

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COMPLAINT OF:)
BORGHESE LANE, LLC)
))
For Exoneration or Limitation of) **Civil No. 2:18-cv-00533-MJH (Lead Case)**
Liability))
) **Member and Related Cases: Civil Action Nos.**
) **18-510; 18-178; 18-317; 18-913; 18-902; and**
) **18-1647.**

ORDER

AND NOW, this 24th day of April, 2023, upon consideration of the Motion to Strike Sur-Reply and Motion for Partial Summary Judgment filed by Industry Terminal & Salvage Company, and for the reasons set forth in the accompanying opinion, IT IS HEREBY ORDERED, as follows:

1. Industry Terminal & Salvage Company’s Motion to Strike McKees Rocks’ Sur-Reply Brief (ECF No. 618) is GRANTED. McKees Rocks Harbor Services, LLC’s Sur-Reply Brief, filed at ECF No. 613, is hereby stricken,

2. Industry Terminal & Salvage Company’s Motion for Partial Summary Judgment on the Issue of Breach of Contract and Contractual Indemnity Against McKees Rocks Harbor Services, LLC (ECF No. 536) is GRANTED.

A. The August 2015 Harbor Services Agreement and the subsequent oral Harbor Services Agreement, which arose after expiration of the written Agreement, are valid, unambiguous, and enforceable maritime contracts.

B. McKees Rocks Harbor Services, LLC has not produced sufficient clear and convincing evidence of any legal basis for reformation or equitable reformation of the Harbor Services Agreement.

C. McKees Rocks Harbor Services, LLC has breached the Harbor Services Agreement by failing to defend Industry Terminal & Salvage Company as required under Section 8.

D. McKees Rocks Harbor Services, LLC has breached the Harbor Services Agreement by failing to name Industry Terminal & Salvage Company as an additional insured as required under Section 8.

E. McKees Rocks Harbor Services, LLC must provide indemnity to Industry Terminal & Salvage Company, to the extent Industry Terminal & Salvage Company is found liable for damages caused by the Mooring Services and/or mooring area condition at the Jack's Run fleeting and mooring area on January 13, 2018.

IT IS FURTHER ORDERED as follows:

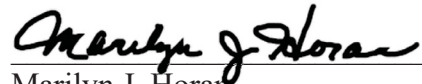
JUDGMENT is entered in favor of Industry Terminal & Salvage Company and against McKees Rocks Harbor Services, LLC, on Industry Terminal & Salvage Company's crossclaim¹ against McKees Rocks Harbor Services, LLC.

JUDGMENT is entered against McKees Rocks Harbor Services, LLC for costs, defense costs, and reasonable attorney's fees incurred as a result of McKees Rocks' breach of its obligation to defend and for all expenses incurred and discharged and all expenses incurred in discharging the claims asserted against ITS in the current litigation.

¹ Industry Terminal & Salvage Company filed the identical crossclaim, as to the Harbor Services Agreement, against McKees Rocks Harbor Services, LLC in multiple pleadings. *See*, for example, ITS's crossclaim was filed at Civil Action No. 18-178 at document number 25; at Civil Action 18-317 at document number 14; at Civil Action No. 18-510 at document number 17; and at Civil Action No. 18-533 at document numbers 228 and 229.

DECLARATORY JUDGMENT is entered in favor of Industry Terminal & Salvage Company and against McKees Rocks Harbor Service, LLC on Industry Terminal & Salvage Company's crossclaim.² Pursuant to Section 8 of the Harbor Services Agreement, McKees Rocks Harbor Services, LLC must provide indemnity to Industry Terminal & Salvage Company, to the extent Industry Terminal & Salvage Company is found liable for damages caused by the Mooring Services and/or mooring area condition at the Jack's Run fleeting and mooring area on January 13, 2018.

JUDGMENT is entered in favor of Industry Terminal & Salvage Company and against McKees Rocks Harbor Services, LLC, as to McKees Rocks Harbor Services, LLC's crossclaim and counterclaim³ seeking reformation and equitable reformation of the Harbor Services Agreement.



Marilyn J. Horan
United States District Court Judge

² Industry Terminal & Salvage Company filed the identical crossclaim, as to the Harbor Services Agreement, against McKees Rocks Harbor Services, LLC in multiple pleadings. *See*, for example, ITS's crossclaim was filed at Civil Action No. 18-178 at document number 25; at Civil Action 18-317 at document number 14; at Civil Action No. 18-510 at document number 17; and at Civil Action No. 18-533 at document numbers 228 and 229.

³ McKees Rocks Harbor Services, LLC's filed the same or similar crossclaim and counterclaim seeking reformation and equitable reformation of the Harbor Services Agreement in multiple pleadings. *See*, for example, counterclaims filed at Civil Action No. 18-178 at document number 29 and Civil Action No. 533 at document number 15; and crossclaims filed at Civil Action 18-178 at document number 27 & 28; at Civil Action 18-533 at document numbers 15 & 60.