

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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MARK DANIEL LEITNER,

Petitioner,

DECISION & ORDER

-vs-

10-MC-6019-CJS

RAY LAHOOD,

Respondent.

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**INTRODUCTION**

**Siragusa, J.** Before the Court is Mark Daniel Leitner's ("Leitner") "Notice of Claim of Maritime Lien" filed on June 3, 2010, against eight "vessels." For the reasons stated below, the Court determines that the Notice of Claim has not properly been filed and directs the Clerk to close this miscellaneous proceeding without a lien.

**BACKGROUND**

Petitioner has filed eight Notices of Claim of Maritime Lien. Each identifies a different vessel, but all refer to an Affidavit of Specific Negative Averment, described below, and the basis for the lien. The first claim identifies a vessel named "U.S. M/V JONATHAN RICHARD MARX" with a unique identifier of "SSN: 246-43-2438, North Carolina Bar NO. 35428." (Docket No. 1, at 1.) The alleged owner is "RAY LAHOOD, US Transportation, 1200 New Jersey Ave., SE, Washington, DC 10590." (*Id.*) No allegation is made that the vessel or its owner is present in the Western District of New York. The amount sought is "FORTY EIGHT BILLION FOUR HUNDRED EIGHTY NINE MILLION US DOLLARS, PLUS INTEREST, PENALTIES, AND FEES." (*Id.*) The lien claim is signed by Petitioner and notarized by a Florida notary public. (*Id.*) The same claims are also made against the following "vessels": U.S. M/V MICHAEL

JOHN WATLING; U.S. M/V ADAM REDERICK HULBIG; U.S. M/V JAROD J. KOOPMAN; U.S. M/V THOMAS FRANCIS KIRWIN; U.S. M/V TIFFANY HOPE EGGERS; U.S. M/V US DISTRICT COURT NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION; U.S. M/V WILLIAM M. MCCOOL. The Court recognizes the name Jarod J. Koopman as an IRS agent about whom Petitioner filed a petition for a writ of mandamus, which the Court denied. See *Leitner v. Koopman*, No. 09-MC-6033-CJS, 2010 WL 681268 (W.D.N.Y. Feb. 22, 2010).

Included in the papers with the lien claim is a paper entitled, "Specific Affidavit of Negative Averment, Opportunity to Cure, and Counterclaim," dated December 26, 2009, and notarized in Rochester, New York. (Docket No. 1, at 11–19.) The paper was prepared for filing in the United States District Court for the Northern District of Florida, with regard to case number 08-CR-79-MCR, entitled *United States v. Mark Daniel Leitner*. (*Id.*, at 11.) On PACER, the case number 08-CR-00079-MCR, returns a multi-defendant case with one defendant named Mark Daniel Leitner, and the case is assigned to U.S. District Judge M. Casey Rodgers. According to the docket sheet in that case, Mr. Leitner was indicted for conspiracy to defraud the United States, money laundering and wire fraud. Further, the docket indicates that Mr. Leitner was found guilty of conspiracy to defraud the Internal Revenue Service and wire fraud by a jury on March 31, 2010. Verdict (Docket No. 1166), *United States v. Leitner*, NO. 3:08-CR-79/MCR (N.D. Fl. Jun. 1, 2010). The last entry is Docket No. 1239, an Order from Judge Rodgers denying Mr. Leitner's release from custody. The Order begins as follows: "This cause is before the court on defendant's *pro se* 'Notice and Demand within the Admiralty' wherein defendant 'demands' his immediate release from custody.... Defendant's pleading is purportedly tendered under the Rules of Admiralty, though he has been advised time and again that such rules are not applicable to criminal proceedings." Order, *United*

*States v. Leitner*, NO. 3:08-CR-79/MCR (N.D. Fl. Jun. 1, 2010). Marx, Watling, Hulbig, and Eggers are all listed as prosecutors in the criminal case and McCool is the Clerk of the Northern District of Florida.

### STANDARDS OF LAW

In *Itel Containers Intern. Corp. V. Atlantrafik Exp. Service Ltd.*, 982 F.2d 765 (2d Cir. 1992), the Second Circuit described a maritime lien as:

a special property right in the vessel, arising in favor of the creditor by operation of law as security for a debt or claim. The lien arises when the debt arises, and grants the creditor the right to appropriate the vessel, have it sold, and be repaid the debt from the proceeds.

*Equilease Corp. v. M/V Sampson*, 793 F.2d 598, 602 (5th Cir.) (*en banc*), *cert. denied*, 479 U.S. 984 (1986). Under United States law as it existed at all relevant times in this case, a maritime lien exists in favor of “[a]ny person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessities, to any vessel.” 46 U.S.C. § 971 (1982).

*Id.*, at 766–77 (footnote omitted). The Maritime Lien Act, codified in Title 46 of the United States Code, currently provides in pertinent part as follows:

(a) Except as provided in subsection (b) of this section, a person providing necessities to a vessel on the order of the owner or a person authorized by the owner—

(1) has a maritime lien on the vessel;

(2) may bring a civil action in rem to enforce the lien; and

(3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.

46 U.S.C. § 31342 (1989). The liens may be recorded with the Secretary of Transportation.

46 U.S.C. § 31343(a). Further,

(2) The district courts of the United States shall have jurisdiction over a civil action in Admiralty to declare that a vessel is not subject to a lien claimed under subsection (b) of this section, or that the vessel is not subject to the

notice of claim of lien, or both, regardless of the amount in controversy or the citizenship of the parties. Venue in such an action shall be in the district where the vessel is found or where the claimant resides or where the notice of claim of lien is recorded. The court may award costs and attorneys fees to the prevailing party, unless the court finds that the position of the other party was substantially justified or other circumstances make an award of costs and attorneys fees unjust. The Secretary shall record any such declaratory order.

46 U.S.C. § 31343(c)(2).

### ANALYSIS

“[D]istrict courts may dismiss a frivolous complaint *sua sponte* even when the plaintiff has paid the required filing fee, just as the Court of Appeals may dismiss frivolous matters in like circumstances.” *Fitzgerald v. First East Seventh Street Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000); *see also Hawkins-El v. AIG Federal Savings Bank*, 07–2073-cv (2d Cir. June 8, 2009) (quoting *Fitzgerald*). *Pro se* plaintiffs, whether fee-paying or proceeding *in forma pauperis*, should be afforded the opportunity to amend a complaint “prior to its dismissal for failure to state a claim, unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim.” *Cruz v. Gomez*, 202 F.3d 593, 597-98 (2d. Cir. 2000). In *Baldwin v. U.S. Army*, 223 F.3d 100,101 (2d. Cir. 2000), although the *pro se* litigant had paid the filing fee, the district court nonetheless dismissed portions of the complaint that it found contained allegations that were “fantastic, delusional and incredible.”

The Court determines that under the circumstances, Petitioner here is the same person as the defendant in the Northern District of Florida case described above. Petitioner's attempt to place a lien on, among others, the Northern District of Florida court and Internal Revenue Service agent Jarod Koopman, as well as the prosecutors and Clerk in the Northern District of Florida, shows that his applications in total are fantastic, delusional and incredible.

Considering that Judge Rodgers has already informed Petitioner that Admiralty law does not apply in the circumstances, that Petitioner has made no showing that the “vessels” he identifies are located within this district, or that he has a valid basis for any liens, let alone liens totaling over forty-eight billion dollars per vessel, Petitioner's lien claims are without merit, and no opportunity to amend his claims is warranted.

### **CONCLUSION**

Petitioner’s lien claims (Docket No. 1) are denied with prejudice and the Clerk is directed to close this miscellaneous proceeding without any liens being issued. The Clerk is directed to send a copy of this Decision and Order to the Honorable M. Casey Rodgers, Northern District of Florida, to apprise her of the claims made in the Western District of New York.

The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from the Order and Judgment of this Court would not be taken in good faith, and leave to appeal to the Court of Appeals as a poor person is hereby denied. *Coppedge v. United States*, 369 U.S. 438 (1962). Further requests to proceed on appeal as a poor person should be directed, on motion, to the United States Court of Appeals for the Second Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

Dated: June 16, 2010  
Rochester, New York

ENTER:

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge