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21 Attorneys for Defendant & Third-Party Plaintiff  
 22 United States of America

23 UNITED STATES DISTRICT COURT  
 24 NORTHERN DISTRICT OF CALIFORNIA  
 25 SAN FRANCISCO DIVISION

26 KARI PRESTON, ) Civil No. C-07-3861-PJH  
 27 )  
 28 Plaintiff, ) IN ADMIRALTY  
 29 )  
 30 v. )  
 31 )  
 32 UNITED STATES OF AMERICA, BAE ) STIPULATION AND ORDER  
 33 SYSTEMS SF SHIP REPAIR, INC., and ) THEREON FOR THE UNITED  
 34 DOES 1 through 10, Inclusive, ) STATES OF AMERICA TO FILE  
 35 ) THE ATTACHED THIRD-PARTY  
 36 Defendants. ) COMPLAINT AGAINST  
 37 ) SEACOAST ELECTRONICS, INC.,  
 38 )

39 UNITED STATES OF AMERICA, )

40 STIPULATION AND ORDER THEREON FOR THE USA  
 41 TO FILE THE ATTACHED THIRD-PARTY COMPLAINT  
 42 AGAINST SEACOAST ELECTRONICS, INC.

1 Cross-Claimant, )  
2 v. )  
3 BAE SYSTEMS SAN FRANCISCO SHIP )  
4 REPAIR, INC., )  
5 Cross-Defendant. )  


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6 BAE SYSTEMS SAN FRANCISCO SHIP )  
7 REPAIR, INC., )  
8 Cross-Claimant, )  
9 v. )  
10 UNITED STATES OF AMERICA, )  
11 Cross-Defendant, )  
12 

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13 BAE SYSTEMS SAN FRANCISCO SHIP )  
14 REPAIR, INC., )  
15 Cross-Claimant, )  
16 v. )  
17 SEACOAST ELECTRONICS, INC., )  
18 Cross-Defendant. )  
19 

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)

20 It is hereby stipulated and agreed, by and between the parties hereto through the  
21 undersigned consents of their counsel of record, that defendant, cross-claimant, cross-  
22 defendant and third-party plaintiff, United States of America, may file and serve its proposed  
23 third-party complaint against Seacoast Electronics, Inc., in the form attached hereto, pursuant  
24 to Rule 14(a) and 14(c) of the Federal Rules of Civil Procedure, and further that  
25

26 Counsel of record for Seacoast Electronics, Inc., hereby agrees to accept mail service

1 of said third-party complaint on behalf of his client, and hereby waives the requirement for  
2 personal service on his client.  
3

4 Dated: November 10, 2008

Law Offices of Lyle C. Cavin, Jr.  
s/Christopher Goodroe

6 \_\_\_\_\_  
CHRISTOPHER GOODROE

7  
8 Attorneys for Plaintiff  
Kari Preston

9 Dated: November 10, 2008

Buty & Curliano LLP  
s/Madeline L. Buty

11 \_\_\_\_\_  
MADELINE L. BUTY

12  
13 Attorneys for Defendant  
Bae Systems SF Ship Repairs, Inc.

14 Dated: November 10, 2008

Burnham Brown  
s/Ronnie R. Gipson

17 \_\_\_\_\_  
RONNIE R. GIPSON

18 Attorneys for Third-Party Defendant  
19 Seacoast Electronics, Inc.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 Dated: November 10, 2008

GREGORY G. KATSAS  
Acting Assistant Attorney General  
JOSEPH P. RUSSONIELLO  
United States Attorney  
R. MICHAEL UNDERHILL  
Attorney in Charge, West Coast Office  
Torts Branch, Civil Division

6 s/Jeanne M. Franken

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JEANNE M. FRANKEN  
Trial Attorney  
Torts Branch, Civil Division  
CHAD KAUFFMAN  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice

Attorneys for Defendant & Third-Party Plaintiff  
United States of America

IT IS SO ORDERED this 13th day of November, 2008 in San Francisco, CA.



1  
2 CERTIFICATION OF SIGNATURES

3 I attest that the content of the document is acceptable to all persons required to sign  
4 the document.  
5

6  
7 s/Jeanne M. Franken  
8 JEANNE M. FRANKEN  
9

1  
2 CERTIFICATE OF SERVICE

3 I hereby certify that, on the dates and by the methods of service noted below, a true  
4 and correct copy of the forgoing STIPULATION FOR THE UNITED STATES OF  
5 AMERICA TO FILE THE ATTACHED THIRD-PARTY COMPLAINT AGAINST  
6 SEACOAST ELECTRONICS, INC. was served on the following at their last known  
7 addresses:  
8

9  
10 Served Electronically through CM/ECF:

11  
12 Ronald H. Klein                   cavin@earthlink.net                   November 12, 2008  
13 Madeline L. Buty                   [Kte@butycurliano.com](mailto:Kte@butycurliano.com)                   November 12, 2008  
14 Ronnie R. Gipson                   [Cburnham@burnhambrown.com](mailto:Cburnham@burnhambrown.com)                   November 12, 2008  
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19 s/Jeanne M. Franken  
20 JEANNE M. FRANKEN  
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21 Attorneys for Defendant & Third-Party Plaintiff  
22 United States of America

23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA  
25 SAN FRANCISCO DIVISION

26 KARI PRESTON, ) Civil No. C-07-3861-PJH  
27 )  
28 Plaintiff, ) IN ADMIRALTY  
29 )  
30 v. )  
31 ) (PROPOSED)  
32 ) THIRD-PARTY COMPLAINT OF  
33 UNITED STATES OF AMERICA, BAE )  
34 SYSTEMS SF SHIP REPAIR, INC., and ) THE UNITED STATES OF  
35 DOES 1 through 10, Inclusive, ) AMERICA AGAINST THIRD-  
36 ) PARTY DEFENDANT, SEACOAST  
37 ) ELECTRONICS, INC.  
38 Defendants. )

39 UNITED STATES OF AMERICA,



1 pursuant to 28 U.S.C. §1345.

2 3. Third-party defendant SEACOAST was at all material times a corporation  
3 organized and doing business pursuant to the laws of a state of the United States and doing  
4 business in the State of California within this District and within the jurisdiction of this  
5 Court, and has appeared in this action.  
6

7 4. SEACOAST contracted with the Government's ship operator, Ocean Duchess,  
8 Inc., to perform certain shipboard repair and/or alteration work onboard the SS CAPE  
9 MOHICAN, a public vessel of the United States of America, .  
10

11 5. At times material hereto, SEACOAST undertook to provide shipboard repair  
12 and/or alteration work on board the SS CAPE MOHICAN, a public vessel of the United  
13 States of America.

14 6. By reason of the foregoing undertaking, SEACOAST was at all material times  
15 obligated to the United States to exercise due and proper care in the performance of its  
16 services and to perform its services safely and properly, and in a skillful and workmanlike  
17 manner.  
18

19 7. Defendant, cross-claimant, cross-defendant and third-party plaintiff, United  
20 States of America, and its ship operator, Ocean Duchess, performed all of the responsibilities  
21 and duties required to be performed by them.

22 8. On or about July 27, 2007, plaintiff herein, Kari Preston, filed a complaint  
23 against the United States of America, alleging she suffered injuries and damages as a result  
24 of events occurring during her employment on the ship, which was said to be from August  
25 3 to November 11, 2006 while it was in port in Alameda, California. (A copy of plaintiff's  
26  
27

1 complaint is attached hereto as Exhibit “A”.)

2 9. The United States of America filed an answer to said plaintiff's complaint in  
3 which it denied any and all liability, and the issues raised thereby remain before the Court  
4 without trial or adjudication. (A copy of the United States' answer is attached hereto as  
5 Exhibit “B”.)  
6

7 10. Defendant, cross-claimant, cross-defendant and third-party plaintiff, United  
8 States of America, files this third-party complaint against third-party defendant,  
9 SEACOAST, in the Government’s capacity as owner of SS CAPE MOHICAN and as the  
10 intended beneficiary of the SEACOAST contract with the ship operator, Ocean Duchess.  
11

12 FIRST CLAIM FOR RELIEF

13 11. Defendant, cross-claimant, cross-defendant and third-party plaintiff herein,  
14 United States of America, reasserts and realleges each and every paragraph of this third-party  
15 complaint with the same force and effect as if set forth herein at length.  
16

17 12. If plaintiff, Kari Preston, sustained injuries as alleged in her complaint, which  
18 is denied, such injuries or damages were caused or contributed to by the negligence and/or  
19 fault of SEACOAST, its agents, servants, employees, and/or others for whom it is or was  
20 responsible.  
21

22 13. If plaintiff, Kari Preston, sustained injuries as alleged in her complaint, which  
23 is denied, such injuries or damages were not caused or contributed to in any way by  
24 defendant, cross-claimant, cross-defendant and third-party plaintiff herein, United States of  
25 America, its agents, servants, employees, vessel, crew and/or others for whom it is or was  
26 responsible.  
27



1 aforesaid, SEACOAST breached express and/or implied warranties of workmanlike  
2 performance, and is liable to defendant, cross-claimant, cross-defendant and third-party  
3 plaintiff, United States of America, whether by way of indemnity, recovery over, or  
4 otherwise, for all of its attorneys' fees, costs, expenses, and disbursements incurred in  
5 defending this action, and, if the United States of America is held liable in this action to any  
6 degree, for the full amount of such judgment against the United States of America, in  
7 addition to said attorneys' fees, costs, expenses and disbursements, and for any other damages  
8 which it may be otherwise entitled to recover herein.  
9

10  
11 WHEREFORE, defendant, cross-claimant, cross-defendant and third party plaintiff  
12 herein, United States of America, prays as follows:  
13

14 1. That if any judgment is entered in favor of plaintiff against the United States  
15 of America, that said judgment be entered directly and solely against third-party defendant  
16 SEACOAST;

17 2. That if any judgment is entered in favor of plaintiff against the United States  
18 of America as a defendant herein, that a judgment over with interest and costs be entered in  
19 favor of third-party plaintiff, United States of America, and against third-party defendant  
20 SEACOAST, for contribution as to such judgment, requiring said third-party defendant to  
21 pay to the United States the full amount of any such judgment against the United States, or  
22 any appropriate portion thereof;  
23

24 3. That if any judgment is entered in favor of plaintiff against the United States  
25 of America as a defendant herein, that a judgment over with interest and costs be entered in  
26  
27

1 favor of third-party plaintiff, United States of America, against third-party defendant  
2 SEACOAST for indemnity as to such judgment, requiring said third-party defendant to pay  
3 to the United States the full amount of any such judgment against the United States, and to  
4 indemnify and exonerate the United States of America against all liability herein, as  
5 appropriate;  
6

7 4. That judgment be entered in favor of third-party plaintiff, United States of  
8 America, against third party defendant SEACOAST for all attorneys' fees, costs, expenses  
9 and disbursements incurred by the United States in the defense of plaintiff's action; and  
10

11 5. That the United States of America may have such other and further relief as to  
12 the Court may seem just and proper in the premises.  
13

14 Dated: November \_\_\_\_\_, 2008

GREGORY G. KATSAS  
Acting Assistant Attorney General  
JOSEPH P. RUSSONIELLO  
United States Attorney  
R. MICHAEL UNDERHILL  
Attorney in Charge, West Coast Office  
Torts Branch, Civil Division

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Torts Branch, Civil Division  
20 CHAD KAUFFMAN  
Trial Attorney  
21 Torts Branch, Civil Division  
22 U.S. Department of Justice  
23

24 Attorneys for Defendant & Third-Party Plaintiff,  
United States of America  
25  
26  
27

1  
2 CERTIFICATE OF SERVICE

3 I hereby certify that, on the dates and by the methods of service noted below, a true  
4 and correct copy of the forgoing THIRD-PARTY COMPLAINT BY DEFENDANT, CROSS  
5 CLAIMANT, CROSS-DEFENDANT AND THIRD-PARTY PLAINTIFF, UNITED  
6 STATES OF AMERICA, AGAINST THIRD-PARTY DEFENDANT, SEACOAST  
7 ELECTRONICS, INC. was served on the following at their last known addresses:  
8

9  
10 Served Electronically through CM/ECF:

11  
12 Ronald H. Klein                      cavin@earthlink.net                      November \_\_\_\_, 2008

13 Madeline L. Buty                      [Kte@butycurliano.com](mailto:Kte@butycurliano.com)                      November \_\_\_\_, 2008

14 Ronnie R. Gipson                      [Cburnham@burnhambrown.com](mailto:Cburnham@burnhambrown.com)                      November \_\_\_\_, 2008  
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20 JEANNE M. FRANKEN  
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LYLE C. CAVIN, JR.  
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2 LYLE C. CAVIN, JR., SBN 44958  
3 RONALD H. KLEIN, SBN 32551  
4 201 Fourth Street, Suite 102  
5 Oakland, California 94607  
6 Telephone 510-444-2501  
7 Facsimile 510-444-4209  
8 Attorneys for Plaintiff, KARI PRESTON

07-27 PM 3:05  
RECEIVED DISTRICT COURT  
SAN FRANCISCO

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BZ

C 07 3861

9 KARI PRESTON,

COMPLAINT FOR DAMAGES  
(Personal Injury)

10 Plaintiff,

[Public Vessels Act, 46 U.S.C. sections 31101  
seq.]

11 v.

[Suits in Admiralty Act, 46 U.S.C. sections  
30901 et seq.]

12 UNITED STATES OF AMERICA, BAE  
13 SYSTEMS SF SHIP REPAIR, INC. and  
14 DOES 1 through 10, Inclusive,

[Jones Act, 46 U.S.C. §30104]

[Unseaworthiness]

[Maintenance and Cure]

[General Maritime Law]

15 Defendants. /

16 Plaintiff, KARI PRESTON, complains against Defendants, and each of them as

17 follows:

18 JURISDICTION and PARTIES

19 1. Plaintiff, KARI PRESTON, is a citizen of the United States, was a seaman at  
20 all material times, and elects to proceed herein pursuant to 28 U.S.C. section 1916 without  
21 prepayment of costs and fees and without security therefor.

22 2. This is a case of admiralty and maritime jurisdiction, as hereinafter more  
23 fully appears, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the  
24 Federal Rules of Civil Procedure.

25 3. At all times mentioned, Defendant UNITED STATES OF AMERICA was and  
26 is a sovereign state, which by Act of Congress of March 9, 1920 (46 U.S.C. sections 30901 et  
27

"A"

1 *seq.*), as amended, commonly known as the Suits in Admiralty Act, has consented to be  
2 sued in this Honorable Court on the cause or causes of action set forth herein, and said  
3 Defendant owned, operated, controlled, and/or chartered the vessel SS:CAPE MOHICAN  
4 which was and is a public vessel of the United States or employed as such by said  
5 Defendant, and said Defendant is amenable to suit herein under and pursuant to the  
6 provisions of an Act of Congress of March 3, 1925 (46 U.S.C. sections 31101 *et seq.*), as  
7 amended, commonly known as the Public Vessels Act.  
8

9 4. Pursuant to the Clarification Act, 50 U.S.C. Appendix, section 1291(a), and  
10 the provisions of Title 46, Code of Federal Regulations, Part 327, Plaintiff duly presented  
11 an administrative claim to the United States Maritime Administration (MARAD), and to  
12 its ship managers, timely and in proper form, providing all pertinent information required  
13 by law to be included therein. Plaintiff is informed and believes and thereon alleges that  
14 said claim was received by MARAD and its ship managers on or about February 12, 2007.  
15 On or about May 25, 2007, said claim was denied.

16 5. This action also arises under the Jones Act, 46 U.S.C. section 30104, and the  
17 general maritime law, in admiralty and maritime jurisdiction as hereinafter more fully  
18 appears.  
19

20 6. At all times herein mentioned, Defendant BAE SYSTEMS SF SHIP REPAIR,  
21 INC. (hereinafter "BAE") and DOES ONE through TEN were and continue to be United  
22 States corporations authorized to do and doing business in the State of California and  
23 within this judicial district.

24 7. Venue is proper in this district pursuant to 46 U.S.C. sections 742 and 782,  
25 based on the fact that the vessel creating liability are found in this district, and that  
26 Defendant BAE is doing business therein.  
27  
28

1 CLAIMS FOR RELIEF AGAINST DEFENDANT USA

2 8. At all times material hereto, Defendant USA was the owner, operator and/or  
3 charterer of the vessel SS CAPE MOHICAN (hereinafter the "vessel"), and used said vessel  
4 in the transportation of cargo, equipment, material and other things for hire upon the  
5 navigable waters of the United States in interstate and foreign commerce, or otherwise  
6 within the jurisdiction of the Jones Act and the general maritime law.

7  
8 9. At all times material hereto, Plaintiff, KARI PRESTON, was employed by  
9 Defendant USA as a member of the crew of said vessel in the capacity of Chief Mate and  
10 otherwise.

11 10. During her period of employment aboard the vessel from August 3, 2006,  
12 through November 11, 2006, while so employed and during the course of her work as a  
13 seaman aboard said vessel while berthed in Alameda, California, Plaintiff was exposed to  
14 harmful, unsafe, hazardous, toxic, deleterious, carcinogenic chemicals and other  
15 hazardous substances, materials, processes, and working conditions, including but not  
16 limited to asbestos, fibrous glass fibers, rust, mold, other toxic, carcinogenic, harmful  
17 hydrocarbons and/or substances, organic solvents, chemicals, and materials.

18 11. Said exposure resulting in Plaintiff's injuries, illnesses, and damages, was  
19 proximately caused or contributed to, in whole or in part, by the negligence of Defendant  
20 USA, its agents, managers, officers, employees, representatives, and contractors, and the  
21 unseaworthiness of said vessel, in that Defendant USA and its vessel:

22  
23 a) Failed to provide Plaintiff with a reasonably safe place to work, proper  
24 tools, appurtenances, and machinery, proper protective apparatus, proper work methods,  
25 instructions, training, warnings, supervision, proper medical care, medical monitoring,  
26 and/or proper medical management for her exposure to said materials, and for her  
27 injuries and illnesses.  
28

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LAW OFFICES OF

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b) Failed to exercise due care under the circumstances.

c) Failed properly to provide proper instructions, orders, supervision, inspection, personnel, and equipment for the safety of its seamen with regard to work done aboard the vessel.

d) Violated certain statutory and regulatory laws pertaining to operations and performance standards concerning personal exposure to said substances, and other matters pertaining to the health and safety of their employees aboard their vessel.

e) Violated various industry standards as well as their own rules and policies pertaining to required, reasonable, and mandatory protection from such substances, as well as monitoring and health examinations.

f) Violated provisions of the International Safety Management Code and International Maritime Organization standards, and certain federal statutes and regulations.

g) Failed to keep and maintain its vessel and its appurtenances, equipment, crew, and work methods in a safe and seaworthy condition.

12. The violation of one or more of said laws, rules, regulations, standards, or other provisions constitutes negligence per se on the part of Defendants, and bars the partial defense of comparative negligence on the part of Plaintiff.

13. Further, the vessel was rendered unseaworthy by the acts and circumstances alleged, including said Defendant's failure to provide Plaintiff with reasonably safe working conditions, its failure to properly train and equip her for proper use of hazardous materials, failure to provide her appropriate personal safety equipment, and failure to provide her with chemicals, fuels, solvents and other materials she was required to use and be exposed to without the presence of harmful ingredients, and said Defendant's failure adequately to warn her about these dangers, rendered the vessel unseaworthy.

1 These circumstances exposed Plaintiff to products, fuels, solvents and other chemicals  
2 containing hazardous amounts of asbestos and other harmful materials which caused her  
3 to contract and suffer injuries and illnesses.

4 14. As a direct and proximate result of the negligence of Defendant, and the  
5 unseaworthiness of the vessel, Plaintiff was hurt and injured in her health, strength, and  
6 activity, sustaining injury to her body and shock and injury to her nervous system, all of  
7 which injuries have caused and continue to cause her great mental, physical and nervous  
8 pain and suffering as well as fear of further injury and disease, and great mental anguish,  
9 for which Defendant remains liable to Plaintiff. Plaintiff is informed and believes and  
10 thereon alleges that these injuries have resulted or will result in some permanent injury  
11 and disability and loss of earning capacity, all to her general damages in an amount to be  
12 ascertained.

13  
14 15. As a further direct and proximate result of said Defendant's negligence, and  
15 the unseaworthiness of the vessel, Plaintiff was, is, and will be prevented from attending  
16 to her usual occupation and she thereby lost earnings, earning capacity, and other benefits  
17 and will continue to sustain similar future losses. The total amount of these losses is  
18 presently unknown to Plaintiff and Plaintiff will amend this complaint to set forth these  
19 amounts when the same shall be ascertained.

20  
21 16. As a further direct and proximate result of said Defendant's negligence and  
22 the unseaworthiness of the vessel, Plaintiff has required treatment by doctors, nurses and  
23 other medical personnel to examine, treat, and care for her, and has incurred and will  
24 incur medical and other expenses. The amount of said expenses are unknown to Plaintiff  
25 at this time and Plaintiff will amend this complaint to set forth these when the same have  
26 been ascertained.

27 17. By reason of above described injuries and illnesses sustained by Plaintiff in  
28

1 the course of her employment as a seaman, Defendant USA had and has a legal duty to  
2 provide Plaintiff with prompt and adequate maintenance payments and proper medical  
3 care and cure for purposes of treating her injuries and illnesses. Insofar as said Defendant  
4 failed to provide maintenance and cure, Plaintiff is owed same at a reasonable amount,  
5 and, in addition, said Defendant is liable to Plaintiff for compensatory damages and,  
6 insofar as such refusal may be found to be unreasonable, arbitrary, or recalcitrant,  
7 attorneys' fees and costs.

8 **CLAIMS FOR RELIEF AGAINST SHORE TERMINALS, DOE DEFENDANTS**

9 18. Plaintiff realleges and incorporates herein by reference each and every  
10 allegation contained in Paragraphs 9 and 10, as though fully set forth at length.

11 19. At material times during the period of Plaintiff's employment aboard the  
12 vessel, Defendants BAE SYSTEMS SF SHIP REPAIR, INC. and DOES 1 through 10,  
13 pursuant to contract with Defendant USA, had its employees, agents, managers, officers,  
14 representatives, and contractors working on board for removal of asbestos and other  
15 hazardous materials from various areas on the vessel, and other work.

16 20. At all material times, pursuant to the general maritime law, Defendants BAE  
17 and DOES ONE through TEN had the duty to perform their work with reasonable care  
18 under the circumstances, such that all working conditions aboard the vessel would remain  
19 reasonably safe and free from unreasonable hazards, and such a duty was owed to  
20 Plaintiff.

21 21. Defendants BAE and DOES, pursuant to the contract between said  
22 Defendants and Defendant USA, impliedly warranted that their work aboard and about  
23 the vessel would be done in a workmanlike manner.  
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1           22. Plaintiff is a third party beneficiary of rights under the contract between said  
2 Defendants USA and BAE, and/or DOE DEFENDANTS, including the right to have the  
3 duties of said defendants carried out in a workmanlike manner.

4           23. During material times while working on or about the vessel, Defendants  
5 BAE, and/or DOE DEFENDANTS, were negligent and breached their duty of reasonable  
6 care and breached their warranty of workmanlike performance owed to Plaintiff by failing  
7 to do the work with reasonable care or in a workmanlike manner and failing to maintain  
8 their work places, processes and procedures aboard the vessel in a reasonably safe and  
9 hazard free condition and in a workmanlike condition.

10           24. Said exposure resulting in Plaintiff's injuries, illnesses, and damages, was  
11 proximately caused or contributed to, in whole or in part, by the negligence of Defendant  
12 BAE, its agents, managers, officers, employees, representatives, and contractors, and the  
13 breach of its warranty of workmanlike performance aboard said vessel, in that said  
14 Defendants:

15           a) Failed to provide Plaintiff with a reasonably safe place to work, proper  
16 tools, appurtenances, and machinery, proper protective apparatus, proper work methods,  
17 instructions, training, warnings, supervision, proper medical care, medical monitoring,  
18 and/or proper medical management for her exposure to said materials, and for her  
19 injuries and illnesses.

20           b) Failed to exercise due care under the circumstances.

21           c) Failed properly to provide proper instructions, orders, supervision,  
22 inspection, personnel, and equipment with regard to work done aboard the vessel and for  
23 the safety of all persons working aboard.

24           d) Violated certain statutory and regulatory laws pertaining to operations  
25 and performance standards concerning personal exposure to said substances, and other  
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matters pertaining to the health and safety of their employees and others working aboard the vessel.

e) Violated various industry standards as well as their own rules and policies pertaining to required, reasonable, and mandatory protection from such substances, as well as monitoring and health examinations.

25. The violation of one or more of said laws, rules, regulations, standards, or other provisions constitutes negligence per se on the part of Defendants, and bars the partial defense of comparative negligence on the part of Plaintiff.

26. Plaintiff's injuries and consequent damages were directly and proximately caused by the negligence of said Defendants, and each of them, their agents, employees and representatives.

27. Plaintiff's injuries and consequent damages were directly and proximately caused by the breach by said Defendants, and each of them, their agents, employees and representatives, of their warranty of workmanlike service.

28. As a direct and proximate result of the negligence of said Defendants, and the breach of their warranty of workmanlike service, Plaintiff was hurt and injured in her health, strength, and activity, sustaining injury to her body and shock and injury to her nervous system, all of which injuries have caused and continue to cause her great mental, physical and nervous pain and suffering as well as fear of further injury and disease, and great mental anguish, for which Defendants remain liable to Plaintiff. Plaintiff is informed and believes and thereon alleges that these injuries have resulted or will result in some permanent injury and disability and loss of earning capacity, all to her general damages in an amount to be ascertained.

29. As a further direct and proximate result of the negligence of said Defendants, and the breach of their warranty of workmanlike service, Plaintiff was, is, and will be

1 prevented from attending to her usual occupation and she thereby lost earnings, earning  
2 capacity, and other benefits and will continue to sustain similar future losses. The total  
3 amount of these losses is presently unknown to Plaintiff and Plaintiff will amend this  
4 complaint to set forth these amounts when the same shall be ascertained.

5 30. As a further direct and proximate result of the negligence of said Defendants,  
6 and the breach of their warranty of workmanlike service, Plaintiff has required treatment  
7 by doctors, nurses and other medical personnel to examine, treat, and care for her, and has  
8 incurred and will incur medical and other expenses. The amount of said expenses are  
9 unknown to Plaintiff at this time and Plaintiff will amend this complaint to set forth these  
10 when the same have been ascertained.

11 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as  
12 follows:

- 13 1. For general damages according to proof;
- 14 2. For loss of earnings and earning capacity according to proof;
- 15 3. For medical and incidental expenses according to proof;
- 16 4. As to Defendant USA, for maintenance and cure according to proof;
- 17 5. As to Defendant USA, for compensatory damages resulting from failure or  
18 refusal to provide maintenance or cure;
- 19 6. As to Defendant USA, for further damages and attorneys' fees and costs  
20 insofar as Defendant's failure or refusal to provide maintenance and cure may be found to  
21 be unreasonable, arbitrary, or recalcitrant;
- 22 7. For prejudgment interest according to proof;
- 23 8. For costs of suit herein incurred and to be incurred; and
- 24 9. For such other and further relief as the court deems just and proper.

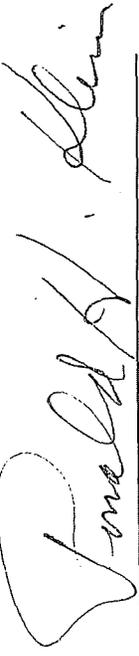
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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to the Local Rules of this court, Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

July 26, 2007

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11 Attorneys of Defendant & Cross-claimant  
 12 United States of America

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15

16 KARI PRESTON,

17 Plaintiff,

18 v.

19 UNITED STATES OF AMERICA,  
 20 BAE SYSTEMS SF SHIP REPAIR,  
 21 INC., and DOES 1 through 10,  
 Inclusive,

22 Defendant.

23 UNITED STATES OF AMERICA

24 Cross-complainant

25 v.

26 BAE SYSTEMS SAN FRANCISCO

27 ANSWER OF UNITED STATES OF AMERICA AND  
 CROSS-CLAIMS BY THE USA AGAINST CO-  
 28 DEFENDANT BAE SYSTEMS SF SHIP REPAIR, INC 1

) CIVIL NO. C-07-3861-BZ

) ANSWER OF UNITED STATES OF  
 ) AMERICA TO PLAINTIFF'S COMPLAINT,  
 ) AND CROSS-CLAIMS BY THE UNITED  
 ) STATES OF AMERICA AGAINST  
 ) CO-DEFENDANT BAE SYSTEMS  
 ) SAN FRANCISCO SHIP REPAIR, INC.

"B"

1 SHIP REPAIR, INC. )

2 Cross-defendant. )

3 For its answer to plaintiff's Complaint, the United States admits, denies, and otherwise  
4 responds as follows:

5 ANSWERING THE PARAGRAPHS TITLED "JURISDICTION AND PARTIES"

6 1. Denies each and every allegation of paragraph 1, except admits and asserts that  
7 at times material hereto plaintiff was employed as a seaman.

8 2. Denies each and every allegation of paragraph 2, except admits and asserts that  
9 this appears to be an admiralty and maritime claim within the meaning of Fed.R.Civ.P.  
10 9(h), and that the United States is a sovereign which has consented to be sued, if at all,  
11 solely pursuant to the terms and conditions of the Clarification Act, 50 App. U.S.C.A.  
12 §1291, which incorporates the Suits in Admiralty Act, 46 U.S.C. §§ 30901-30918.

13 3. Denies each and every allegation of paragraph 3, except admits and asserts that  
14 the M/V CAPE MOHICAN is a public vessel, and that the United States is a sovereign  
15 which has consented to be sued, if at all, solely pursuant to the terms and conditions of  
16 the Clarification Act, 50 App. U.S.C.A. §1291, which incorporates the Suits in Admiralty  
17 Act, 46 U.S.C. §§ 30901-30918.

18 4. Denies each and every allegation of paragraph 4, except admits and asserts that  
19 plaintiff submitted a purported claim which was received by the United States Maritime  
20 Administration ("MARAD") on or about February 12, 2007, and that MARAD denied it  
21 on or about May 25, 2007.

22 5. To the extent paragraph 5 contains assertions of law, no response is required by  
23 defendant United States of America; otherwise, admits and asserts this case against the  
24 United States of America by a seaman employed on a MARAD vessel appears to be an  
25 admiralty and maritime claim within the meaning of Fed.R.Civ.P. 9(h), and that the  
26 United States is a sovereign which has consented to be sued, if at all, solely pursuant to

1 the terms and conditions of the Clarification Act, 50 App. U.S.C.A. §1291, which  
2 incorporates the Suits in Admiralty Act, 46 U.S.C. §§ 30901-30918.

3 6. Denies each and every allegation of paragraph 6 for lack of knowledge and  
4 information.

5 7. To the extent paragraph 7 contains assertions of law, no response is required by  
6 defendant United States of America; otherwise, denies the allegations of paragraph 7 for  
7 lack of knowledge and information.

8 ANSWERING THE PARAGRAPHS TITLED "CLAIMS FOR RELIEF AGAINST  
9 DEFENDANT USA"

10 8. Answering the allegations of paragraph 8, repeats and realleges paragraphs 1-7,  
11 *supra*, as though each were fully set out herein; and to the extent paragraph 8 contains  
12 assertions of law, no response is required by defendant United States of America;  
13 otherwise denies each and every allegation therein, except admits and asserts at time  
14 material hereto, that the United States was the owner of the M/V CAPE MOHICAN, and it  
15 was used at times to carry cargo and other things on navigable waters of the United States.

16 9. Denies each and every allegation of paragraph 9, except admits and asserts that,  
17 at times material hereto, plaintiff was a seaman employed on behalf of the United States of  
18 America on the M/V CAPE MOHICAN by MARAD's ship manager, Ocean Duchess, Inc.  
19 ("Ocean Duchess"), pursuant to contract.

20 10. Denies each and every allegation of paragraph 10.

21 11. Denies each and every allegation of paragraphs 11 a) through 11 g), inclusive.

22 12. To the extent paragraph 12 contains assertions of law, no response is required  
23 by defendant United States of America; otherwise, Denies each and every allegation of  
24 paragraph 12.

25 13. To the extent paragraph 13 contains assertions of law, no response is required  
26 by defendant United States of America; otherwise, denies each and every allegation of

1 paragraph 13.

2 14. Denies each and every allegation of paragraph 14.

3 15. Denies each and every allegation of paragraph 15.

4 16. Denies each and every allegation of paragraph 16.

5 17. To the extent paragraph 17 contains assertions of law, no response is required  
6 by defendant United States of America; otherwise, denies each and every allegation of  
7 paragraph 17.

8 ANSWERING THE PARAGRAPHS TITLED "CLAIMS FOR RELIEF AGAINST  
9 "SHORE TERMINALS" [sic], DOE DEFENDANTS"

10 18. Answering the allegations of paragraph 18, repeats and realleges paragraphs 1-  
11 17, *supra*, as though each were fully set out herein.

12 19. To the extent the allegations in paragraph 19 are addressed to defendants other  
13 than the United States, its agents, servants, employees, crew, and/or others for whom it is  
14 or was responsible, no response is required by defendant United States of America;  
15 otherwise, denies each and every allegation therein.

16 20. To the extent paragraph 20 contains assertions of law, or the allegations are  
17 addressed to defendants other than the United States, its agents, servants, employees, crew,  
18 and/or others for whom it is or was responsible, no response is required by defendant  
19 United States of America; otherwise, denies each and every allegation of paragraph 20 to  
20 the extent it alleges liability against the United States, its agents, servants, employees,  
21 crew, and/or others for whom it is or was responsible.

22 21. To the extent paragraph 21 contains assertions of law, or the allegations are  
23 addressed to defendants other than the United States, its agents, servants, employees, crew,  
24 and/or others for whom it is or was responsible, no response is required by defendant  
25 United States of America; otherwise, denies each and every allegation of paragraph 21 to  
26 the extent it alleges liability against the United States, its agents, servants, employees,

1 crew, and/or others for whom it is or was responsible.

2 22. To the extent paragraph 22 contains assertions of law, or the allegations are  
3 addressed to defendants other than the United States, its agents, servants, employees, crew,  
4 and/or others for whom it is or was responsible, no response is required by defendant  
5 United States of America; otherwise, denies each and every allegation of paragraph 22 to  
6 the extent it alleges liability against the United States, its agents, servants, employees,  
7 crew, and/or others for whom it is or was responsible.

8 23. To the extent paragraph 23 contains assertions of law, or the allegations are  
9 addressed to defendants other than the United States, its agents, servants, employees, crew,  
10 and/or others for whom it is or was responsible, no response is required by defendant  
11 United States of America; otherwise, denies each and every allegation of paragraph 23 to  
12 the extent it alleges liability against the United States, its agents, servants, employees,  
13 crew, and/or others for whom it is or was responsible.

14 24. To the extent paragraphs 24 a) through 24 e) inclusive contain assertions of law,  
15 or the allegations are addressed to defendants other than the United States, its agents,  
16 servants, employees, crew, and/or others for whom it is or was responsible, no response is  
17 required by defendant United States of America; otherwise, denies each and every  
18 allegation of paragraphs 24 a) through 24 e) inclusive to the extent they allege liability  
19 against the United States, its agents, servants, employees, crew, and/or others for whom it  
20 is or was responsible.

21 25. To the extent paragraph 25 contains assertions of law, or the allegations are  
22 addressed to defendants other than the United States, its agents, servants, employees, crew,  
23 and/or others for whom it is or was responsible, no response is required by defendant  
24 United States of America; otherwise, denies each and every allegation of paragraph 25 to  
25 the extent it alleges liability against the United States, its agents, servants, employees,  
26 crew, and/or others for whom it is or was responsible.

1 26. To the extent paragraph 26 contains assertions of law, or the allegations are  
2 addressed to defendants other than the United States, its agents, servants, employees, crew,  
3 and/or others for whom it is or was responsible, no response is required by defendant  
4 United States of America; otherwise, denies each and every allegation of paragraph 26 to  
5 the extent it alleges liability against the United States, its agents, servants, employees,  
6 crew, and/or others for whom it is or was responsible.

7 27. To the extent paragraph 27 contains assertions of law, or the allegations are  
8 addressed to defendants other than the United States, its agents, servants, employees, crew,  
9 and/or others for whom it is or was responsible, no response is required by defendant  
10 United States of America; otherwise, denies each and every allegation of paragraph 27 to  
11 the extent it alleges liability against the United States, its agents, servants, employees,  
12 crew, and/or others for whom it is or was responsible.

13 28. To the extent paragraph 28 contains assertions of law, or the allegations are  
14 addressed to defendants other than the United States, its agents, servants, employees, crew,  
15 and/or others for whom it is or was responsible, no response is required by defendant  
16 United States of America; otherwise, denies each and every allegation of paragraph 28 to  
17 the extent it alleges liability against the United States, its agents, servants, employees,  
18 crew, and/or others for whom it is or was responsible.

19 29. To the extent paragraph 29 contains assertions of law, or the allegations are  
20 addressed to defendants other than the United States, its agents, servants, employees, crew,  
21 and/or others for whom it is or was responsible, no response is required by defendant  
22 United States of America; otherwise, denies each and every allegation of paragraph 29 to  
23 the extent it alleges liability against the United States, its agents, servants, employees,  
24 crew, and/or others for whom it is or was responsible.

25 30. To the extent paragraph 30 contains assertions of law, or the allegations are  
26 addressed to defendants other than the United States, its agents, servants, employees, crew,

1 and/or others for whom it is or was responsible, no response is required by defendant  
2 United States of America; otherwise, denies each and every allegation of paragraph 30 to  
3 the extent it alleges liability against the United States, its agents, servants, employees,  
4 crew, and/or others for whom it is or was responsible.

5 FIRST AFFIRMATIVE DEFENSE

6 31. The Complaint fails to state a claim upon which relief can be granted.

7 SECOND AFFIRMATIVE DEFENSE

8 32. If plaintiff sustained damages or injuries as a result of matters alleged in her  
9 Complaint, which is denied, those damages or injuries were caused in whole or in part by  
10 the negligence and/or fault of plaintiff herself, and were not caused or contributed to in  
11 any manner by any negligence and/or fault of the United States, its agents, servants,  
12 employees, crew, vessel or others for whom it was or is responsible or by any  
13 unseaworthiness of the M/V CAPE MOHICAN.

14 THIRD AFFIRMATIVE DEFENSE

15 33. If plaintiff sustained damages or injuries as a result of matters alleged in her  
16 Complaint, which is denied, those damages or injuries were caused in whole or in part by  
17 persons or entities for whose acts or omissions the United States was or is not responsible,  
18 and were not caused or contributed to in any manner by any negligence and/or fault of the  
19 United States, its agents, servants, employees, crew, vessel or others for whom it was or is  
20 responsible or by any unseaworthiness of the M/V CAPE MOHICAN.

21 FOURTH AFFIRMATIVE DEFENSE

22 34. This Court lacks subject matter jurisdiction over plaintiff's action based on,  
23 *inter alia*, the doctrine of separation of powers; any acts or omissions by or on behalf of  
24 the United States which plaintiff alleges caused or contributed to her alleged injuries or  
25 damages were discretionary in nature and are not reviewable by this court.

26 ///

1 FIFTH AFFIRMATIVE DEFENSE

2 35. If plaintiff sustained damages or injuries as a result of matters alleged in her  
3 Complaint, which is denied, those damages or injuries were caused in whole or in part by  
4 the failure of the plaintiff to carry out the responsibilities assigned to her as a primary duty  
5 and were not caused or contributed to in any manner by any negligence and/or fault of the  
6 United States, its agents, servants, employees, crew, vessel or others for whom it was or is  
7 responsible or by any unseaworthiness of the M/V CAPE MOHICAN.

8 SIXTH AFFIRMATIVE DEFENSE

9 36. The Court lacks subject matter jurisdiction over plaintiff's Complaint and  
10 action, and it must be dismissed.

11 SEVENTH AFFIRMATIVE DEFENSE

12 37. Plaintiff has failed to mitigate her alleged damages.

13 EIGHTH AFFIRMATIVE DEFENSE

14 38. Plaintiff is not entitled to attorneys' fees.

15 The Cross-Claims of cross-claimant United States of America against cross-  
16 defendant BAE SYSTEMS SAN FRANCISCO SHIP REPAIR, INC. ("BAE") allege, on  
17 information and belief, as follows:

18 CROSS-CLAIMS OF THE UNITED STATES OF AMERICA

19 39. Defendant United States of America reasserts and re-alleges each and every  
20 paragraph of its Answer and Cross-Claim with the same force and effect as if set forth at  
21 length herein.

22 40. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully  
23 appears, within the meaning of Fed.R.Civ.P. 9(h).

24 41. The United States of America was and is a sovereign authorized to sue under 28  
25 U.S.C. § 1345, and was at times material hereto the owner of the M/V CAPE MOHICAN.

26 42. At times material hereto, plaintiff was a seaman employed aboard the M/V

1 CAPE MOHICAN on behalf of the United States by Ocean Duchess, MARAD's ship  
2 manager for the vessel, pursuant to a contract with MARAD.

3 43. At times material hereto, cross-defendant BAE was a corporation organized  
4 and existing under the laws of the state of California, with a place of business and doing  
5 business within this district and within the jurisdiction of this court.

6 44. At times material hereto, BAE removed and replaced asbestos ceiling panels on  
7 M/V CAPE MOHICAN while the vessel was in navigable waters of the United States.

8 45. At times material hereto, BAE was obliged to conduct its operations safely,  
9 properly, and in a skillful and workmanlike manner, including, but not limited to, its  
10 removal and replacement of the aforesaid asbestos ceiling panels on board the M/V CAPE  
11 MOHICAN.

12 46. At times material hereto, pursuant to the contract with MARAD's ship manager,  
13 BAE was obliged to conduct its operations in compliance with federal and state  
14 regulations and all industry standards.

15 47. At times material hereto, pursuant to a contract with MARAD's ship manager,  
16 BAE was obliged to conduct its operations subject to current licensing for asbestos  
17 abatement including, but not limited to, its removal and replacement of the aforesaid  
18 asbestos ceiling panels on board the M/V CAPE MOHICAN.

19 48. At times material hereto, plaintiff was not an employee of BAE.

20 49. Plaintiff has filed its Complaint against the United States of America, alleging,  
21 *inter alia*, that she was injured during the period August 3, 2006 through November 11,  
22 2006, as a result of the negligence and fault of the United States of America and BAE,  
23 which alleged negligence and fault of the United States is denied.

24 50. The United States of America has filed its foregoing Answer to plaintiff's  
25 Complaint in which it denied all liability in the premises, and the issues raised therein  
26 remain before this Court without trial or adjudication.

1 51. The United States of America has performed all of the duties and obligations  
2 which were required to be performed by it.

3 FIRST CROSS-CLAIM BY CROSS-CLAIMANT UNITED STATES OF AMERICA  
4 AGAINST CROSS-DEFENDANT BAE

5 52. The United States of America incorporates each and every paragraph of this  
6 Answer and Cross-complaint as though fully set out herein.

7 53. If plaintiff sustained damages as asserted in her Complaint, which is denied,  
8 said injuries or damages were caused in whole or in part by the negligence and/or fault of  
9 BAE, its agents, servants, employees, subcontractors, and/or others for whom it was or is  
10 responsible, and not by the United States of America.

11 54. If Plaintiff sustained damages as alleged in her Complaint, which is denied,  
12 such damages were not caused or contributed to in any manner by defendant, United  
13 States, its agents, servants, employees, crew, or others for whom it is or was responsible,  
14 and not by the United States of America.

15 55. If judgment is rendered in favor of plaintiff, and against defendant United States  
16 of America, then that the United States of American may recover contribution and/or  
17 indemnification from BAE in the full amount of any fault which is found by the court  
18 against BAE.

19 SECOND CROSS-CLAIM BY CROSS-CLAIMANT UNITED STATES OF AMERICA  
20 AGAINST CROSS-DEFENDANT BAE

21 56. The United States of America incorporates each and every paragraph of this  
22 Answer and Cross-complaint as though fully set out herein.

23 57. If plaintiff sustained damages as asserted in her Complaint, which is denied,  
24 said injuries or damages were caused in whole or in part by the breach of an implied  
25 and/or express warranty of workmanlike service and/or fitness for use by BAE, its agents,  
26 servants, employees, subcontractors, and/or others for whom it was or is responsible, and

1 not by the United States of America.

2 58. By reason of the matters aforesaid, BAE is liable to the United States of  
3 America, whether by indemnification or contribution, for all attorney's fees, costs,  
4 expenses and disbursements incurred in the defense of Plaintiff's actions and, if the United  
5 States is held liable in this action, for the full amount of such judgment against the United  
6 States of America, and for any and all other damages which the United States of America  
7 may be entitled to recover herein.

8 THIRD CROSS-CLAIM BY CROSS-CLAIMANT UNITED STATES OF AMERICA  
9 AGAINST CROSS-DEFENDANT BAE

10 59. Defendant United States of America incorporates each and every paragraph of  
11 this Answer and Cross-complaint as though fully set out herein.

12 60. If plaintiff sustained damages as asserted in her Complaint, which is denied,  
13 said injuries or damages were caused in whole or in part by the breach by BAE, its agents,  
14 servants, employees, subcontractors, and/or others for whom it was or is responsible of an  
15 implied and/or express warranty of workmanlike service and/or fitness for use arising from  
16 or found in the contract between Ocean Duchess and BAE, of which the United States is  
17 an intended third-party beneficiary.

18 61. By reasons of the matters aforesaid, BAE is liable to the United States of  
19 America, whether by way of indemnification or contribution, for all attorney's fees, costs,  
20 expenses and disbursements incurred in the defense of Plaintiff's actions and, if the United  
21 States is held liable in this action, for the full amount of such judgment against the United  
22 States of America, and for any and all other damages which the United States of America  
23 may be entitled to recover herein.

24 WHEREFORE, the United States of America prays:

25 62. That plaintiff's action against it be dismissed with prejudice and with costs;

26 63. That judgment be entered in favor of the United States of America as against

1 plaintiff.

2 64. That if any judgment is entered in favor of plaintiff and against the United  
3 States of America, then that a judgment over with interest and costs may be entered in  
4 favor of the United States of America and against BAE for indemnity and/or contribution,  
5 as by this court may be deemed appropriate in the premises, requiring BAE to pay to the  
6 United States of America the amount of any such judgement, and to indemnify and  
7 exonerate the United States of America against all liability herein as appropriate;

8 65. That judgement may be entered in favor of the United States of America and  
9 against BAE for all attorney's fees, costs, expenses and disbursements incurred by the  
10 United States of America in the defense of Plaintiff's action; and

11 66. For such and other further relief as this Court may deem just and proper.

12  
13 Dated: October 22, 2007

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19  
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22 U.S. Department of Justice

23 Attorneys for Defendant & Cross-claimant  
24 United States of America