

Honorable Thomas Zilly

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICHAEL POWERS,

Plaintiff,

v.

UNITED STATES OF AMERICA, NORTH  
WHIDBEY FIRE & RESCUE

Defendants.

NO. 2:21-00517 TSZ

*AMENDED COMPLAINT FOR  
DAMAGES*

UNITED STATES OF AMERICA,

Third-Party Plaintiff,

v.

NORTH WHIDBEY FIRE & RESCUE

Defendant.

JURY DEMAND

Plaintiff Michael Powers alleges as follows:

**I. INTRODUCTION**

1.1 Plaintiff Michael Powers brings this action against Defendants United States of America and North Whidbey Fire & Rescue (“NWFR”) to recover damages for the injuries he suffered as a result of the United States Coast Guard’s negligence and NWFR’s negligence during a search and rescue operation on May 2, 2019.

1.2 Just before 5:00 a.m. on May 2, 2019, Mr. Powers’ boat sank west of Deception

1 Pass Bridge when it was overtaken by a large wave. Mr. Powers and his cousin Richard Seay were  
2 the only two people aboard. Mr. Seay died shortly after entering the 47-degree water, despite Mr.  
3 Powers' attempts to rescue and then resuscitate him.

4 1.3 The United States Coast Guard and several local agencies, including the Swinomish  
5 Police Department and NWFR, responded to the emergency. But after less than one hour, and  
6 after conducting virtually no investigation, the Coast Guard called off the search and rescue. The  
7 Coast Guard falsely told the other responding agencies that it had made contact with the missing  
8 vessel, that the vessel had not capsized, and that the vessel was not in distress, thereby inducing  
9 the other responding agencies to cancel their searches.

10 1.4 Upon information and belief, on May 2, 2019, before Mr. Powers was found, a  
11 NWFR vessel "Marine 25" located debris near the area where Mr. Powers' vessel sank, but NWFR  
12 did not communicate that information to the Coast Guard until the following day, or to any other  
13 responding agencies.

14 1.5 When the Coast Guard called off the search and rescue and told other responding  
15 agencies that it had confirmed there was no vessel in distress, Mr. Powers was still floating in the  
16 area where his boat sank, holding his cousin's body, waiting for what he believed to be imminent  
17 rescue. As the hours passed and it became clear that no help was arriving, Mr. Powers struggled  
18 to stay alive, in extreme pain and duress, under the belief that he would probably die. A Good  
19 Samaritan finally pulled Mr. Powers, unconscious, from the water, approximately eight hours after  
20 Mr. Powers' boat sank, and approximately seven hours after the Coast Guard had called off the  
21 search and rescue.

## 22 II. JURISDICTION

23 2.1 Subject matter jurisdiction as to the claims against the United States lies in this  
24 Court under 28 U.S.C. § 1333 and the Suits in Admiralty Act (SAA), 46 U.S.C. §§ 30901 *et seq.*

25 2.2 In the alternative, should the Court conclude that the Public Vessels Act, 46 U.S.C.  
26 §§ 31101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671–2680, applies to the

1 claims against the United States, the Court has subject matter jurisdiction pursuant to those Acts  
2 as well.

3 2.3 Subject matter jurisdiction as to the claims against NWFR lies in this Court under  
4 28 U.S.C. § 1367. Plaintiff pursues his claims against NWFR at law under the “savings to suitors”  
5 clause of 28 U.S.C. § 1333(1).

### 6 III. VENUE AND CLAIM PREREQUISITE

7 3.1 Venue is proper in the Western District of Washington because this district is where  
8 Plaintiff resides and where a substantial part of the events or omissions giving rise to the claim  
9 occurred. 28 U.S.C. § 1391(b); 46 U.S.C. § 30906.

10 3.2 While neither the Suits in Admiralty Act, 46 U.S.C. §§30901 *et seq.*, nor the Public  
11 Vessels Act, 46 U.S.C. §§ 31101 *et. seq.*, expressly require Plaintiff to provide administrative  
12 notice to the United States Coast Guard, Plaintiff Michael Powers presented an administrative  
13 claim to the United States Coast Guard in an abundance of caution. On October 15, 2020, Plaintiff  
14 submitted, via certified mail, notice of his claim against the United States Coast Guard under the  
15 facts addressed below, using Standard Form 95. That submission included reports, audio files of  
16 phone calls, photographs, witness statements, and other supporting documents and information  
17 related to Plaintiff’s claim. A true and correct copy of Plaintiff’s letter, which includes the  
18 Standard Form 95 administrative claim form, is attached to this Complaint and marked as Exhibit  
19 A. A copy of the Coast Guard’s written denial of Plaintiff’s claim is attached to this Complaint  
20 and marked as Exhibit B.

21 3.3 To the extent that the Federal Tort Claims Act is deemed applicable, all conditions  
22 precedent to filing suit have been fulfilled. *See* Exhibit A and Exhibit B.

23 3.4 As to NWFR, all conditions precedent to filing suit have been fulfilled. *See* Exhibit  
24 C.

### 25 IV. PARTIES

26 4.1 Plaintiff Michael Powers is a resident of the State of Washington, residing in

1 Arlington, Washington.

2 4.2 The United States Coast Guard is an agency of the United States Department of  
3 Homeland Security, and thus is an agency of the United States of America.

4 4.3 The officers and agents of the Coast Guard are all agents of the Coast Guard and  
5 therefore of the United States Department of Homeland Security.

6 4.4 NWFR is a Fire Protection District operating in Washington State created under  
7 Title 52 of the Revised Code of Washington.

8  
9 **V. FACTS**

10 ***Plaintiff's Experience***

11 5.1 At approximately 4:30 a.m. on May 2, 2019, Michael Powers and his cousin by  
12 marriage, Richard Seay, launched Mr. Powers' 20-foot Duckworth boat from the Cornet Bay boat  
13 ramp near Deception Pass, Washington. It was opening day of halibut season and Mr. Powers and  
14 Mr. Seay, along with numerous other boaters, left the boat launch and ventured toward the open  
15 waters.

16 5.2 The sea was calm east of Deception Pass Bridge, but quickly built to 4-6 foot seas  
17 west of the bridge, with occasional 8-9 foot seas.

18 5.3 After passing the Deception Pass Bridge, a rogue wave shattered the boat's  
19 windshields, causing the boat to fill with water quickly.

20 5.4 Mr. Powers' boat sank approximately 1.2 miles west of the Deception Pass Bridge,  
21 in navigable waters, at about 4:45 a.m. on May 2, 2019. At that time, the water temperature was  
22 approximately 47 degrees Fahrenheit. Mr. Powers and Mr. Seay clung to their life jackets,  
23 struggling not to drown as the boat quickly sank.

24 5.5 After a short time in the cold water, Mr. Seay went into shock. Mr. Powers  
25 attempted to keep Mr. Seay awake, but he survived for only about 20-30 minutes. Mr. Powers  
26 performed mouth-to-mouth resuscitation on Mr. Seay for approximately ten minutes, but was

1 unable to save him. At that point, Mr. Powers believed that rescue was on his way. Mr. Powers  
2 waited for rescue with his cousin's body for about one hour, but he saw no signs of rescue.

3 5.6 After waiting for about one hour, the waves began to calm, and Mr. Powers decided  
4 to swim toward land that appeared to be nearby. He pulled Mr. Seay's body with him as he swam  
5 but made no progress. At that point, Mr. Powers made the difficult decision to leave his cousin's  
6 body behind. Finally, Mr. Powers removed the life jacket from Mr. Seay's corpse and placed it  
7 on himself, hoping that it would help him stay afloat long enough to be rescued.

8 5.7 Mr. Powers attempted to swim to two separate shores that he could see in the  
9 distance, but with each attempt, the tide pulled him away. Mr. Powers dipped further into  
10 hypothermia as he tried for hours to swim toward the perpetually receding shores.

11 5.8 After approximately six hours in the water, Mr. Powers came to the realization that  
12 he could not physically reach land. His fingers stiffened into clenched fists as the hypothermia  
13 overwhelmed his body. In a final, fleeting attempt to survive, Mr. Powers placed the extra life  
14 jacket under his knees, so that his body was positioned face-up.

15 5.9 At 11:00 a.m., Mr. Powers succumbed to shock and lost consciousness.

16 5.10 At about 12:30 p.m., a passing fishing boat found Mr. Powers floating unconscious  
17 and pulled him aboard. Mr. Powers had spent approximately eight hours in the near-freezing  
18 water. When he was pulled aboard, he was extremely hypothermic, nonsensical, and foaming at  
19 the mouth.

20 5.11 After he was pulled from the water, Mr. Powers was taken to shore, then driven by  
21 ambulance to a nearby helicopter. The helicopter airlifted him to Harborview Medical Center,  
22 where he spent two days in the ICU.

23 ***Coast Guard Search and Rescue ("SAR") Standards and Guidelines***

24 5.12 The Coast Guard has implemented standards to effectively resolve emergency  
25 situations like the emergency situation that Mr. Powers and Mr. Seay faced on May 2, 2019. These  
26 standards are documented, in part, in the U.S. Coast Guard Addendum to the United States Search

1 and Rescue Supplement (NSS) to the International Aeronautical and Maritime Search and Rescue  
2 Manual, COMDTINST M16130.2F.

3 5.13 The Coast Guard consistently coordinates SAR efforts with state and local  
4 agencies. When coordinating a SAR, the SAR Mission Coordinator, or “SMC,” takes on the role  
5 of monitoring and providing guidance to all responding agencies, “ensuring that the search plan is  
6 received, understood, and followed by all SAR facilities.” COMDTINST M16130.2F art. 3.1.2.4.  
7 According to official Coast Guard policy, the SMC is responsible for acting because, “[i]n search  
8 and rescue, the SMC is usually in the best position to access the circumstances of a particular case,  
9 and to take whatever steps are necessary to promote safety of life and property.” *Id.* at art. 4.1.4.3.

10 5.14 When the Coast Guard is first made aware of a potential emergency situation, it  
11 often does not have all of the pertinent information at the outset. Thus, Coast Guard policy  
12 mandates that it is “incumbent upon all SAR personnel involved, but especially the SMC, to  
13 continue investigative efforts to learn as much as possible about the incident and related matters.”  
14 COMDTINST M16130.2F art. 3.1.3. According to the Coast Guard’s standards, these  
15 investigative efforts include effective interviewing to obtain pertinent information, as well as  
16 “good analysis skills to piece together the facts and data obtained in order to develop one or more  
17 consistent, coherent ‘pictures’ or ‘scenarios’ of what may have happened to the survivors.” *Id.*  
18 The collection of this important data as soon as possible is “crucial” to successful SAR  
19 proceedings. *Id.* at art. 3.1.4.

20 5.15 Pursuant to official policy, once the Coast Guard becomes aware of a potential  
21 emergency, it assigns the report to one of three “emergency phases”: “(a) Uncertainty Phase; (b)  
22 Alert Phase; [or] (c) Distress Phase.” COMDTINST M16130.2F at art. 3.1.2.2.

23 5.16 After an emergency phase is assigned, Coast Guard policy requires that a SAR plan  
24 be developed and communicated to any other agencies responding. *See id.* at art. 3.1.2.3. “Proper  
25 and accurate planning is critical to SAR mission success.” *Id.* at art. 3.1.2.3. Pursuant to official  
26 Coast Guard policy, search planners must create a search plan either manually or through

1 SAROPS, which is a computerized SAR planning system. Appendix H to COMDTINST  
2 M16130.2F art. H.1.6. Coast Guard standards mandate that “SAROPS shall be used whenever  
3 practicable.” *Id.*

4 5.17 Once a search plan is developed, the SMC monitors the SAR and ensures that all  
5 SAR facilities receive, understand, and follow the plan. COMDTINST M16130.2F art. 3.1.2.4.  
6 Official Coast Guard policy recognizes that effectively communicating with other agencies during  
7 a SAR in order to send and receive key information is “critically important to effective SAR case  
8 prosecution.” *Id.* at art. 3.9.2.5.

9 5.18 The Coast Guard may only conclude a SAR in one of several, clearly defined  
10 scenarios. One of those scenarios occurs when “[i]nformation is received that the aircraft, ship or  
11 persons who are the subject of the SAR incident are not in distress (False alert).” COMDTINST  
12 M16130.2F art. 3.1.2.5. Persons who are the object of a search must all be accounted for in order  
13 for a case to be closed. When persons remain missing at the conclusion of SAR efforts, the case  
14 cannot be closed. *Id.* at art. 3.8.1.1. Similarly, “[w]hen the source of a suspected false alert . . .  
15 remains unknown, the case cannot be closed, but only suspended.” *Id.* at art. 3.4.10.3.

### 16 ***Coast Guard Search and Rescue Operations on May 2, 2019***

17 5.19 At approximately 4:47 a.m. on May 2, 2019, another boater named David Shell,  
18 who was near Mr. Powers’ boat when it sank, placed a 911 call after losing sight of Mr. Powers’  
19 boat. Mr. Shell reported that he saw a boat near him disappear and that he was concerned that the  
20 boat had capsized in the large waves. Mr. Shell reported that the water was so dangerous that he  
21 could not turn back to help.

22 5.20 At approximately 5:01 a.m., Island County Dispatch relayed Mr. Shell’s 911 report  
23 to the Coast Guard Sector Puget Sound SCC.

24 5.21 Upon receiving the call from dispatch, the Coast Guard undertook the search and  
25 rescue of the potentially capsized vessel and any survivors. Coast Guard Sector Puget Sound  
26 assumed the role of SAR Mission Coordinator, or “SMC.”

1           5.22    At 5:04 a.m., a Coast Guard watchstander contacted Mr. Shell directly. Mr. Shell  
2 reported that one of the passengers on his boat believed that he saw the missing boat’s lights under  
3 water. Mr. Shell again stated that the boat may have capsized in the rough seas. He reiterated that  
4 it was too dangerous to turn around to search for the missing boat, with 15-foot seas coming out  
5 underneath Deception Pass Bridge. Mr. Shell described the missing boat as “something like” a  
6 22-foot Hewescraft, but stated that it was too dark to tell what type of boat it was or how many  
7 people were on board.

8           5.23    After the Coast Guard watchstander spoke directly with Mr. Shell, the Coast Guard  
9 Operation Unit completed an initial Search and Rescue checksheet but did not use Search and  
10 Rescue Optimal Planning System (SAROPS) or any other means to calculate datum during the  
11 search and rescue case.

12           5.24    Upon information and belief, the Coast Guard classified the incident with a  
13 “distress phase” designation, placing it in the most urgent SAR “emergency phase.”

14           5.25    At approximately 5:08 a.m. the SCC Communications Unit watchstander issued an  
15 urgent marine information broadcast (“UMIB”) regarding the missing boat. The UMIB sought the  
16 aid of any nearby vessels to help in the search for the possibly capsized vessel, on behalf of the  
17 Coast Guard.

18           5.26    At approximately 5:11 a.m., a vessel called P/C Kraken (“the Kraken”), responded  
19 to the UMIB, reporting that they observed a vessel traveling east from Deception Pass Bridge,  
20 heading back to the port. The Kraken reported that the vessel was a either a 22 or 24-foot white-  
21 on-silver, hard top boat. Shortly after communicating this information to the Coast Guard, the  
22 Coast Guard requested that the Kraken make contact with the vessel and “advise.” The Kraken  
23 made contact with the vessel it had described, and those aboard the vessel reported that they were  
24 not in distress, and that they had turned around due to the weather and sea conditions. Following  
25 the Coast Guard’s instruction, the Kraken advised the Coast Guard Communications Unit of this  
26 information.



1           5.27    At approximately 5:22 a.m., the Coast Guard Communications Unit thanked the  
2 Kraken for their assistance in the case. During that conversation, the Kraken notified the Coast  
3 Guard that they had seen other vessels go out that morning, into the rough seas, that had not  
4 returned. The Kraken crew observed five other vessels leave that morning that had not come back  
5 yet.

6           5.28    At approximately 5:22 a.m., based on its conversation with the Kraken, the Coast  
7 Guard was on notice that it had not located or contacted several other vessels that had gone into  
8 the dangerous seas and had not yet returned to shore. It did not investigate whether any of those  
9 vessels were, or had been, in distress. The Coast Guard took no steps to verify if the vessel  
10 approached by the Kraken was the same vessel that had been reported likely capsized by Mr. Shell  
11 and his crew. To the contrary, the Coast Guard's exchanges with the Kraken only confirmed that  
12 there were numerous boats unaccounted for. The Coast Guard took no steps to reconcile the report  
13 from Shell that his partner had reported seeing the sinking boat's lights underwater.

14           5.29    At about the same time the Communications Unit was thanking the Kraken, a shift  
15 change occurred. At 5:28 a.m., either the offgoing or the oncoming Command Duty Officer  
16 briefed Coast Guard District 13 – the district encompassing the Pacific Northwest – on the  
17 emergency situation. The Command Duty Officer falsely stated that the Coast Guard had  
18 confirmed that the reported missing vessel had not capsized and had simply turned around due to  
19 the weather. The Command Duty Officer stated that the Coast Guard had issued a UMIB, and that  
20 it was successful; he falsely explained that they were able to positively correlate the vessel  
21 observed by the Kraken as “matching the same exact length and description . . . and activity” as  
22 the vessel reported by David Shell via his 911 call. The Command Duty Officer's brief did not  
23 include the following, important information, of which Coast Guard officials engaged in the SAR  
24 were aware at the time:

- 25           • the fact that one of Mr. Shell's partners aboard his boat believed that he saw missing  
26           vessel's lights underwater;

- 1 • the fact that Mr. Shell could not search for the missing vessel due to the dangerous  
2 seas;
- 3 • the fact that, because of the dangerous conditions, Mr. Shell could not be certain  
4 what the vessel in distress actually looked like and gave only a cursory description  
5 of the vessel with no significant identifying information;
- 6 • the fact that the Coast Guard had not located or contacted the other vessels that had  
7 gone out into the dangerous seas that morning, in the same area, to confirm that  
8 those vessels had not capsized; and
- 9 • the fact that many other fishing boats were out that day for the purpose of halibut  
10 fishing, and not all were accounted for.

11 Again, the Coast Guard’s own review of the incident – even in its heavily redacted form – expressly  
12 acknowledges that the Command Duty Officer’s brief to Coast Guard District 13 failed to include  
13 much of the significant information listed above.

14 5.30 Prior to leaving their watch, the offgoing Operations Unit had not entered the search  
15 and rescue case into MISLE [Marine Information for Safety and Law Enforcement]. The offgoing  
16 Operations Unit told the oncoming operations unit that a MISLE case was unnecessary at that  
17 point. Later that morning, the oncoming Operations Unit created a MISLE case and closed it as a  
18 “confirmed false alert” at 6:16 a.m.

19 5.31 At 5:33 a.m., without any further investigation, the Communication Unit cancelled  
20 the UMIB, and the Coast Guard called off all search and rescue vessels, abandoning Mr. Powers.

21 5.32 When the Coast Guard called off Mr. Powers’ search and rescue, Mr. Powers still  
22 was waiting for rescue in the area where his boat sank, with his cousin’s body.

23 5.33 At the time that the Coast Guard called off Mr. Powers’ search and rescue, at least  
24 two local agencies had boats in the water near Deception Pass Bridge looking for evidence of Mr.  
25 Powers’ capsized boat and any survivors with the intent to perform a rescue mission. But for the  
26 Coast Guard calling off these boats and missions, Mr. Powers would have been timely rescued.

1 ***Coast Guard Interactions with Other Agencies, including NWFR***

2 5.34 The United States Coast Guard was not the only agency notified of David Shell's  
3 911 call regarding Mr. Powers' boat. Other federal, state, and local agencies were also advised of  
4 the report.

5 5.35 After learning of the report, shortly after 5:00 a.m. on May 2, 2019, Navy Search  
6 and Rescue indicated that it would take at least an hour to bring in a helicopter. The Navy was  
7 advised to hold the helicopter because other agencies were responding.

8 5.36 Similarly, an Island County Sheriff Officer who was responding to the emergency  
9 canceled his response after learning that other agencies – including the Coast Guard – were  
10 responding.

11 5.37 Sometime between 5:00 a.m. and 5:30 a.m., NWFR responded to David Shell's 911  
12 report. As part of that response, NWFR sent at least one of its Marine Units – Marine 25 – to the  
13 scene.

14 5.38 The Swinomish Police Department also responded to Mr. Shell's 911 call. By 5:14  
15 a.m., two Swinomish Police Department boats were on their way to the scene. Officers aboard  
16 had donned their dry suits in preparation for a water rescue.

17 5.39 At approximately 5:26 a.m., a Swinomish Police Department Marine Unit arrived  
18 in the area of Deception Pass in order to locate the missing vessel and any survivors.

19 5.40 Shortly thereafter, the Coast Guard specifically and falsely told the Swinomish  
20 Police Department that it had made contact with the vessel in distress and advised the Swinomish  
21 Police Department that the vessel in distress had not capsized. Based on this false information,  
22 the Swinomish Police Department called off its search for the capsized vessel and any survivors.

23 5.41 At approximately 5:38 a.m., Marine 25 of North Whidbey Fire & Rescue contacted  
24 the Coast Guard to request an update. Marine 25 had heard on the radio that the Coast Guard had  
25 called off the search and wanted to confirm that the Coast Guard had made contact with the vessel  
26 in distress. The Coast Guard told Marine 25 that it had "determined that there was no vessel in

1 distress.” Based on this baseless, conclusory, and wildly incorrect information, NWFR called off  
2 its search for the capsized vessel and any survivors.

3 5.42 Upon information and belief, before or around the time that the Coast Guard called  
4 off SAR efforts, NWFR unit Marine 25 completed a search of the area where Mr. Powers’ boat  
5 disappeared. During that search, NWFR located debris in the water indicative of capsized, including  
6 a seat cushion and a cooler.

7 5.43 Upon information and belief, despite finding this evidence of a capsized vessel  
8 during its search, Marine 25 did not communicate that information to the Coast Guard, even after  
9 learning that the Coast Guard called off SAR efforts. Instead of communicating this information  
10 to the Coast Guard or any of the other responding agencies, NWFR ceased its own search efforts.

11 5.44 In response to the Coast Guard actively calling off the search and rescue, all of the  
12 departments and units that responded to Mr. Shell’s 911 call turned back, leaving Mr. Powers  
13 waiting for rescue that would not come.

14 5.45 Absent the Coast Guard’s misguided, erroneous, and extraordinarily reckless  
15 decision to call off the search with no evidence that the reported capsized boat was safe, Mr.  
16 Powers would have been rescued many hours earlier.

17 **VI. FIRST CAUSE OF ACTION: CLAIM AGAINST THE UNITED STATES**  
18 **BASED ON COAST GUARD NEGLIGENCE**

19 6.1 This negligence cause of action is brought pursuant to the Suits in Admiralty Act  
20 by Plaintiff Michael Powers.

21 6.2 In the alternative, either the Public Vessels Act and/or the Federal Tort Claims  
22 Act apply.

23 6.3 Because Mr. Powers’ injuries occurred in navigable waters, maritime situs is  
24 established.

25 6.4 Because the Coast Guard’s SAR operations bear a significant relationship to  
26 traditional maritime activities, maritime nexus is established.

1           6.5     Once it engaged in the SAR operation involving Plaintiff’s vessel, the Coast Guard  
2 assumed a duty to Plaintiff to act with reasonable care in its SAR operations and to assist in the  
3 coordination of the SAR by other agencies similarly engaged.

4           6.6     The Coast Guard failed to act with reasonable care in its SAR operations, failing  
5 within the course and scope of its duties, in one or more of the following ways:

- 6           • By concluding and reporting that it had made contact with the vessel in distress  
7           when it had not done so, and when it had no reasonable basis for so concluding;
- 8           • By concluding and reporting that it had made contact with a vessel “matching the  
9           same exact length and description . . . and activity” as the vessel in distress that Mr.  
10          Shell reported, even though Mr. Shell had given only a cursory description of the  
11          vessel in distress that did not include the vessel’s color, or any other significant  
12          identifying information that would differentiate it from the other fishing boats in  
13          the area;
- 14          • By concluding that Mr. Shell’s report of a capsized vessel was unfounded after less  
15          than one hour of investigation and with no confirmation that the boat reported to  
16          have sunk and with lights underwater was safe;
- 17          • By completely failing to investigate whether the boat reported to have capsized was  
18          safe;
- 19          • By failing to communicate the actual substance of Mr. Shell’s report during the  
20          search and rescue, including the fact that one of Mr. Shell’s crew members believed  
21          he saw the missing vessel’s lights under water and the fact that Mr. Shell could not  
22          turn around to help due to dangerous seas;
- 23          • By failing to use appropriate search planning methods as required by the Coast  
24          Guard’s official standards and polices;
- 25          • By cancelling the UMIB while there were other vessels near Mr. Powers’ location,  
26          without conducting a reasonable investigation that supported cancelling the search;

- 1 • By directly and baselessly telling other responding agencies, including North  
2 Whidbey Fire & Rescue and the Swinomish Police Department, that it had made  
3 contact with the missing vessel and that it was not in distress;
- 4 • By closing the SAR case contrary to its own policy, which requires that it account  
5 for all persons who are the object of a search before closing a SAR case.

6 6.7 Because the Coast Guard acted negligently in its SAR operations, it incorrectly  
7 called off the search for Mr. Powers, leaving him to struggle for his life in near-freezing waters for  
8 nearly eight hours.

9 6.8 The Coast Guard's actions in this case made Mr. Powers' situation worse than it  
10 would have been had the Coast Guard not responded at all. Not only did the Coast Guard  
11 negligently and incorrectly close its SAR case, but its actions also induced other responding  
12 agencies to either halt their SAR efforts, or choose not to engage in SAR at all, while Mr. Powers  
13 was still in the area where his vessel sank. Had the Coast Guard not engaged in the SAR, the Coast  
14 Guard would not have incorrectly told the other responding agencies that it had confirmed there  
15 was no emergency, nor would it have actively called off the search in its role as SMC ("SAR  
16 Mission Coordinator). Accordingly, had the Coast Guard played no role in the case, other agencies  
17 would have continued searching, and Mr. Powers would have been found hours sooner.

18 6.9 The Coast Guard's negligence directly and proximately caused Mr. Powers'  
19 injuries.

20 **VII. SECOND CAUSE OF ACTION: NEGLIGENCE CLAIM AGAINST NWFR**  
21 **UNDER THE GENERAL MARITIME LAW**

22 7.1 This cause of action against NWFR is brought at law under the general maritime  
23 law and the "savings to suitors" clause of 28 U.S.C. § 1333(1). This Court has supplemental  
24 jurisdiction pursuant to 28 U.S.C. § 1367.

25 7.2 NWFR, by and through its representatives, officers, agents, employees, vessel,  
26 vessel crew, and others breached a duty of care to Plaintiff.

1           7.3     NWFR knew or should have known that the Coast Guard and other responding  
2 agencies were seeking information regarding the missing vessel. NWFR had a duty to use  
3 reasonable care in its search and rescue operations. This included a duty to use reasonable care in  
4 sharing relevant information regarding distress or potential distress with other agencies, including  
5 the Coast Guard. NWFR breached this duty when Marine 25, which was at or near the scene of  
6 the capsized vessel and had completed a search of that area, failed to inform the Coast Guard or  
7 any other responding agencies that it had found debris in the water.

8           7.4     NWFR also had a duty to use reasonable care in engaging in its own rescue efforts.  
9 NWFR breached this duty when Marine 25 conducted a search of the area where Mr. Powers'  
10 vessel capsized, found potential signs of a capsized vessel or vessel in distress, and nevertheless  
11 called off its search efforts.

12           7.5     In breaching these duties, NWFR acted with gross negligence.

13           7.6     Upon information and belief, had NWFR shared this information with other  
14 responding agencies, those agencies would have continued their search efforts and found Mr.  
15 Powers, who was still near the site of the capsized vessel, in a timely manner.

16           7.7     Upon information and belief, had NWFR continued its own search for the missing  
17 vessel and any survivors, it would have found Mr. Powers, who was still near the site of the  
18 capsized vessel, in a timely manner.

19           7.8     NWFR's negligence was a proximate cause of Plaintiff's injuries.

20           7.9     Because Mr. Powers' injuries occurred in navigable waters, maritime situs is  
21 established.

22           7.10    Because NWFR's SAR operations bear a significant relationship to traditional  
23 maritime activities, and because NWFR unit Marine 25 was acting in navigable waters when the  
24 negligence occurred, maritime nexus is established.

1 **VIII. THIRD CAUSE OF ACTION: NEGLIGENCE CLAIM AGAINST NWFR**  
2 **UNDER WASHINGTON COMMON LAW**

3 8.1 Plaintiff re-alleges that NWFR owed a duty to Plaintiff: NWFR, by and through its  
4 representatives, officers, agents, employees, vessel, vessel crew, and others breached a duty of  
5 care to Plaintiff.

6 8.2 Plaintiff re-alleges that NWFR owed the duties to Plaintiff as alleged in paragraphs  
7 7.3 and 7.4. NWFR breached the duties it owed to Plaintiff as alleged in paragraphs 7.3 and 7.4.

8 8.3 Upon information and belief, had NWFR either communicated to other responding  
9 agencies that it had located debris during its search of the area in question, or continued its own  
10 search of the area, Mr. Powers would have been located and rescued in a timely manner.

11 8.4 NWFR's negligence was a proximate cause of Plaintiff's injuries.

12 **IX. DAMAGES**

13 9.1 As a result of Defendants' negligence and failure to exercise ordinary care, Michael  
14 Powers was left at sea awaiting rescue in near-freezing waters for many hours. During that time,  
15 Mr. Powers suffered hypothermia and eventually came to believe that he would die. When he was  
16 finally pulled from the water after nearly eight hours, he was delusional, foaming at the mouth,  
17 and required intubation. Mr. Powers spent two days in the ICU and continues to suffer from the  
18 trauma that he experienced as a result of being left at sea. Mr. Powers has PTSD because of the  
19 incident.

20 9.2 As a result of Defendants' negligence and failure to exercise ordinary care, Mr.  
21 Powers sustained injuries and is entitled to recover damages including but not limited to: past and  
22 future medical expenses, past and future pain and suffering, mental anguish, prejudgment interest  
23 and punitive damages under the General Maritime Law.

24 **X. NO COMPARATIVE FAULT**

25 10.1 Mr. Powers actions were not negligent and did not cause or contribute to his  
26 injuries. Mr. Powers is not at fault.





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**PIPINICH LAW**

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