

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE  
(In Admiralty)

VESPER MARITIME LIMITED  
as Owner of the S/Y VESPER

Plaintiff,

V.

Civil Action No.

LYMAN MORSE BOATBUILDING, INC.  
of Thomaston, Maine

Defendant.

## COMPLAINT

Now comes the Plaintiff, Vesper Maritime Limited, and makes its complaint against the defendant Lyman Morse Boatbuilding, Inc. as follows:

## PARTIES

1. The Plaintiff, Vesper Maritime Limited ("VML") is a legal entity formed and existing pursuant to the laws of the British Virgin Islands and at all times material hereto was the owner of the S/Y VESPER.

2. The Defendant, Lyman Morse Boatbuilding, Co, Inc., ("Lyman Morse") is a corporation duly organized and existing pursuant to the laws of the State of Maine, having its principal place of business in Thomaston, County of Knox, State of Maine.

## JURISDICTION

3. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333 and the General Maritime Law of the United States.

FACTS APPLICABLE TO ALL COUNTS

4. Lyman Morse is and was at all times material hereto the operator of a full-service boatyard and marine facility carrying out vessel construction and repairs that held and holds itself out as a marine facility that will perform vessel repairs with the expertise and professionalism the vessel-owning customer expects.
5. Lyman Morse at all times material hereto held and holds itself out as having the capacity to haul and store monohull vessels to 110 tons.
6. VESPER is a 95 foot custom, sloop-rigged sailing yacht designed by German Frers and built by Yachting Developments of New Zealand in 2006.
7. Prior to November 2018, Vesper Maritime had a long-standing relationship with LYMAN MORSE having brought the S/Y VESPER to their yard for extensive annual maintenance and seasonal and periodic refitting. In these engagements, Vesper Maritime has paid LYMAN MORSE millions of dollars in service and professional fees.
8. In early November 2018, the VESPER completed a long-term service period at LYMAN MORSE and prepared to sail south to Antigua. The yacht was loaded with supplies and provisions for months of extended cruising. The yacht departed LYMAN MORSE and put to sea on Sunday November 4, 2018.
9. At approximately 1800 hours on the evening of departure, the Master of the yacht noticed unusual performance and sounds from the steering gear of the vessel. Upon observation and inspection, the decision was made to return to LYMAN MORSE in order to ascertain the exact cause of the problem and have it repaired in order to continue onward to Falmouth Harbor, Antigua.
10. VESPER arrived back at the LYMAN MORSE yard at approximately 0700 on November 5, 2018.

11. On Wednesday November 7, 2018, VESPER was hauled from the water by LYMAN MORSE via its Travelift and secured in the vessel washdown area. The yacht remained supported by the slings of the Travelift until November 9, 2018.

12. On November 9, 2018, VESPER was moved via Travelift to a staging area of the LYMAN MORSE yard. This area is comprised of gravel over dirt, and was known to LYMAN MORSE personnel to be wet and potentially unstable.

13. Notwithstanding the wet and unstable nature of the staging area, VESPER was placed there via Travelift and then staged and standed by LYMAN MORSE personnel only. The yacht was stored with an insufficient number of stands and no cribbing.

14. LYMAN MORSE did not have a standing or storage plan for VESPER despite the fact that the yacht had been hauled and stored by LYMAN MORSE on more than five prior (5) occasions.

15. Throughout the day of Friday November 9, 2018, VESPER crew and LYMAN MORSE personnel worked on deck and inside the yacht in addition to below her and upon the rudder bearing opening in the aft section of the bottom of the yacht.

16. Prior to departing the LYMAN MORSE yard at the end of the work day Phillip Henderson, Master of VESPER, consulted the yard manager regarding the likelihood of severe weather or strong winds during the night and weekend. These concerns were discounted and dismissed by LYMAN MORSE as “not being a problem” due to a “moderate forecast and the fact that VESPER was protected on two sides by large buildings and one side by an earth bank.”

17. At approximately 0415 hours on November 10, 2018, Capt. Henderson was contacted by Mr. Matt Graham from LYMAN MORSE informing him that there had been an incident at the yard involving VESPER and requesting him to come to the yard immediately.

18. Capt. Henderson and his wife, Linda Wright, arrived at the LYMAN MORSE yard at approximately 0445 to find that VESPER had fallen from her standed position and was lying on

her port side. Present upon his arrival were various LYMAN MORSE personnel, including but not limited to Matt Graham, Drew Lyman, Steve Toffield, and others.

19. In the minutes and hours immediately following arrival on the scene, Mr. Lyman and other LYMAN MORSE personnel repeatedly and excitedly informed and assured Capt. Henderson and Linda Wright that the incident was solely the fault of the yard and that LYMAN MORSE would take full responsibility. These representations were made at the scene of the incident as well as during meetings in the conference room in building 11 of the LYMAN MORSE yard.

20. During these discussions and meetings, a representative of LYMAN MORSE's insurance agent, The Allen Agency, was present and participated in the stated assurances and reassurances given to Capt. Henderson.

21. After providing such assurances and reassurances to the Master of the VESPER, Lyman Morse and The Allen Agency formulated an initial plan to right and stand up the fallen yacht. Based upon the assurances of full responsibility for the loss, no objection was made to these efforts by the Master.

22. After luring the Master into a position of false reassurance, LYMAN MORSE personnel began to remove critical physical evidence from the scene of the loss, both manually and with the use of heavy machinery. An adjacent yacht was removed from the area next to VESPER and stands and gantry stairways were forcibly removed from beneath VESPER.

23. These actions by LYMAN MORSE and The Allen Agency removed and destroyed critical evidence as to the cause of the incident, thereby frustrating and interfering with the determination as to causation. Stands and equipment removed from the scene of the VESPER loss were moved to different places throughout the LYMAN MORSE yard, with some repurposed for the standing and storage of other yachts.

24. Although the cause of the incident is readily apparent to most qualified observers, this destructive removal of evidence forever frustrated and interfered with the factual and physical/engineering determination as to the cause of the loss.

25. Within days of this extraordinary destruction and removal of physical evidence, LYMAN MORSE reneged on any prior acceptance or admission of liability and responsibility for the losses to the VESPER. To date, LYMAN MORSE refuses to acknowledge responsibility, liability, or even admit to the statements made to the Master and crew in the immediate aftermath of the loss.

26. The Master of VESPER would never have authorized or permitted any activity surrounding the damaged yacht VESPER, or removal of equipment or modification/changes to the grounds surrounding the loss, had he not been previously assured by authorized LYMAN MORSE personnel that the yard would be liable and responsible for the loss.

27. To this date, LYMAN MORSE refuses to accept responsibility for the loss of the VESPER.

COUNT ONE  
BREACH OF THE WARRANTY OF WORKMANLIKE PERFORMANCE

28. Vesper repeats and reiterates all of its allegations set forth in paragraphs one through 27, inclusive, of its complaint as if separately stated herein.

29. Lyman Morse owed VML a warranty of workmanlike performance with respect to all work carried out on VESPER, including but not limited to the work done to place the vessel in the jack stands.

30. The work done by Lyman Morse on VESPER was not workmanlike as Lyman Morse failed to properly and adequately secure the vessel on the jack-stands in a manner that would prevent her from falling over, and otherwise as will be shown at trial.

31. As a result of Lyman Morse's breach of its warranty of workmanlike performance, VML sustained substantial damages.

WHEREFORE, Vesper asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.

COUNT TWO  
BREACH OF MARITIME CONTRACT

32. VML repeats and reiterates all of its allegations set forth in paragraphs one through 31, inclusive, of its complaint as if separately stated herein.

33. Lyman Morse's promise to perform the work on and to VESPER in exchange for consideration paid by or to be paid by VML constitutes a maritime contract.

34. Lyman Morse breached its contract with VML by failing to carry out the repairs as requested and/or by performing the repairs in a substandard, incomplete, and/or unworkmanlike manner.

35. VML sustained catastrophic structural damages as a result of Lyman Morse's breach of its contract and the resulting damage to VESPER.

WHEREFORE, VML asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.

COUNT THREE  
NEGLIGENCE UNDER GENERAL MARITIME LAW

36. VML reasserts and reiterates the allegations set forth in paragraphs one through 35 of their complaint and incorporates the same by reference.

37. Lyman Morse owed VML a duty to act with reasonable care in carrying out work for it on VESPER.

38. Lyman Morse breached the duty of care it owed VML through acts or omissions including, but not necessarily limited to:

- a. failing to properly and adequately support the vessel before removing her from the travel lift slings;
- b. failing to rig the jack-stands in the manner called for by the manufacturer of the stands and/or as called for by applicable industry standards;
- c. failing to take steps to determine that the location where the vessel was placed was appropriate under the circumstances then extant or to be expected;
- d. failing to take steps to protect the vessel from the environment in which she was placed and in consideration of known or potential weather circumstances;
- e. failing to prepare a lift plan, and prepare for a safe lift and staging of the vessel in the yard knowing that the vessel was returning and/or was to be lifted and stored on the hard;
- f. failing to have on hand and in inventory a sufficient number of jack-stands;
- g. failing to perform the repairs in a competent and workmanlike fashion;
- h. such other acts or omissions as will be shown at trial.

39. As a result of Lyman Morse's breach of the standard of care it owed VML, VML sustained substantial damages.

WHEREFORE, Vesper asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.

COUNT FOUR  
MARITIME BAILMENT

40. VML repeats and reiterates all of its allegations set forth in paragraphs one through 39, inclusive, of its complaint as if separately stated herein.

41. VML was delivered into the possession and control of Lyman Morse with a sound hull and in excellent condition save for an issue with the rudder of undetermined origin that Lyman Morse had agreed to repair.

42. Lyman Morse accepted possession and control of VESPER from plaintiff in excellent condition save for an issue with the rudder of undetermined origin that Lyman Morse had agreed to repair. Said possession and control was exclusive as to Lyman Morse which was a bailee of the vessel.

43. During the time VML was in the exclusive possession and control of Lyman Morse the vessel sustained catastrophic structural damages after falling over while on jack-stands rigged by employees of Lyman Morse.

44. Despite demand by VML, Lyman Morse has failed and continues to fail to redeliver VESPER to VML in the same like condition as when accepted by it.

45. As a result of Lyman Morse's failure to return VESPER to VML in the same like condition as when delivered to defendant, Lyman Morse is liable to VML in the amount of its damages.

WHEREFORE, VML asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.



COUNT FIVE  
*RES IPSA LOQUITUR* UNDER MARITIME LAW

46. VML repeats and reiterates all of its allegations set forth in paragraphs one through 45, inclusive, of its complaint as if separately stated herein.
47. Lyman Morse exercised exclusive control over VESPER and the stands upon which it had placed the vessel.
48. Vessels such as VESPER do not fall over after being properly placed upon boat stands in the absence of negligence.
49. No other plausible explanations for the falling of VESPER exists.
50. Lyman Morse is liable to VML for the damages to VESPER under the doctrine of *res ipsa loquitur* as it has been adopted by the General Maritime Law of the United States.

WHEREFORE, Vesper asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.

COUNT SIX  
FRAUDULENT MISREPRESENTATION

51. VML repeats and reiterates all of its allegations set forth in paragraphs one through 50, inclusive, of its complaint as if separately stated herein.
52. In entering into the contract with VML, Lyman Morse represented that it would do its work in a competent and workmanlike fashion.
53. The representations made by Lyman Morse were false.
54. The representations made by Lyman Morse, when made, were either known to be false or made recklessly without knowledge of its truth.

55. Lyman Morse intended that Vesper rely upon the representations.

56. VML relied upon Lyman Morse's representations that they would do the work in a safe and competent manner.

57. Vesper suffered damages as a result of relying on the representations made by Lyman Morse.

WHEREFORE, VML asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.

COUNT SEVEN  
NEGLIGENT MISREPRESENTATION

58. VML repeats and reiterates all of its allegations set forth in paragraphs one through 57, inclusive, of its complaint as if separately stated herein.

59. Lyman Morse, in the course of its business and the transactions with VML to carry out repairs on and to VESPER, in which Lyman Morse had a pecuniary interest, supplied false information for the guidance of VML in the transaction.

60. VML relied upon the information provided by Lyman Morse as to their ability to carry out the repairs in a safe and competent fashion and that the vessel would be repaired and as repaired would be reasonably fit and seaworthy.

61. Lyman Morse failed to exercise reasonable care or competence in obtaining or communicating the information it provided to VML.

62. VML has suffered pecuniary loss and other damages caused by its justifiable reliance upon the information given by Lyman Morse.

WHEREFORE, VML asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.

COUNT EIGHT  
GOOD FAITH AND FAIR DEALING UNDER MARITIME LAW

63. VML repeats and reiterates all of its allegations set forth in paragraphs one through 62, inclusive, of its complaint as if separately stated herein.

64. Implied within the contract between VML and Lyman Morse was a covenant of good faith and fair dealing between the parties.

65. Lyman Morse breached the covenant of good faith and fair dealing by failing to carry out the work it promised to do in a workmanlike manner, and otherwise, and by causing and/or allowing the vessel to fall over.

66. As a result of Lyman Morse's breach of the covenant of good faith and fair dealing, VML has sustained damages.

WHEREFORE, VML asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.

COUNT NINE  
PUNITIVE DAMAGES UNDER THE GENERAL MARITIME LAW

67. VML repeats and reiterates all of its allegations set forth in paragraphs one through 66, inclusive, of its complaint as if separately stated herein.

68. The actions of Lyman Morse in failing to carry out the basic task of properly supporting the vessel and in otherwise carrying out its work in an unworkmanlike manner so as to allow a vessel such as VESPER to fall over constitutes grossly negligent, outrageous, and/or wantonly reckless misconduct that is shocking to the conscience of reasonable men.

69. VML is entitled to an award of punitive damages under the General Maritime Law of the United States.

WHEREFORE, VML asks this Honorable Court to enter judgment in its favor against Lyman Morse for the damages sustained by VML, including monetary damages, compensatory damages, consequential damages; punitive damages, attorneys' fees, costs; and interest in an amount not less than FIFTEEN MILLION DOLLARS (\$15,000,000.00); as well as for such other and further relief as the Court may deem equitable and proper.

DATED: January 31, 2019

VESPER MARITIME LIMITED  
By its attorneys,

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