

JONATHAN WERLANG, COUNSEL (SBN: 320506)
DRILL TECH DRILLING & SHORING, INC.
LEGAL DEPARTMENT
2200 Wymore Way
Antioch, California 94509
Telephone: (925) 978-2060

Attorney for Plaintiff
DRILL TECH DRILLING & SHORING, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DRILL TECH DRILLING & SHORING, INC.,
a California corporation,

Plaintiff,

v.

SUNPAC LLC, a Washington limited liability
company; RR DONNELLEY LOGISTICS
SERVICES WORLDWIDE, INC., a Delaware
corporation; and DOES 1 through 100, inclusive.

Defendants.

Case No.

**COMPLAINT OF DRILL TECH
DRILLING & SHORING, INC.**

For:

(1) NEGLIGENT LOSS OF PROPERTY
UNDER THE CARMACK AMENDMENT;
(2) NEGLIGENT SELECTION OF
CARRIER

DEMAND FOR TRIAL BY JURY

Plaintiff DRILL TECH Drilling & Shoring, Inc. ("DRILL TECH"), hereby alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff DRILL TECH, is, and all times relevant to this action was, a corporation organized and existing under the laws of the State of California. DRILL TECH is, and all times relevant to this action was, a general engineering contractor licensed to do business as such in the State of California by the Contractors State License Board of the Department of Consumer Affairs of the State of California.

2. Defendant SUNPAC, LLC (“SUNPAC”) is, and at all times relevant to this action was, a limited liability company organized and existing under the laws of the State of Washington.

3. Defendant RR DONNELLEY LOGISTICS SERVICES WORLDWIDE, INC. (“DLS”) is, and at all times relevant to this action was, a corporation organized and existing under the laws of the State of Delaware.

4. NATIONAL INDEMNITY INSURANCE CORPORATION (“NATIONAL INDEMNITY”) is, and at all times relevant to this action was, a corporation organized and existing under the laws of the State of Omaha.

5. DRILL TECH is unaware of the true names, capacities, or basis for liability of defendants DOE 1 through DOE 10 inclusive, and therefore sues said defendants by their fictitious names. DRILL TECH will amend this complaint to allege their true names, capacities, or basis for liability when the same have been ascertained. DRILL TECH is informed and believes and alleges that defendants DOE 1 through DOE 100 inclusive, and each of them, are in some manner liable to DRILL TECH, or claim some right, title, or interest in the subject property that is junior and inferior to that of DRILL TECH, or both.

6. At all times relevant to this action, each defendant, including those fictitiously named defendants, was the agent, servant, employee, partner, joint venturer, or surety of the other defendants and was acting within the scope of that agency, employment, partnership, venture, or suretyship with the knowledge and consent or ratification of each of the other defendants in doing the things alleged in this complaint.

JURISDICTION

7. DRILL TECH brings its first cause of action against SUNPAC under 49 U.S. Code § 14706 (the CARMACK AMENDMENT), which gives federal district courts exclusive jurisdiction over cases involving the interstate delivery of goods.

1 8. DRILL TECH brings its second cause of action against DLS under 28 U.S. Code § 1367
2 (supplemental jurisdiction), because the action is so related to claims in the action within such
3 original jurisdiction that they form part of the same case or controversy under Article III of the
4 United States Constitution.

5 **FACTS**

6
7 9. DRILL TECH contracted with DLS to select a carrier capable of shipping a BG-40-V-1957
8 from its yard in Antioch to a job site in Lowell, Oregon.

9 10. DLS selected SUNPAC as the carrier, and delivered to DRILL TECH a Bill of Lading
10 (Exhibit A).

11 11. At the time of selection, SUNPAC had over twice the national average of out of service
12 vehicles and roadway accidents (Exhibit B, SAFER Record). DRILL TECH was not made
13 aware of this.
14

15 12. DRILL TECH contracted with SUNPAC to transport a disassembled BG-40-V-1957 drilling
16 apparatus from its yard at 2200 Wymore Way in Antioch, California, to a work site in Lowell,
17 Oregon on or around the middle of November.

18 13. On November 10th, 2016, one of SUNPAC's trucks caught fire while executing the transport
19 contract, severely damaging the "lower mast" portion of the BG-40-V-1957 (the "CARGO").
20

21 14. The CARGO, at the time and place of its loss and destruction by fire as mentioned above, had
22 the market value of \$314,573.83. After the fire, the cargo had no market value whatsoever, to
23 DRILL TECH's damage in the amount of \$314,573.83.
24

25 15. As a result of the fire, DTDS suffered operating losses in the amount of \$77,245.10, detailed
26 in Exhibit C, SUNPAC Demand Letter 1.

27 16. Prior to filing of this action, DTDS made demand upon SUNPAC and NATIONAL
28 INDEMNITY INSURANCE CORPORATION for \$907,347.13, what it reasonably believed

1 was the replacement cost of the lower mast portion (Exhibit C, Lower Mast Claim Package).

2 17. SUNPAC tendered its policy limits of \$100,000, a fraction of DRILL TECH's claim.

3 18. DRILL TECH issued a demand for the full amount of the claim to DLS and SUNPAC on
4 April 19th, 2018 (Exhibit D, SUNPAC Demand Letter 1). A draft copy of this complaint was
5 included.

6 19. DRILL TECH, after receiving a revised estimate from the manufacturer of the BG-40-V-
7 1957, reduced its claim to \$391,818.93 and issued a new demand to DLS and SUNPAC on
8 May 29th, 2018 (Exhibit E, SUNPAC Demand Letter 2).

9 20. As of June 11th, 2018, DRILL TECH has not been compensated for any portion of its claim by
10 either SUNPAC or DLS.
11

12 **FIRST CAUSE OF ACTION**

13 (Negligent Destruction of Property under the Carmack Amendment, against SUNPAC)

14 21. DRILL TECH realleges and incorporates by reference each and every allegation of the above
15 paragraphs 1 through 20 inclusive, as if fully set forth herein.
16

17 22. With respect to the interstate road carriage of the cargo from Antioch, California to Lowell,
18 Oregon to defendant SUNPAC was at all material times engaged in the business of a motor
19 carrier and was a receiving, delivering and/or other carrier within the meaning of the
20 CARMACK AMENDMENT.

21 23. The damage sustained to the shipment in suit was proximately caused in whole or in part by
22 events during interstate road carriage was the shipment was in the actual, constructive, or
23 contractual custody of SUNPAC, and entities acting on its behalf.

24 24. By reason of the foregoing premises, SUNPAC is liable, without limitation of any kind, as
25 carrier and/or forwarder under the CARMACK AMENDMENT, and DRILL TECH as nearly
26 as the same can now be estimated, no part of which has been paid although duly demanded, in
27
28

1 the sum of \$314,573.83.

2 WHEREFORE, DRILL TECH prays as follows;

3
4 **SECOND CAUSE OF ACTION**
(NEGLIGENT SELECTION OF CARRIER, against DLS)

5 25. DRILL TECH realleges and incorporates by reference each and every allegation of the above
6 paragraphs 1 through 20 inclusive, as if fully set forth herein.

7
8 26. DLS had a duty to select a minimally competent carrier to transport the CARGO for DRILL
9 TECH.

10 27. DLS was negligent in selecting SUNPAC as an independent contractor in that SUNPAC was
11 incompetent and in that DLS knew, or by the exercise of reasonable care might have
12 ascertained that hiring SUNPAC created the particular risk and hazard of damage to DRILL
13 TECH from the failure of a truck because of SUNPAC's poor fleet maintenance and accident
14 ratings, and SUNPAC's failure to properly maintain a significant portion of their fleet in
15 comparison with national standards, and that SUNPAC was not properly qualified to transmit
16 DRILL TECH's goods.
17

18 28. DLS's negligent selection of SUNPAC created a strong risk of damage and destruction to
19 DRILL TECH's property through accident or mechanical failure.
20

21 29. That particular harm materialized when the BG-40 was irreparably damaged during transit by
22 a mechanical failure of SUNPAC's truck, resulting in damages of \$314,573.83.

23 30. Further harm occurred when DRILL TECH could not provide the drill on the work site as
24 scheduled, leading to further costs of \$77,245.10 that were immediately foreseeable as a result
25 of DLS's negligence.
26

27 WHEREFORE, DRILL TECH prays as follows;
28

PRAAYER

1
2 1. On the FIRST CAUSE OF ACTION against SUNPAC:

3 A. That process in due form of law may issue against defendant citing SUNPAC to
4 appear and answer all and singular the matters aforesaid;

5 B. That if defendant cannot be found within this District then all SUNPAC's property
6 within this District be attached to the sum of \$314,573.83, with interest thereon and costs, the sum
7 sued for in this complaint;
8

9 C. That judgment may be entered in favor of DRILL TECH and against SUNPAC in the
10 amount of \$314,573.83, together with interest at the lawful rate 10% per annum, and the costs of
11 this action, together with such other and further relief as to this honorable court is deemed just and
12 proper.
13

14 D. For such other relief as the court may deem proper.

15 2. On the SECOND CAUSE OF ACTION AGAINST DLS:

16 A. That process in due form of law may issue against defendant citing DLS to appear and
17 answer all and singular the matters aforesaid.

18 B. That if defendant cannot be found within this District then all DLS's property within
19 this District be attached to the sum of \$391,818.93, with interest thereon and costs, the sum sued for
20 in this complaint;
21

22 C. That judgment may be entered in favor of plaintiff DRILL TECH and against
23 defendant DLS in the amount of \$391,818.93, together with interest at the lawful rate 10% per
24 annum, and the costs of this action, together with such other and further relief as to this honorable
25 court is deemed just and proper.
26

27 B. For such other relief as the court may deem proper.
28

1 Dated: June 12th, 2018


JONATHAN WERLANG
Counsel for Plaintiff
DRILL TECH DRILLING & SHORING, INC.

2
3
4
5 **DEMAND FOR TRIAL BY JURY**

6 DRILL TECH Drilling & Shoring, Inc. hereby demands trial by jury.

7
8 Dated: June 12th, 2018


JONATHAN WERLANG.
Counsel for Plaintiff
DRILL TECH DRILLING & SHORING, INC.