

FILED

JUL 20 2009

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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8 Attorneys for Plaintiff
 9 SHIPPING CORPORATION OF INDIA LIMITED

10
 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

14 SHIPPING CORPORATION OF
 INDIA LIMITED,

15 Plaintiff,

16 vs.

17 PROGRESS BULK CARRIERS,
 18 LTD.,

19 Defendant.

Case No. CV09 3247 MHP

**RELEASE BY CONSENT OF
 PROPERTY IN THE CUSTODY
 OF THE U.S. MARSHAL,
 SUBSTITUTE CUSTODIAN OR
 OTHER PERSONS FROM
 ATTACHMENT AND RELATED
 ORDERS;**

**SUPPLEMENTAL ADMIRALTY
 RULES FOR CERTAIN
 ADMIRALTY OR MARITIME
 CLAIMS OF THE FEDERAL
 RULES OF CIVIL PROCEDURE,
 RULE E (5)(C)**

**(PROPOSED ORDER FILED
 CONTEMPORANEOUSLY
 HEREWITH)**

26
 27 **WHEREAS**, on July 17, 2009, Plaintiff SHIPPING
 28 CORPORATION OF INDIA LIMITED ("Plaintiff") obtained an order from

1 this Court pursuant to Rule B of the Supplemental Admiralty Rules for
2 Certain Admiralty or Maritime Claims of the Federal Rules of Civil
3 Procedure (“the Attachment Order”), attaching Defendant’s, PROGRESS
4 BULK CARRIERS LTD’s (“Defendant”), property in the Northern District,
5 including but not limited to, (1) Defendant’s bunkers and/or other fuel
6 (“Defendant’s Bunkers”) aboard the vessel M/V SUJITRA NAREE (“the
7 Vessel”); and, (2) Defendant’s funds and/or other supplies then held by
8 Pacific Coast Maritime Agencies Inc., of 61 Avenida De Orinda, Suite F,
9 Orinda California, 94563 (“Defendant’s Funds”);

10 **WHEREAS**, on July 17, 2009, the Plaintiff also obtained an
11 order to the United States Marshal regarding Process of Maritime
12 Attachment and Garnishment (“Marshal Order”) as well as an Order for the
13 Appointment of a Substitute of Custodian (“Custodian Order”) (the
14 Attachment Order, the Custodian Order, and the Marshal Order are
15 collectively referred to herein as the “Orders”);

16 **WHEREAS**, the Attachment Order attaches and/or garnishes all
17 tangible or intangible property belonging to or being held for the Defendant
18 within the Northern District, including but not limited to, Defendant’s
19 Bunkers and Defendant’s Funds;

20 **WHEREAS**, the Marshal Order directs the United States
21 Marshal to attach all tangible or intangible property belonging to or being
22 held for the Defendant within the Northern District, including but not
23 limited to, Defendant’s Bunkers and Defendant’s Funds;

24 **WHEREAS**, the Custodian Order compels the United States
25 Marshal to assume custody and possession of the Defendant’s Bunkers and
26 Defendant’s Funds and then surrender such custody and possession to a
27 Substitute Custodian, Nielsen Beaumont (the “Substitute Custodian”);

28 **WHEREAS**, on July 17, 2009, the United States Marshal,

1 pursuant to the Orders, proceeded (1) to attach Defendant's Bunkers and
2 subsequently transfer custody of this property to the Substitute Custodian;
3 and, (2) to attach Defendant's Funds;

4 **WHEREAS**, on July 20, 2009, the Defendant has agreed to
5 provide security in the amount of US\$300,000, on terms satisfactory to
6 Plaintiff;

7 **WHEREAS**, by this Release by Consent, the Plaintiff consents
8 to:

9 (a) The immediate release of Defendant's Bunkers and
10 Defendant's Funds from attachment; and,

11 (b) The vacatur of the Orders as they apply to Defendant's
12 property in the Northern District, including Defendant's Bunkers and
13 Defendant's Funds;

14 **WHEREAS**, by this Release by Consent, the Plaintiff requests
15 that the Court retain jurisdiction for fifteen (15) days, prior to such time
16 Plaintiff shall dismiss the action unless a default arises with the provision
17 of security;

18 **NOW THEREFORE PLAINTIFF HEREBY CONSENTS:**

19 1. TO THE IMMEDIATE RELEASE FROM ATTACHMENT
20 OF DEFENDANT'S BUNKERS AND DEFENDANT'S FUNDS;

21 2. TO THE VACATUR OF THE ORDERS (BEING THE
22 ATTACHMENT ORDER, THE CUSTODIAN ORDER, AND THE
23 MARSHAL ORDER) AS TO DEFENDANT'S BUNKERS, DEFENDANT'S
24 FUNDS, AND ALL DEFENDANT'S PROPERTY IN THE NORTHERN
25 DISTRICT COVERED BY THE ORDERS;

26 ///

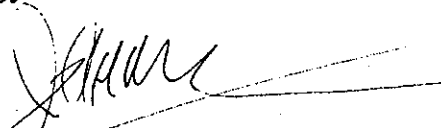
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1 3. TO THE IMMEDIATE RELEASE OF THE SUBSTITUTE
2 CUSTODIAN, THE UNITED STATES MARSHAL, AND THE UNITED
3 STATES FROM ALL RESPONSIBILITIES CONFERRED BY THE
4 ORDERS.

5
6 **PLAINTIFF SO CONSENTS:**

7
8 DATED: July 20, 2009


9 ELIZABETH P. BEAZLEY
10 JOHN COX
11 JAMES A. MARISSSEN
12 JENNIFER M. PORTER
13 KEESAL, YOUNG & LOGAN
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15 SHIPPING CORPORATION OF
16 INDIA LIMITED
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 18 LTD.,

19 Defendant.

Case No. CV09 3247 MHP

IN ADMIRALTY

~~PROPOSED~~ ORDER TO
 RELEASE DEFENDANT'S
 PROPERTY FROM
 ATTACHMENT, INCLUDING
 DEFENDANT'S BUNKERS IN
 THE CUSTODY OF THE U.S.
 MARSHAL OR SUBSTITUTE
 CUSTODIAN

22
 23 THE COURT HAVING REVIEWED THE PLAINTIFF'S
 24 CONSENT TO RELEASE PROPERTY FROM ATTACHMENT;

25 NOW THEREFORE IT IS HEREBY ORDERED:

26 1. THE ATTACHMENT OF DEFENDANT'S BUNKERS ON
 27 BOARD THE M/V *SUJITRA NAREE* IS HEREBY AND IMMEDIATELY
 28 RELEASED;

1 2. THE ATTACHMENT OF DEFENDANT'S FUNDS HELD
2 BY PACIFIC COAST MARITIME AGENCIES INC., OF 61 AVENIDA DE
3 ORINDA, SUITE F, ORINDA, CALIFORNIA IS HEREBY AND
4 IMMEDIATELY RELEASED;

5 3. THE ATTACHMENT ORDER, THE CUSTODIAN
6 ORDER, AND THE MARSHAL ORDER (THE "ORDERS") ARE HEREBY
7 IMMEDIATELY VACATED;

8 4. THE SUBSTITUTE CUSTODIAN, THE UNITED STATES
9 MARSHAL, AND THE UNITED STATES ARE RELIEVED FROM ANY
10 AND ALL RESPONSIBILITIES CONFERRED BY THE ORDERS WITH
11 RESPECT TO DEFENDANT'S PROPERTY IN THE NORTHERN
12 DISTRICT; AND,

13 5. THE COURT SHALL RETAIN JURISDICTION FOR
14 FIFTEEN (15) COURT DAYS BY WHICH TIME PLAINTIFF SHALL
15 HAVE DISMISSED THE ACTION ABSENT A DEFAULT IN THE
16 PROVISION OF SECURITY.

17
18
19 DATED: July 20, 2009


For the HONORABLE MARILYN H. PATEL
U.S. DISTRICT COURT JUDGE