

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

FILED

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U.S. DISTRICT COURT  
EASTERN DIST. TENN.

BY \_\_\_\_\_ DEPT. CLERK

1:10-CV-179

Collier/Lee

KELLY O'CONNOR, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SERODINO, INC., )  
 )  
Defendant. )

Jury Demanded

Civil Action No.

**COMPLAINT**

Comes Plaintiff, by and through the undersigned counsel, and for his Complaint against Defendant would show unto the Court as follows:

**I. THE PARTIES**

1. Plaintiff is a resident of Whitfield County, Georgia.
2. Defendant is a Tennessee corporation providing marine services, including transportation and construction. Defendant's principal place of business is in Hamilton County, Tennessee.
3. Defendant is an employer within the meaning of 46 U.S.C. § 2114 and T.C.A. § 50-1-304.

**II. NATURE OF THE ACTION**

4. This is an action seeking redress for retaliatory discharge and discrimination in employment for the refusal to perform and remain silent about illegal activities, in violation of 46 U.S.C. § 2114, T.C.A. § 50-1-304, and the common law of the State of Tennessee.

**III. JURISDICTION**

5. The actions complained of herein took place in Hamilton County, Tennessee.

6. The jurisdiction of this Court is invoked pursuant to 46 U.S.C. § 2114(b).

#### **IV. FACTUAL BASES OF PLAINTIFF'S CLAIMS**

7. Plaintiff, who is a licensed United States Merchant Marine Officer, was employed by Defendant as a boat pilot from January 4, 2008, until his termination on September 15, 2009.

8. During his employment with Defendant, Plaintiff piloted towboats pushing barge traffic on the Tennessee River between Halesboro, Tennessee, and Knoxville, Tennessee.

9. Throughout his employment with Defendant, Plaintiff noticed and became increasingly vocal about numerous violations of federal law and regulations relating to maritime safety.

10. Plaintiff complained to Defendant on numerous occasions about the insufficient manning on some of Defendant's vessels. This insufficient manning led to the lack of and/or faulty, cursory, and perfunctory inspections in violation of 33 C.F.R. § 164.80 and rendered the vessel unable to meet the watch requirements of 46 U.S.C. § 8104 and 46 C.F.R. § 15.705.

11. Plaintiff had a good faith belief that this understaffing was in violation of federal law and/or regulations, and that it compromised the safety of the crew and the public at large.

12. Plaintiff complained to Defendant on numerous occasions about Defendant's failure to maintain proper lookout on its vessels in violation of 33 U.S.C. § 2005.

13. Plaintiff had a good faith belief that this failure to maintain a proper lookout was in violation of federal law and/or regulations, and that it compromised the safety of the crew and the general public.

14. Defendant, in a twelve-month period, has been involved in two fatal barge collisions with recreational boaters as a result of failing to maintain proper lookout.

15. Plaintiff complained to Defendant on numerous occasions that officers and crew members were required to exceed 12 hours of work on given shifts, in violation of 46 U.S.C. § 8104.

16. Plaintiff had a good faith belief that violation of the “12-hour rule” was a violation of federal law and/or regulations, and that it compromised the safety of the crew and the general public.

17. Plaintiff was instructed by Defendant to be quiet about the 12-hour violations and to continue working in excess of 12 hours if he wished to keep his job.

18. Plaintiff complained to Defendant about the lack of security/safety training and drills required by federal law and/or regulations, specifically 33 C.F.R. § 104.225 and 33 C.F.R. §104.230.

19. Plaintiff had a good faith belief that Defendant’s failure to provide mandatory security/safety training and drills was a violation of federal law and/or regulations, and that it compromised the safety of the crew and the general public.

20. Plaintiff complained to Defendant about the lack of periodic and random drug and alcohol testing required by federal law and/or regulations, specifically 46 C.F.R. § 16.220 and 46 C.F.R. §16.230.

21. Plaintiff had a good faith belief that Defendant’s failure to conduct periodic and random drug and alcohol testing was a violation of federal law and/or regulations, and that it compromised the safety of the crew and the general public, especially given the fact that Plaintiff observed officers and crew members who smelled of alcohol and marijuana while aboard working vessels.

22. Despite Plaintiff's numerous complaints, Defendant refused to rectify or correct the unsafe conditions resulting from non-compliance with the aforementioned federal laws and regulations.

23. As a result of these complaints, Defendant began retaliating against Plaintiff. This retaliation included nit-picking Plaintiff's performance in a manner not visited upon his non-complaining co-workers. The retaliation also included admonishing Plaintiff in writing for minor performance errors, despite the fact that non-complaining co-workers had not been admonished in writing for running barges aground while asleep, snapping propellers off on rocks, running out of fuel, and colliding with recreational boaters. Additionally, many of Defendant's employees and management treated Plaintiff with open hostility.

24. On or about August 11, 2009, Plaintiff notified Defendant's Vice-President via letter that Plaintiff was refusing to acquiesce further to violations of the "12-hour rule", and that henceforth he would be abiding by all of the safety regulations that Defendant was in the habit of ignoring. Plaintiff sent a copy of this letter to the United States Coast Guard.

25. On or about August 12, 2009, Plaintiff sent to the Coast Guard a 39-page letter setting forth in detail the various items of non-compliance herein discussed. Plaintiff understood that by sending this complaint letter to the Coast Guard, he was placing his employment in jeopardy.

26. Thereafter, the Coast Guard commenced an investigation of Defendant. Over the next several weeks, Plaintiff had several conversations with Coast Guard officials regarding his complaints.

27. Defendant temporarily laid Plaintiff off work on August 17, 2009, as a result of his complaints. No one else was laid off at this time. Though Defendant claimed the layoff was due to “no work”, Defendant returned Plaintiff to work one week later without explanation.

28. On September 15, 2009, Defendant placed Plaintiff on “permanent layoff.”

## **V. CAUSES OF ACTION**

### COUNT ONE: 46 U.S.C. § 2114(a)(1)(A)

29. In terminating Plaintiff due to his good faith report to the Coast Guard of activity he believed to be in violation of maritime safety laws and/or regulations, Defendant is in violation of 46 U.S.C. § 2114(a)(1)(A).

30. In otherwise discriminating against Plaintiff due to his good faith report to the Coast Guard of activity he believed to be in violation of maritime safety laws and/or regulations, Defendant is in violation of 46 U.S.C. § 2114(a)(1)(A).

### COUNT TWO: 46 U.S.C. § 2114(a)(1)(B)

31. In terminating Plaintiff due to his refusal to perform acts which he reasonably expected would result in serious injury to himself, the crew, or the public, Defendant is in violation of 46 U.S.C. § 2114(a)(1)(B).

32. In otherwise discriminating against Plaintiff due to his refusal to perform acts which he reasonably expected would result in serious injury to himself, the crew, or the public, Defendant is in violation of 46 U.S.C. § 2114(a)(1)(B).

### COUNT THREE: Tennessee Public Protection Act, T.C.A. § 50-1-304

33. In discharging Plaintiff due to his refusal to perform illegal activities, which implicate important public policy, Defendant is in violation of the Tennessee Public Protection Act, T.C.A. § 50-1-304.

34. In discharging Plaintiff due to his refusal to remain silent about illegal activities, which implicate important public policy, Defendant is in violation of the Tennessee Public Protection Act, T.C.A. § 50-1-304.

COUNT FOUR: Common-law retaliatory discharge

35. In discharging Plaintiff due to his refusal to perform illegal activities, which implicate important public policy, Defendant is guilty of common-law retaliatory discharge.

36. In discharging Plaintiff due to his refusal to remain silent about illegal activities, which implicate important public policy, Defendant is guilty of common-law retaliatory discharge.

**VI. PUNITIVE DAMAGES**

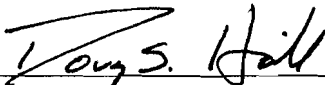
37. In discharging Plaintiff due to his refusal to perform illegal activities and/or his reporting illegal activities to the Coast Guard, Defendant acted intentionally, recklessly, and/or maliciously; thus, warranting punitive damages.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff accordingly prays for the following relief:

- a. That proper process be served upon Defendant and that Defendant be required to answer in the time prescribed by law;
- b. Back pay, reinstatement or front pay in lieu thereof, damages for humiliation and embarrassment and other compensatory damages;
- c. Punitive damages;
- d. Attorneys fees and court costs under all applicable statutes;
- e. All such further relief to which Plaintiff may be found entitled; and
- f. A jury to try all such issues triable by a jury.

BURNETTE, DOBSON & PINCHAK

By:  \_\_\_\_\_

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