

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

AUG 10 2015

JAMES W. McCORMACK, CLERK  
By: [Signature]  
DEP CLERK

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

**ROBERT L. COLEMAN, Special Administrator  
for the Estate of Nicolas Perez Hernandez, and  
his surviving heirs and dependents**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 3:15-cv-225-BSM**

**COOPER MARINE & TIMBERLANDS CORPORATION,  
as Owner Pro Hac Vice and Operator of the Barge CMT 123,  
Official No. 1067600, a Foreign Corporation, and LOGISTIC  
SERVICES, INC., a Foreign Corporation, and SEVERSTAL  
U.S. HOLDINGS LLC, a Foreign Corporation**

**DEFENDANTS**

**COMPLAINT FOR WRONGFUL DEATH**

NOW COMES the Plaintiff, ROBERT L. COLEMAN, Special Administrator of the Estate of Nicolas Perez Hernandez and his Surviving Heirs and Dependents, by and through his undersigned attorneys, and sue the Defendants, COOPER MARINE & TIMBERLANDS CORPORATION as Owner *Pro Hac Vice* and Operator of the Barge, CMT 123, Official No. 1067600 a Foreign Corporation, (hereinafter "COOPER MARINE), and LOGISTIC SERVICES, INC., a Foreign Corporation, and SEVERSTAL U.S. HOLDINGS, LLC, a Foreign Corporation, (hereinafter "SEVERSTAL"), Defendants, pursuant to 33 U.S.C.A. §905(b), the Longshoreman and Harbor Workers Compensation Act, (LHWCA), 33 U.S.C.A. §933(a), General Maritime Law and the laws and ordinances of the State of Arkansas, and says:

1. Notice of a related case. Pending before the Honorable J. Leon Holmes is the following case: In the Matter of Cooper Marine & Timberlands Corporation, as Owner Pro Hac Vice and Operator; and GATX Third Aircraft, LLC, as Owner of the Barge CMT 123, Official No. 1067600, U. S. District Court, Eastern District of Arkansas, Jonesboro Division, Case No. 3:15-cv-

<sup>1</sup>  
This case assigned to District Judge Miller  
and to Magistrate Judge Kearney

170. This case was transferred to the Eastern District of Arkansas from the Middle District of Louisiana. In the interest of judicial economy, plaintiffs ask that the case filed herein be assigned to Judge Holmes. Both cases involve similar facts surrounding the liability of Cooper Marine and Timberlands Corporation for the wrongful death of Nicholas Perez Hernandez.

2. Federal jurisdiction of this suit is based upon the diversity of citizenship of the Plaintiff and the Defendants as well as the LHWCA.

3. The Plaintiff, ROBERT L. COLEMAN, was appointed as Special Administrator of the Estate of Nicolas Perez Hernandez, deceased, on September 29, 2014, by the Probate Court of Mississippi County, Arkansas, Case No. PR2014-107. ROBERT L. COLEMAN is an attorney practicing in the State of Arkansas and an Arkansas resident.

4. The deceased, NICOLAS PEREZ HERNANDEZ, at all times material hereto, including April 8, 2014, was a longshoreman employed by Kinder Morgan, Inc., which was providing the services of a stevedore or longshore labor for the barge CMT 123 as it lay along side the Kinder Morgan dock at Hickman, Arkansas, in the navigable waters of the United States and in the jurisdiction of the United States District Court, Eastern District of Arkansas.

5. The beneficiaries of the ESTATE OF NICOLAS PEREZ HERNANDEZ are:

1. Cecilia Hernandez Lopez, mother;
2. Nicki Alejandra Perez Mendez, daughter;
3. Diana Nicole Perez Mendez, daughter;
4. Cintia Janeth Perez Hernandez, sister;
5. Fransisco Javier Perez Hernandez, brother;
6. Nidia Diensure Perez Hernandez, sister;
7. Ana Celia Perez Hernandez, sister;
8. Reynaldo Perez Hernandez, brother;
9. Juan Jose Perez Hernandez, brother;
10. Miguel Angel Perez Hernandez, brother;
11. Gregorio Antonio Perez Hernandez, brother; and

12. Zoila Perez Hernandez, sister.

6. The Defendant, COOPER MARINE, at all times material hereto, was and is a foreign corporation, doing business in the states of Mississippi and Arkansas as owner *pro hac vice* and operator of the Barge CMT 123.

7. The Defendant, LOGISTICS SERVICES, INC., at all times material hereto, was a foreign corporation, doing business as a stevedore in Columbus, Mississippi, and who loaded approximately 46 rolls of steel and its dunnage onto Barge CMT 123 at its facility in Columbus on or about March 8, 2014.

8. The Defendant, SEVERSTAL, at all times material hereto, was a foreign corporation, doing business as a manufacturer of steel rolls in its plant in Columbus, Mississippi and who provided the steel rolls and dunnage for its loading onto Barge CMT 123 in Columbus.

#### FACTS COMMON TO ALL COUNTS

9. During January of 2014, Defendant, SEVERSTAL, entered a contract of affreightment with Defendant, COOPER MARINE, for shipment of 46 hot rolled steel coils that Defendant, SEVERSTAL had manufactured in its plant in Columbus, Mississippi, for delivery to a company, IPSCO, in Hickman, Arkansas. Each steel coil weighed between 59,000 and 68,000 lbs. The steel coils were sent by SEVERSTAL by rail to Defendant, LOGISTICS SERVICES, INC.'s loading terminal in Columbus, Mississippi. SEVERSTAL also provided wooden dunnage (or cradles) that the steel coils were to be stowed upon when the Barge CMT 123 was loaded by LOGISTICS SERVICES, INC. on or about March 8, 2014. On or about March 12, 2014 COOPER MARINE took the Barge CMT 123 in tow and headed up river where the Barge was dropped off at a fleet two days later. Other tug boat companies completed the tow of the Barge to the Kinder

Morgan Facility in Hickman, Arkansas on March 31, 2014. On April 8, 2014, Barge CMT 123 was unloaded at the Kinder Morgan facility by a Kinder Morgan crane operator. NICOLAS PEREZ HERNANDEZ, deceased, and co worker, Juan Nieves, were on board the Barge as stevedores under the employ of Kinder Morgan, to assist in the unloading of the cargo of steel coils. After the first five coils had been unloaded, two other steel coils suddenly rolled to the shoreward side of the Barge causing it to severely list. As the Barge listed, approximately twenty more coils rolled to the shoreward side of the Barge causing it to capsize and sink. NICOLAS PEREZ HERNANDEZ and Juan Nieves died as a result of the Barge capsizing and sinking. NICOLAS PEREZ HERNANDEZ body was recovered ten days later, seventeen miles downstream and Juan Nieves body has never been recovered.

COUNT I

CLAIMS AGAINST COOPER MARINE & TIMBERLAND AS THE OWNER  
PRO HAC VICE AND OPERATOR OF BARGE CMT 123

10. Paragraph 1 through 8 of this Complaint are incorporated into this paragraph by reference as if fully set forth herein.

11. Defendant, COOPER MARINE, had a duty to the Deceased, NICOLAS PEREZ HERNANDEZ, to load and transport the steel coils onto Barge CMT 123 safely and to load them upon proper and safe dunnage, of adequate size, shape and condition, so that they would not suddenly and dangerously shift during transport or during unloading.

12. Defendant, COOPER MARINE, breached that duty.

13. Defendant, COOPER MARINE, had a duty to Deceased, NICOLAS PEREZ HERNANDEZ, to use due care in the loading, transport and unloading of the steel coils aboard its

Barge CMT 123.

14. Defendant, COOPER MARINE, breached that duty.

15. Defendant, COOPER MARINE, had a duty to Deceased, NICOLAS PEREZ HERNANDEZ, to load and transport the steel coils aboard its Barge CMT 123, with dunnage that was of the proper size, shape and condition so that the steel coils would be stowed safely and securely and not shift and roll during transport or unloading.

16. Defendant, COOPER MARINE, breached that duty. The dunnage was of inadequate size for the heavy steel coils, were of improper shape and in poor condition.

17. The careless loading and stowage of the steel coils upon improper dunnage created a dangerous and unsafe condition of which COOPER MARINE knew, or with the exercise of reasonable care should have known and involved an unreasonable risk of harm to longshoreman including, Decedent, NICOLAS PEREZ HERNANDEZ.

18. Defendant, COOPER MARINE, failed to exercise reasonable care under the circumstances to protect the longshoreman against the danger.

19. The inadequately loaded and inadequately secured steel coils were a hidden danger to the Decedent, NICOLAS PEREZ HERNANDEZ.

20. Defendant, COOPER MARINE, had a duty to the Decedent, NICOLAS PEREZ HERNANDEZ, to warn him of the hidden danger of the inadequately loaded and inadequately stowed steel coils, which would have been known to COOPER MARINE in the exercise of reasonable care. The dangerous condition existed at the beginning of the voyage and therefore COOPER MARINE was aware of it.

21. Defendant, COOPER MARINE, breached that duty.

22. Barge CMT 123 was unseaworthy when it was turned over by COOPER MARINE to Kinder Morgan for unloading, in that it was not tight nor staunch, nor was it strong and fully and properly manned, equipped and supplied, with its cargo of steel coils improperly stowed and was not in any way seaworthy or fit for the service in which it was engaged and it was in such condition that an expert and experienced stevedore including Decedent, NICOLAS PEREZ HERNANDEZ, could not through the exercise of reasonable care, carry on its cargo unloading operations with reasonable safety.

23. Barge CMT 123 was within the knowledge and privity of the COOPER MARINE, unseaworthy and negligent in that it was negligently loaded with a cargo of steel coils without regard to or in grossly negligent or negligent regard to proper and safe methods and manner of loading and storing, which if it had been safely and properly loaded and stored, the said cargo would not have shifted or cause to be shifted, causing the listing and capsizing of CMT 123 and the injury and death of its longshoreman, including, Decedent, NICOLAS PEREZ HERNANDEZ.

24. The tackle, equipment, tools, and appurtenances of Barge CMT 123 were unseaworthy and unsafe and failed to secure the cargo of steel coils in a safe and proper manner, thereby causing or contributing to the cause of the shifting of said cargo and the listing and capsizing of Barge CMT 123 that led to the injury and death of Decedent, NICOLAS PEREZ HERNANDEZ, all of which were within the knowledge and privity of COOPER MARINE, and contributed to the unseaworthiness of Barge CMT 123.

25. The master and crew of Barge CMT 123, including the master and crew of the vessel assigned by COOPER MARINE to tow Barge CMT 123, were not properly trained or licensed nor were sound nor competent to load and stow the cargo of steel coils in a proper and safe manner, all

of which constituted at all times material defects of Barge CMT 123 and contributed to its unseaworthy condition, all of which were within the knowledge and privity of COOPER MARINE.

26. Defendant, COOPER MARINE, exercised active operations and control over the unloading of the cargo of steel coils and the master and crew appreciated or with the exercise of reasonable care should have appreciated the danger to Decedent, NICOLAS PEREZ HERNANDEZ, of the improperly and unsafely stowed cargo or that the Decedent might have failed to discover the condition, or apprehend the probability or gravity of harm or protect himself against the danger and COOPER MARINE failed to take reasonable precautionary or remedial steps to prevent or eliminate the danger.

27. Defendant, COOPER MARINE, failed to fulfill its duty to hire a competent stevedoring company to off load the cargo of steel coils and relied instead on temporary employees of Kinder Morgan, including the Decedent, NICOLAS PEREZ HERNANDEZ, who were not properly trained in unloading the cargo and they failed to provide proper, safe and adequate supervision of the Kinder Morgan employees acting as longshoreman, and failed to intervene in the in the face of known unsafe work practices by Kinder Morgan, vis-a-vis the unsafe work conditions presented by COOPER MARINE, all of which constituted gross negligence, negligence, and contributed to the unseaworthiness of Barge CMT 123 and was within the actual knowledge and privity of COOPER MARINE.

28. COOPER MARINE failed through their negligence and the negligence of their Barge CMT 123 to intervene in the off loading operations conducted by the Decedent, NICOLAS PEREZ HERNANDEZ, and the other Kinder Morgan stevedores, made hazardous by the hidden dangers and defects relative to the cargo of CMT 123, all of which were within the knowledge and privity of

COOPER MARINE, when they knew the longshoremen were not able to safely work and perform unloading in the dangerous conditions created by COOPER MARINE.

29. Defendant, COOPER MARINE, had unsafe safety and loading and unloading programs in breach of United States Coast Guard Regulations and reasonable and prudent loading and unloading practices and procedures which negligence caused or contributed to cause Decedent's injury and death. This conduct rendered Barge CMT 123 negligent and unseaworthy.

30. Defendant, COOPER MARINE, failed to properly instruct and intercede to supervise Decedent, NICOLAS PEREZ HERNANDEZ, and other longshoremen, regarding safely unloading the steel coils from Barge CMT 123, knowing the barge was unseaworthy and the longshoremen, including the Decedent, were not trained to deal safely with the imminently dangerous work conditions.

31. Defendant, COOPER MARINE, committed other acts of negligence under Arkansas common law and statutes and General Maritime Law that will become known during discovery in this cause.

32. As a direct and proximate result of the above acts and omissions and violations of Federal and State of Arkansas statutes and codes and General Maritime Law, the cargo of steel coils shifted and caused Barge CMT 123 to list and capsize, causing the death by drowning of Decedent, NICOLAS PEREZ HERNANDEZ.

33. Plaintiff, ROBERT L. COLEMAN, as Special Administrator of the Estate of Nicolas Perez Hernandez, seeks the following damages on behalf of the Estate:

- a. Medical expenses;
- b. Funeral and burial expenses;
- c. The damages for the value of the loss of Nicolas Perez Hernandez' life; and



d. Pain and anguish that Nicolas Perez Hernandez suffered prior to his death.

34. Plaintiff, ROBERT L. COLEMAN, as Special Administrator of the Estate of Nicholas Perez Hernandez and his Surviving Heirs and Dependents, as specifically named in paragraph 4 above, seeks the following damages on behalf of the wrongful death beneficiaries:

- a. Damages for the mental and emotional anguish suffered by each as a result of the death of Nicolas Perez Hernandez; and,
- b. Economic losses suffered by the wrongful death beneficiaries.

## COUNT II

### CLAIMS AGAINST DEFENDANT, LOGISTIC SERVICES, INC.

35. Paragraphs 1 through 8 of this Complaint are incorporated by reference into this paragraph as if fully set forth herein.

36. Defendant, LOGISTIC SERVICES, INC., at all times material hereto, did business as a stevedore in Columbus, Mississippi, and who loaded approximately 46 steel coils and its dunnage onto Barge CMT 123 at its facility in Columbus, on or about March 8, 2014.

37. The Defendant, LOGISTIC SERVICES, INC., had a duty to Deceased, NICOLAS PEREZ HERNANDEZ, to load the steel coils onto Barge CMT 123 safely and to stow them upon proper and safe dunnage so that they would not suddenly and dangerously shift during transport or during unloading.

38. The Defendant, LOGISTIC SERVICES, INC., breached that duty.

39. Defendant, LOGISTIC SERVICES, INC., had a duty to Deceased, NICOLAS PEREZ HERNANDEZ, to load the steel coils onto Barge CMT 123 safely and stow them upon proper and safe dunnage so that they would not suddenly shift during transport or during unloading.

40. Defendant, LOGISTIC SERVICES, INC., breached that duty.

41. Defendant, LOGISTIC SERVICES, INC., knew or should have known that the dunnage provided by Defendant, SEVERSTAL, was not of the proper size, design, shape and condition so that the heavy steel coils would be stowed safely and securely and not shift and during transport or unloading.

42. Defendant, LOGISTIC SERVICES, INC., breached that duty.

43. The careless loading of the steel coils upon improper dunnage and inadequately stowed and secured, created a dangerous and unsafe condition of which LOGISTIC SERVICES, INC., knew or with the exercise of reasonable care should have known, involved an unreasonable risk of harm to longshoremen, including Decedent, NICOLAS PEREZ HERNANDEZ, when they began the process of unloading the steel coils, in that they were unstable and would shift and roll aboard the Barge CMT 123.

44. Defendant, LOGISTIC SERVICES, INC., had a duty to the Decedent, NICOLAS PEREZ HERNANDEZ, to warn him of the danger, or hidden danger of the inadequately loaded and inadequately secured steel coils.

45. Defendant, LOGISTIC SERVICES, INC., breached that duty.

46. Defendant, LOGISTIC SERVICES, INC., committed other acts of negligence that will become known during discovery of this cause.

47. As a direct and proximate result of the above acts and omissions and violations of federal and State of Arkansas law, statutes and codes and General Maritime Law, the cargo of steel coils shifted causing Barge CMT 123 to list and capsize, causing the death by drowning of Decedent, NICOLAS PEREZ HERNANDEZ.

48. Plaintiff, ROBERT L. COLEMAN, as Special Administrator of the Estate of Nicolas

Perez Hernandez, seeks the following damages on behalf of the Estate:

- a. Medical expenses;
- b. Funeral and burial expenses;
- c. The damages for the value of the loss of Nicolas Perez Hernandez' life; and
- d. Pain and anguish that Nicolas Perez Hernandez suffered prior to his death.

49. Plaintiff, ROBERT L. COLEMAN, as Special Administrator of the Estate of Nicholas Perez Hernandez and his Surviving Heirs and Dependents, as specifically named in paragraph 4 above, seeks the following damages on behalf of the wrongful death beneficiaries:

- a. Damages for the mental and emotional anguish suffered by each as a result of the death of Nicolas Perez Hernandez; and
- b. Economic losses suffered by the wrongful death beneficiaries.

### COUNT III

#### AGAINST SEVERSTAL U.S. HOLDINGS, LLC

50. Paragraphs 1 through 8 of this Complaint are incorporated into this paragraph as if fully set forth herein.

51. Defendant, SEVERSTAL, manufactured the 46 steel coils that were to be shipped from its plant in Columbus, Mississippi to a company, IPSCO, located at Hickman, Arkansas.

52. Defendant, SEVERSTAL, provided the dunnage that was to be used for stowage of the steel coils aboard Barge CMT 123 for its shipment.

53. Defendant, SEVERSTAL, knew or had reason to know that the dunnage that it provided with the steel coils was of inadequate size, shape and in such poor condition such that it could not adequately and safely support the steel coils during transit and unloading on Barge CMT 123.

54. Defendant, SEVERSTAL, knew or had reason to know that the dunnage that it

provided with the steel coils was of inadequate size, shape and in such poor condition such that it would cause the cargo of steel coils to shift during transit and unloading of the Barge CMT 123.

55. Defendant, SEVERSTAL, had a duty to the crew and longshoremen of Barge CMT 123, including Decedent, NICOLAS PEREZ HERNANDEZ, to provide dunnage that was of adequate size, shape and condition so that it would adequately and safely support the steel coils during shipment and unloading.

56. The Defendant, SEVERSTAL, breached that duty.

57. Having undertaken the task of providing dunnage for the 46 steel coils, SEVERSTAL had a duty to the crew and longshoremen of Barge CMT 123, including Decedent, NICOLAS PEREZ HERNANDEZ, to provide dunnage that was of adequate size, shape and condition that it would adequately and safely support the steel coils.

58. Defendant, SEVERSTAL, breached that duty.

59. As a direct and proximate result of the above acts and omissions of the Defendant, SEVERSTAL, the cargo of steel coils shifted during unloading at the Kinder Morgan facility, causing Barge CMT 123 to list and capsize, causing the death by drowning of decedent, NICOLAS PEREZ HERNANDEZ.

60. Plaintiff, ROBERT L. COLEMAN, as Special Administrator of the Estate of Nicolas Perez Hernandez, seeks the following damages on behalf of the Estate:

- a. Medical expenses;
- b. Funeral and burial expenses;
- c. The damages for the value of the loss of Nicolas Perez Hernandez' life; and
- d. Pain and anguish that Nicolas Perez Hernandez suffered prior to his death.

61. Plaintiff, ROBERT L. COLEMAN, as Special Administrator of the Estate of Nicholas

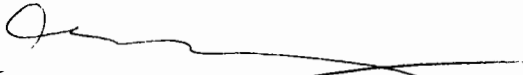
Perez Hernandez and his Surviving Heirs and Dependents, as specifically named in paragraph 4 above, seeks the following damages on behalf of the wrongful death beneficiaries:

- a. Damages for the mental and emotional anguish suffered by each as a result of the death of Nicolas Perez Hernandez; and,
- b. Economic losses suffered by the wrongful death beneficiaries.

62. Plaintiff, ROBERT L. COLEMAN, demands trial by jury.

WHEREFORE, the Plaintiff prays for judgement against the Defendants, in amounts to be determined by a jury, and adequate to compensate them for their losses. The amount should be in excess of the minimum amount for diversity of citizenship cases in federal court, Seventy-Five Thousand (\$75,000.00) Dollars. The Plaintiff prays for all other just and proper relief.

Respectfully submitted,  
THE BRAD HENDRICKS LAW FIRM  
500 C Pleasant Valley Dr.  
Little Rock, AR 72227  
(501) 221-0444 (P) / (501) 219-0608 (F)  
tkitchens@bradhendricks.com  
gwise@bradhendricks.com

By:   
Lloyd W. "Tre" Kitchens, III, ABN 99075  
George R. Wise, Jr., ABN 78171

CIVIL COVER SHEET 3:15cv225

JS 44 (Rev 12/12)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the clerk of the court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

AUG 10 2015

I. (a) PLAINTIFFS Robert L. Coleman, Special Administrator of the Estate of Nicolas Perez Hernandez, et al.

DEFENDANTS Cooper Marine & Timberlands, et al. JAMES W. MCCORMACK, CLERK By: [Signature] DLP CLERK

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) The Brad Hendricks Law Firm 500 C Pleasant Valley Drive, Little Rock, AR 72227 (501) 221-0444

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large grid of categories for nature of suit: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FOREFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity) 33 U.S.C.A. Section 905(b); 33 U.S.C.A. Section 933(a) Brief description of cause Wrongful Death

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint JURY DEMAND: X Yes O No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 8/5/15 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE