation." *Greer v. United States* , 505 F.2d 90, 93 (5th Cir. 1974); accord, *The President Madison*, 91 F.2d 835, 845 (9th Cir. 1935) ("Falling market value, a court of admiralty may estimate the worth of a lost ship by all relevant evidence.").

The only direct evidence of the value of the CMY presented by either party was the statement of its captain that the vessel was ⊥323 worth 4.8 million New Taiwanese dollars, and of his father, the CMY's owner, that the vessel had been purchased six years earlier for 5 million New Taiwanese dollars. On the basis of this testimony, Plaintiffs claim a current value of 5 million New Taiwanese dollars, or roughly $186,000.

While "[o]wnership of property is generally considered sufficient to render admissible the owner's opinion as to value", the admissibility, and certainly the weight, of that testimony turns on whether the owner in fact had sufficient facts on which to base his opinion. Damages, supra § 997 at 952-93. Here, neither the owner nor the owner's son testified that he had any knowledge of the current market for used vessels of the size and type of the CMY. Standing alone, therefore, this testimony does not enable the Court to adopt plaintiffs' proffered value as its own conclusion.

The Court believes, however, that other evidence submitted by plaintiffs relating to the

CMY's earnings and to the cost of new vessels does support a valuation in the range proposed by plaintiffs. First, although the earnings evidence is submitted in support of plaintiffs' claim for future profits, and although the Court concludes below that no such claim is permissible under the law, see pp. 16-17 infra, the Court nevertheless believes that the figures presented there are useful in attempting to establish the value of the CMY at the time of its loss. "The discounted future earning power of a ship . . . is a factor to be used in determining present market value." *Alkmeon Naviera, S.A. v. M/V Marina L*, 633 ⊥324 F.2d 789, 797 (9th Cir. 1980).

Here, plaintiffs have produced evidence that the fishing activities of the CMY yielded profits ranging from $15,000 to $26,000 per month over the last five years, and approximately $17,000 per month in the six months immediately preceding its sinking. Taking the smallest of these figures, $15,000 per month or $180,000 per year, projecting that the CMY would have had a remaining useful life of at least two years, and discounting the expected profits by as much as 30% per year to account both for the time value of money and for the inherent uncertainties of the fishing business, one still arrives at a present value of future profits in excess of the $186,000 value proffered by plaintiffs.

A further check on plaintiffs' valuation is the uncontradicted assertion of the CMY's owner that a new fiberglass boat similar to the CMY would cost between 8 million and 10 million New Taiwanese dollars. See *The President Madison*, supra, 91 F.2d at 845 (recognizing "cost of reconstruction less depreciation" as an appropriate basis for valuation). Taking the lower estimate of 8 million as the replacement cost new of the CMY, [5] and assuming that the CMY has depreciated 50% from its value as a new vessel, [6] ⊥325 yields a present value for 4 million New Taiwanese dollars.

Believing that the lower replacement cost valuation best indicates the amount a willing buyer would have paid for the CMY, [7] the Court adopts that figure as plaintiffs' damages for its loss.[8]

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[5] According to his testimony, fiberglass boats are cheaper to make than wooden boats. However, using the cost of a fiberglass boat is appropriate absent some showing that buyers will pay a premium to have a wooden boat instead. If anything, the testimony suggests the opposite --that wooden boats are no longer made at all.

[6] Defendants' brief pointed to documentary evidence that the CMY was 12 years old, rather than 6, as had been testified to. As plaintiffs failed to file a reply brief explaining the discrepancy, the Court accepts defendants' assertion. Taking the 25-year and 20-30 year estimates of the CMY's useful life offered by its owner and captain, respectively, a 50% depreciation figure is a reasonable approximation.

[7] That the income approach might yield a higher number suggests that a buyer could rationally pay more, but does not predict what he actually would pay given other alternatives. To use the easiest example, even if the income approach yielded a valuation of 8 million New Taiwanese dollars, a buyer would never pay that much for the used CMY but would buy a new boat for the same price.

[8] Plaintiffs' brief attaches the New Taiwanese dollars/U.S. dollars exchange rate as of October 17, 1993, the day before their brief was filed. If available, plaintiffs should include in their proposed judgment a figure that converts 4 million New Taiwanese dollars to U.S. dollars

B. Repatriation Costs

Plaintiffs ask that they be reimbursed for $1600 spent to return home four members of the CMY's crew. The Court believes that this a proper item of incidental damages and should be awarded. See *Ozanic v. United States* , 165 F.2d 738, 743-44 (2d Cir. 1948) (recognizing repatriation expenses as an element of damages but denying them on the facts presented).

C. Interest

Plaintiffs seek interest on the value of the vessel, suggesting that they should be awarded 2 years' worth of interest representing the amount of time it would take to replace the vessel. The Court agrees that plaintiffs are entitled to interest, ⊥326 but not as plaintiffs have calculated it.

As the Court understands the law, absent exceptional circumstances, the owner of a vessel which has been totally lost is entitled to prejudgment interest from the time of the sinking to the time judgment is entered. *Alkmeon*, supra, 633 F.2d at 797; *Bunge Corp v. American Comm. Barge Line Co.* , 630 F.2d 1236, 1242 (7th Cir. 1980). That interest makes the owner whole by adding to the vessel's value at the time of the sinking the interest that it would have earned had the money been paid immediately. To deny such interest, as one court has pointed out, would "allow the tort-feasor the use of moneys belonging, in common parlance, to the party he has injured." *The President Madison* , supra, 91 F.2d at 845. Accordingly, the judgment in this matter should include an amount representing 9% interest on the value found above from July 16 to the date of judgment. See *A.J.J. Enterprises v. Renguul* , Civil Appeal No. 7-90 (August 6, 1991) (absent agreement, prejudgment interest to be paid at 9% rate).

Plaintiffs, like all other litigants, are also entitled to postjudgment interest on the entire amount of the judgment until it is paid. 14 PNC 2001. However, the Court finds no basis to award plaintiffs additional interest prospectively. With pre- and postjudgment interest, plaintiffs are assured that they will receive interest for however long it takes to actually receive the money. If two years (or more) pass, then plaintiffs will receive two years (or more) worth of interest by operation of law. If plaintiffs receive their money sooner, then they themselves can ⊥327 invest that money and retain the interest that is earned. There is therefore no need or reason to add on the potentially duplicative amount that plaintiffs seek.

D. Lost Income

Plaintiffs also seek an award representing income that they believe they would have earned from the use of the CMY over the next 2 years. However, as suggested earlier, see p. 12 supra, in the case of a vessel that has been totally lost, damages for potential future profits are not recoverable. See, e.g., *The Umbria*, 166 U.S. 404, 421, 17 S.Ct. 610, 617 (1897) ("in cases of a total loss the probable profits of a charter not yet entered upon are always rejected"); accord,

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using the exchange rate as of July 16, 1993, the date of the sinking.

A&S Transp. Co. v. The Tug Fajardo , 688 F.2d 1, 2 (1st Cir. 1982). [9] The reason for this rule is that future earnings are properly taken into consideration -- as the Court has done above -- in determining market value. To award them as a separate and additional item of damages would therefore be a form of double-counting:

> "Where . . . the lost ship had a readily ascertainable market value, and that value is awarded, we will not award potentially duplicative items of damage in order to compensate; market value accomplishes this." *Alkmeon*, supra, 633 F.2d at 797.

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Accordingly, plaintiffs' request in this regard is denied.

E. Emotional Distress

Plaintiffs seek $150,000 in damages for the emotional distress suffered by the captain of the CMY and 4 members of its crew. [10] The Court agrees with plaintiffs that it is difficult to assess this sort of damages and believes that that difficulty is exacerbated where, as here, the crew members were not called to testify. Accordingly, the Court finds that the $150,000 figure is unjustified on the current record.

At the same time, the Court believes that it is undeniable that plaintiffs suffered some distress in their having to be rescued from a sinking ship, and that such distress is properly chargeable to defendants. The Court therefore awards $1000 in damages to the captain of the CMY and each of his crew members. See *Fathom Expeditions, Inc. v. M/T Garrion* , 402 F. Supp. 390, 394 -95 (M.D. Fla. 1975) (awarding $250 each for anguish, fright and suffering resulting from collision and subsequent rescue from the water).

F. Punitive Damages

Finally, plaintiffs seek an award of punitive damages in the amount of twice the lost value of the CMY. The Court has determined to deny this request for two reasons.

⊥329 First, although the Court has come across no authority denying the availability of punitive damages in admiralty, neither has it come across a single case (nor have plaintiffs cited any) in

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[9] The cases relied upon by plaintiffs are not to the contrary. *The President Madison*, supra, and *Brooklyn Eastern District Terminal Co. v. United States*, 287 U.S. 170, 53 S.Ct. 103 (1932), do not allow recovery of lost profits as such, but state merely that "the earnings of the vessels", among other evidence, may be considered by a court in "estimat[ing] the worth of a lost ship". *Venore Transp. Co. v. M/V Struma*, 583 F.2d 708 (4th Cir. 1978), deals with the availability of consequential damages to a time charterer where a vessel has been damaged rather than destroyed, and is therefore not on point.

[10] Based on the testimony of the 601's captain and an arrival document relating to the CMY, defendants suggest that there were 6 crew members on the CMY in addition to its captain. Because the Court does not believe that the discrepancy is material in any other respect, and because plaintiffs' lower count is here helpful to defendants, the Court sees no reason to resolve that issue.

which such damages were either sought or awarded.

Second, the Court is of the view that additional damages are not necessary to serve the punishment and deterrence purposes typically served by punitive damages. See Restatement (2d) of Torts, § 908. As to the 601, the notion of punishment and deterrence makes little sense. The legal fiction that the vessel itself is a wrongdoer for purposes of in rem jurisdiction cannot reasonably be stretched to justify an award of punitive damages. As to the remaining defendants, the Court believes that the substantial compensatory damages awarded above should be sufficient to achieve those ends.

CONCLUSION

The Court rules in favor of plaintiffs and against defendants the 601, Bei Hei and Captain Li as set forth above. Plaintiffs should submit a proposed judgment reflecting the damages awarded and calculating interest up to and including the date of the judgment. See pp. 14, 15, 17, supra. If plaintiffs seek to sell ⊥330 the 601 to satisfy their judgment, they should thereafter submit proposed orders sufficient to accomplish that purpose as well as a proposed text for publication to inform other potential claimants against the vessel in advance of any sale.[11]

[11] See Advisory Committee Note to Supplemental Admiralty Rule c(4): "If . . . the vessel is not released, general notice is required in order that all persons, including unknown claimants, may appear and be heard, and in order that the judgment in rem shall be binding on all the world."