

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

STATE OF ALASKA, )  
ALASKA MARINE HIGHWAY SYSTEM, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROBERT E. DERECKTOR, INC., )  
MTU FRIEDRICHSHAFEN, GMBH, and )  
MTU DETROIT DIESEL, INC., )  
 )  
Defendants. ) Case No: 1JU-10-\_\_\_\_\_ CI  
\_\_\_\_\_ )

**COMPLAINT**

COMES NOW plaintiff State of Alaska (State) and alleges as follows:

**PARTIES**

1. The Alaska Marine Highway System (AMHS) is a division of the Department of Transportation & Public Facilities, which is a state agency.
2. Upon information and belief, defendant Robert E. Derecktor, Inc. (Derecktor) is a corporation formed under the laws of New York and is engaged in the business of ship design, construction, sales, and service.
3. Upon information and belief, defendant MTU Friedrichshafen GmbH is a corporation formed under the laws of Germany and is engaged in the business of marine propulsion system design, manufacture, sales, and service.
4. Upon information and belief, defendant MTU Detroit Diesel, Inc. is a corporation formed under the laws of Delaware and is engaged in the business of marine propulsion system design, manufacture, sales, and service.

5. Upon information and belief, MTU Detroit Diesel is the North American regional headquarters of MTU Friedrichshafen. Hereafter, plaintiff refers to the two entities collectively as MTU.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

6. In 2001, the State solicited proposals for design and construction of fast vehicle ferries to be acquired by AMHS.

7. In response, defendants submitted a proposal to plaintiff. It included various representations, including marine propulsion system qualities, performance characteristics, and maintenance costs.

8. Subsequently, plaintiff contracted with Derecktor for the design and construction of two fast vehicle ferries in exchange for agreed consideration. Derecktor, in turn, engaged MTU to supply the marine propulsion systems, which included MTU Model 595 engines, accompanying reduction gear units, and associated components.

9. The parties' contract incorporates defendants' proposal.

10. The parties' contract obligates defendants to provide fast vehicle ferries meeting various design, construction, and performance standards.

11. By contract, Derecktor has guaranteed and warranted both Derecktor's material and workmanship and MTU's material and workmanship against defects and deficiencies. If either Derecktor's or MTU's material or workmanship is defective or does not meet contract standards, Derecktor is required to replace the offending items at its own expense.

12. Additionally, MTU has warranted its material and workmanship. Therefore, independent of Derecktor's guarantees and warranties, MTU is responsible for repairing or replacing its material and workmanship, if defective or deficient.

13. In addition to funds paid for ferry design and construction, plaintiff purchased extended warranties, or service contracts, from defendants. They are intended to provide added protection against material and workmanship defects or deficiencies.

14. Plaintiff received delivery of the FVF FAIRWEATHER on April 2, 2004, and delivery of the FVF CHENEGA (Vessels) on May 12, 2005.

15. Subsequent operation has revealed defects and deficiencies concerning both Vessels, including degraded engine blocks, cracked cylinder liners, excessive propulsion system vibration, damaged reduction gear units, and prematurely spent components, *e.g.*, gears, shafts, bearings, etc.

16. Following installation of the Vessels' propulsion systems, MTU discontinued production of the Model 595 engine and defendants have failed to maintain a necessary supply of replacement parts as required by contract.

17. Actual Vessel maintenance costs vastly exceed defendants' representations.

18. Despite plaintiff's repeated demands, defendants have failed to fulfill contract, warranty, and service contract obligations. In so doing, they have impaired AMHS' public mass transit system, unjustly shifted investigation and repair costs to plaintiff, and caused other damages.

19. Defendants' conduct evidences reckless indifference to interests of the State.

20. The court has jurisdiction over the subject matter of this action and venue is proper.

21. The court has personal jurisdiction over defendants per AS 09.05.015.
22. This action is timely under AS 09.10.120.
23. Defendants have damaged plaintiff in an amount exceeding \$100,000, exclusive of costs, interest, and attorneys' fees.
24. Defendants are independently and concurrently liable for all harm, injury, and/or loss plaintiff has suffered.

**COUNT I**  
(Breach of Contract)

25. Plaintiff asserts all preceding allegations.
26. Defendants' failure to fulfill contract terms constitutes breach of contract.
27. Defendants are liable to plaintiff for all damages and/or other appropriate relief.

**COUNT II**  
(Breach of Warranty)

28. Plaintiff asserts all preceding allegations.
29. Defendants' failure to fulfill their warranties constitutes breach of warranty.
30. Defendants are liable to plaintiff for all damages and/or other appropriate relief.

**COUNT III**  
(Breach of Service Contracts)

31. Plaintiff asserts all preceding allegations.
32. Additionally or alternatively, the service contracts are contracts imposing heightened duties on defendants for the benefit of the State.
33. Defendants breached these duties and are liable to plaintiff for all damages and/or other appropriate relief.

**COUNT IV**  
(Bad Faith)

34. Plaintiff asserts all preceding allegations.

35. In addition to breaching the terms of their respective contracts and warranties, defendants engaged in bad faith and acted with reckless indifference to the interests of the State.

36. In addition to breaching their respective service contract obligations, defendants engaged in bad faith and acted with reckless indifference to the interests of the State.

37. Defendants are liable to plaintiff for all damages and/or other appropriate relief.

**COUNT V**  
(Misrepresentation/Nondisclosure)

38. Plaintiff asserts all preceding allegations.

39. Defendants misrepresented and/or failed to disclose material facts relating to the Vessels, including true propulsion system qualities, performance characteristics, and maintenance costs.

40. Plaintiff detrimentally relied on defendants' representations.

41. Defendants are liable to plaintiff for all damages and/or other appropriate relief.

**COUNT VI**  
(Unfair Trade Practices—AS 45.50.471)

42. Plaintiff asserts all preceding allegations.

43. Additionally or alternatively, defendants have engaged in unfair or deceptive acts or practices in the conduct of trade or commerce.

44. Defendants are liable to plaintiff for treble damages, actual attorneys' fees, and all other relief provided by law.

**COUNT VII**  
(Negligence)

45. Plaintiff asserts all preceding allegations.

46. Defendants breached the duty of reasonable care owed to plaintiff.

47. Defendants are liable to plaintiff for all damages and/or other appropriate relief.

WHEREFORE, plaintiff State of Alaska prays:

A. The court award judgment in favor of plaintiff against all defendants;

B. The court award plaintiff compensatory damages, treble damages, punitive damages, costs, interest, and attorneys' fees; and

C. The court award such other relief as it deems just and proper.

DATED this \_\_\_\_\_ day of March, 2010, at Juneau, Alaska.

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

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