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Of Counsel:  
Albert O. Grant II, Esq  
(admitted to NY and NJ bar)

August 15, 2011

Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, DC 20573-0001  
ATTN: Rachel E. Dickon

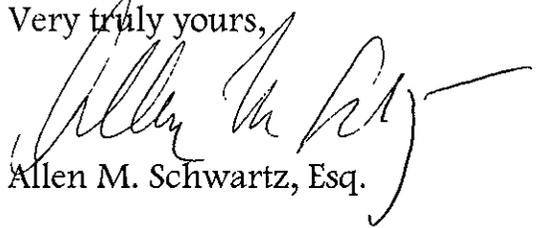
Re: Bimsha International v. Chief Cargo Services, Inc  
and Kaiser Apparel, Inc.  
Docket No. 10-08

Dear Ms Dickon:

Enclosed please find original plus 5 copies of Claimant's Reply to  
Respondent's Opposition.

Thank you.

Very truly yours,

  
Allen M. Schwartz, Esq.

**ORIGINAL**

FEDERAL MARITIME COMMISSION

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DOCKET NO. 10-08

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMMISSION

**BIMSHA INTERNATIONAL**

**V.**

**CHIEF CARGO SERVICES, INC. AND KAISER APPAREL, INC.**

**COMPLAINANT'S REPLY TO RESPONDENT'S REPLY TO COMPLAINANT'S  
PROPOSED FINDINGS OF FACTS, AND COMPLAINANT'S BRIEF**

**Dated: New York, NY  
August 15, 2011**

**Allen M. Schwartz, Esq.  
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**TABLE OF CONTENTS**

Background ..... 4

    A. Argument..... 4

    B. On The Matter of “Novation”..... 6

Conclusion..... 7

TABLE OF AUTHORITIES

*Anchor Shipping Co., v. Aliança Navegação e Logística Ltda,*  
30SRR 991, 999 (FMC 2006)..... 6

*Cargo One, Inc.*  
28 SRR at 1645..... 6

*Sinicway Int’l Logistics Ltd. –*  
*Possible Violations of Sections 10(a)(1) and 10(b)(2) of the Shipping Act of 1984,*  
FMC No. 10-09 ..... 5

Complainant Bimsha International (hereinafter referred to as "Complainant") makes this Reply to Respondent's Findings of Facts and as Complainant's Reply Brief.

### **BACKGROUND**

On September 20, 2010, Respondent Chief Cargo Services, Inc., (hereinafter referred to as "Respondent") answering the Complainant's claim filed in the Federal Maritime Commission ("FMC") served its opposition by way of a "Motion to Dismiss in Lieu of Answer" before the FMC Court. A copy of the Respondent's motion is annexed hereto as **Exhibit 1**.

### **ARGUMENT**

The Respondent acknowledges the Complainant's claim was premised on the obligation of the Respondent to meet contractual commitments created through Bills of Lading (see page 6 bottom of Respondent's Reply).

The Complainant alleged the Respondent as a common carrier, committed acts prohibited by section 10(d)(1) of the Shipping Act when it released the cargo without having received the endorsed Bills of Lading.

The FMC Court held in its Memorandum and Decision dated October 22, 2010, that if the Respondent violated the Shipping Act, that the FMC Court had subject matter jurisdiction and the motion was denied. The decision made on October 22, 2010 by the FMC Court was served on the parties and no re-argument or appeal was filed by Respondent. The decision is now the law of the case. A copy of the decision is annexed as **Exhibit 2**.

Section 10(d)(1) provides: A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering property, (46 USC §41102(c)). Bimsha alleges that it suffered actual injury as a result of Respondent's violations of the Act and seeks reparations in the sum of \$207,809.74 (See Bimsha Complaint, paragraph VIII).

Bimsha's complaint alleges Chief Cargo was a common carrier, committed acts prohibited by section 10(d)(1) of the Shipping Act when it released the cargo without having received the endorsed Bills of Lading. The Commission found it has jurisdiction over the complaint alleging Respondent had committed acts prohibited by the Shipping Act. See *Sinicway Int'l Logistics Ltd. – Possible Violations of Sections 10(a)(1) and 10(b)(2) of the Shipping Act of 1984, FMC No. 10-09* (August 20, 2010)(Order of Investigation and Hearing).

The Commission held Bills of Lading for the carriage of goods by sea are maritime contracts and jurisdiction over maritime contracts is granted to the judicial branch of the Federal Government by Article III, Section 2 of the United States Constitution.... The exercise of the judicial power to redress a party for injuries suffered was a result of the alleged breach of a Bill of Lading and not services [*sic*] contract.

Bimsha's complaint alleges Chief Cargo, a common carrier, committed acts prohibited by section 10(d)(1) of the Shipping Act when it released the cargo without having received the endorsed Bills of Lading for 3 shipments, the Commission has jurisdiction over Bimsha's complaint alleging Respondent committed acts prohibited by

the Shipping Act. See *Cargo One, Inc.* 28 SRR at 1645. See also *Anchor Shipping Co., v. Aliança Navegação e Logística Ltda*, 30SRR 991, 999 (FMC 2006) (Commission has jurisdiction over complaint alleging Respondent committed acts prohibited by the Shipping Act).

Respondent was served by with the Memorandum and Order on Motion to Dismiss in Lieu of Answer on October 22, 2010 has not appealed the Decision, has not moved to reargue or vacate the finding of the Court. The finding of the FMC Court it has subject matter jurisdiction is now the law of the case.

Complainant alleges the Respondent is out of time and wrongfully reargues the same issue a second time in its Proposed Findings of Fact and Brief.

#### **ON THE MATTER OF “NOVATION”**

The Respondent offers no document or agreement made by Complainant that serves to release the Respondent from its obligation to having obtained endorsed Bills of Lading before releasing the goods. The Respondent was in violation of the terms of the Bills of Lading before it released the goods and was never excused from its obligations contained in the Bills of Lading.

Earlier and on September 23, 2008 the Respondent guaranteed it would not release any shipment without receiving properly endorsed Bills of Lading (see copy annexed as **Exhibit 3**). The guarantee was given to augment Respondent's liability and was issued by Respondent to Respondent's agent in Pakistan, M.R. Group, who handled the transactions as the overseas freight forwarder for the Respondent (see copy of Deposition Testimony annexed as **Exhibit 4**).

In the deposition held of Claimant on June 2, 2011, Claimant's witness, Mr. Adeeb, testified the Respondent's agent in Pakistan was M.R. Group. This allegation has not been refuted by Respondent.

### CONCLUSION

The Respondent has admitted it released the three shipments of goods being the property of the Complainant without obtaining the endorsed Bills of Lading. Clearly the Respondent committed acts prohibited by section 10(d)(1) of the Shipping Act, when it released the cargo without having obtained the endorsed Bills of Lading.

In the Memorandum/Decision of the FMC Court made on October 20, 2010 the FMC found it has subject matter jurisdiction of this claim.

The Court is respectfully advised that although served with legal process by the Complainant, the added Respondent, Kaiser Apparel, Inc., has defaulted and has failed to serve any opposition or to defend the claim.

To: Bennett Giuliano, McDonnell &  
Perrone, LLP  
Attorneys for Respondent Chief Cargo  
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# EXHIBIT 1

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 10-08**

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**BIMSHA INTERNATIONAL**

**V.**

**CHIEF CARGO SERVICES, INC. AND KAISER APPAREL, INC.**

---

**RESPONDENT'S REPLY TO COMPLAINANT'S PROPOSED FINDINGS OF FACT,  
RESPONDENT'S PROPOSED FINDINGS OF FACT AND RESPONDENT'S BRIEF**

---

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**TABLE OF CONTENTS**

INTRODUCTION ..... 1

A. RESPONDENT'S REPLY TO  
COMPLAINANT'S PROPOSED FINDINGS OF FACT ..... 1

B. RESPONDENT'S PROPOSED FINDINGS OF FACT ..... 2

C. RESPONDENT'S BRIEF ..... 4

I. Complainant has argued a claim based on allegations not  
appropriate for the Federal Maritime Commission's consideration..... 4

II. The agreement between Bimsha International and  
Rich Kids Jeans Corporation is a novation that extinguishes the  
obligations previously owed to Bimsha International under the bills of lading ..... 7

CONCLUSION ..... 9

**TABLE OF AUTHORITIES**

*Cargo One Inc. v. COSCO Container Lines Co., Ltd.*,  
2000 WL 1648961 (F.M.C., Docket No. 99-24, Oct. 31, 2000)..... 4, 5, 6

*Consolidated Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197 (1938))..... 1

*Corning Glass Works v. U.S. Intern. Trade Comm'n*,  
799 F.2d 1559 (Fed. Cir. 1986)..... 1

*French Am. Banking Corp. v. Flota Mercante Grancolombiana, S.A.*,  
609 F.Supp. 1352 (S.D.N.Y. 1985) ..... 8

*In re K.G.L. Contracting Servs., Inc.*, 118 B.R. 881, 885 (Bankr. S.D. Fla. 1990)..... 8

## INTRODUCTION

Respondent Chief Cargo Services, Inc., a non-vessel operating common carrier, through its attorneys, Bennett, Giuliano, McDonnell & Perrone, LLP, files its Reply to Complainant's Proposed Findings of Fact, its Proposed Findings of Fact and its Brief. The nature of Complainant Bimsha International's claim is that Chief Cargo Services, Inc. released certain shipments to notify party, Rich Kids Jeans Corporation, without being presented with original bills of lading.

### A. RESPONDENT'S REPLY TO COMPLAINANT'S PROPOSED FINDINGS OF FACT

Respondent objects to Complainant's Proposed Findings of Fact, as Complainant has failed to submit them in serially numbered paragraphs with references to exhibit numbers and pages of the transcript in accordance with § 502.221 (d) (2). Respondent respectfully requests that this Honorable Commission reject Complainant's Proposed Findings of Fact, specifically those portions that do not contain a citation to Complainant's Appendix.

Moreover, Respondent respectfully requests that this Honorable Commission find that Complainant failed to meet its burden of proof, in that Complainant has not supported its claim with substantial evidence, defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Corning Glass Works v. U.S. Intern. Trade Comm'n*, 799 F.2d 1559, 1566 (Fed. Cir. 1986) (quoting *Consolidated Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197, 216 (1938)). Complainant's Appendix consists of unauthenticated documents and contains no testimonial evidence either laying a foundation for the admission of such documents or independently substantiating the alleged violations by Respondent. Because Complainant has not submitted substantial evidence, there can be no finding of a violation by Respondent.

## B. RESPONDENT'S PROPOSED FINDINGS OF FACT

1. Complainant Bimsha International is a Pakistani proprietorship that manufactures and exports denim garments. *See* Deposition of Bimsha International ("Bimsha Depo"), p. 6, ln. 16 – p. 8, ln. 11. (Excerpts of the deposition cited by Respondent are included in Respondent's Appendix as Exhibit 1.)

2. Bimsha International is unfamiliar with the Bill of Lading Act. *See* Bimsha Depo, p. 55, lns. 21-23.

3. Bimsha International is unfamiliar with the Ocean Shipping Reform Act of 1998. *See* Bimsha Depo, p. 55, lns. 18-20.

4. Non-party Rich Kids Jeans placed a total of five orders with Bimsha International for denim jeans to be manufactured and shipped to Rich Kids Jeans Corporation in New York. *See* Bimsha Depo, p. 5, lns. 5-7.

5. Adeb Iqbal Sheikh, the owner of Bimsha International, arranged the orders with Mr. Yogi of Rich Kids Jeans Corporation. *See* Bimsha Depo, p. 10, lns. 6-8.

6. Bimsha International's Complaint to the Federal Maritime Commission involves three of the five orders placed by Rich Kids Jeans Corporation. *See* Bimsha Depo, p. 10, ln. 14 – p. 11, ln. 2.

7. After receiving each of the orders from Rich Kids Jeans Corporation, Bimsha International contacted Mr. Athar of MR Group, which was acting as the Pakistani shipping agent of Respondent Chief Cargo Services Inc. *See* Bimsha Depo, p. 15, ln. 4 – p. 16, ln. 6.

8. After Rich Kids Jeans Corporation received the three containers, Mr. Sheikh spoke with Mr. Yogi and was told by Mr. Yogi that Rich Kids Jeans Corporation was in possession of all three containers and planned on making payments to Bimsha International to

fulfill the entire outstanding balance owed for the denim garments purchased by Rich Kids Jeans Corporation. *See Bimsha Depo*, p. 26, lns. 2-14.

9. Thereafter, Edmond Yau, the owner of Chief Cargo Services, Inc., drafted an agreement, which was titled "Payment Commitment For Bimsha," and arranged for representatives of Rich Kids Jeans Corporation and Bimsha International to meet in New York and to enter into the agreement for payment of the monies owed for the three shipments. *See Bimsha Depo*, p. 28, lns. 17-19; p. 33, lns. 3-19.

10. Bimsha International and Rich Kids Jeans Corporation memorialized the payment schedule in an agreement executed by Mr. Sheikh and Yogesh Anand, a representative of Rich Kids Jeans Corporation. *See Bimsha Depo*, p. 30, ln. 20 – p. 31, ln. 17. (A copy of this agreement was identified at the Deposition of Bimsha International as Exhibit 8 and is included in Respondent's Appendix as Exhibit 2.)

11. Rich Kids Jeans Corporation agreed to make a total of seven payments to Bimsha International for the three containers that had been received by Rich Kids Jeans Corporation. *Id.*

12. The purpose of the agreement between Bimsha International and Rich Kids Jeans Corporation was for Bimsha International to receive full and complete payment from Rich Kids Jeans Corporation for the three containers. *See Bimsha Depo*, p. 33, lns. 15-19.

13. Rich Kids Jeans Corporation's last payment to Bimsha International occurred on May 28, 2010. *See Bimsha Depo*, p. 33, ln. 21 – p. 34, 7.

14. Despite its entering into an agreement for payments owed for the three shipments, Bimsha International has not attempted to contact Rich Kids Jeans Corporation concerning the halted payments. *See Bimsha Depo*, p. 34, lns. 10-17.

15. Despite its entering into an agreement for payments owed for the three shipments, Bimsha International has not sought any recourse against Rich Kids Jeans Corporation for nonpayment on the three containers. *See Bimsha Depo*, p. 34, lns. 10-17.

### C. RESPONDENT'S BRIEF

#### I. Complainant has argued a claim based on allegations not appropriate for the Federal Maritime Commission's consideration.

Without any basis in the record before this Honorable Commission, Bimsha International contends that the "Respondents fraudulently and unlawfully / wrongfully released the shipments without Bills of Lading to the customer." Bimsha International also submits a laundry list of laws that it alleges the respondents violated. Notwithstanding the unsupported list, Bimsha International cannot rebut the presumption against it that its "claim is no more than a simple contract breach claim." *Cargo One Inc. v. COSCO Container Lines Co., Ltd.*, 2000 WL 1648961, at \*14 (F.M.C., Docket No. 99-24, Oct. 31, 2000). Bimsha International has the burden to demonstrate that its allegations comprise more than just a contract law claim. *Id.* Because Bimsha International has not proven any of the violations alleged in its Complaint through its objectionable *Proposed Findings of Fact*, its claim should be dismissed by this Honorable Commission.

The proper forum for resolution of Bimsha International's claim is a court of competent jurisdiction, such as a New York State Court or the United States District Court in either the Eastern District of New York or the Southern District of New York. These courts would have subject matter jurisdiction over the claim and personal jurisdiction over the named parties, as well as Rich Kids Jeans Corporation, the party that actually owes Bimsha International money.

The claim alleged by Bimsha International is not properly before the Federal Maritime Commission, and therefore, the Complaint should be dismissed for lack of subject matter jurisdiction. In the Federal Maritime Commission Complaint, Bimsha International contends that Respondent released the goods without obtaining the endorsed bills of lading. The relationship between Bimsha International and Chief Cargo Services, Inc. is governed by the applicable bills of lading, not a services contract, and the claim made herein is contractual in that it stems from the obligations created by the bills of lading:

Bills of lading for the carriage of goods by sea are maritime contracts, and jurisdiction over maritime contracts is granted to the judicial branch of the federal government by Article III, Section 2 of the United States Constitution, which provides that:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--**to all cases of admiralty and maritime jurisdiction;**--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

U.S. CONST. art. 3, § 2 (emphasis added). The Constitution vests the federal courts with the power to adjudicate "all cases of admiralty and maritime jurisdiction," such as the controversy herein. The exercise of judicial power to redress a party for injuries suffered as a result of an alleged breach of a bill of lading, and not a services contract, is beyond the subject matter jurisdiction of the Federal Maritime Commission. *Cargo One Inc.*, 2000 WL 1648961, at \*15.

None of Bimsha International's allegations involve elements peculiar to the Shipping Act of 1984, and therefore, the Federal Maritime Commission should not adjudicate the action.

*Cargo One Inc.*, 2000 WL 1648961, at \*14. The Shipping Act of 1984 was enacted to:

- (1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;
- (2) provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;
- (3) encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and
- (4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

46 U.S.C. § 40101 (2009). It is not the purpose of the Federal Maritime Commission to hear breach of contract claims, even where, as is the case here, those claims are cloaked in unsubstantiated allegations of violations of the Shipping Act of 1984.

Bimsha International's claim is premised on the obligation of Chief Cargo Services, Inc., among others, to meet certain contractual commitments created through the bills of lading. The claim is a "breach of contract action[]" which section 8(c) [of the Shipping Act of 1984] renders not properly before the Commission in the absence of evidence offered by complainant (as the party bearing the burden of proof) that some extraordinary aspects of the allegation distinguish it substantially from a breach claim." *Cargo One Inc.*, 2000 WL 1648961, at \*15. Bimsha International fails to offer any evidence indicating that its claim is anything more than an action for breach of contract for money damages based on bills of lading. Bimsha International's claim

for damages ought to be brought in a court of competent jurisdiction. Its Complaint, herein, should be dismissed, as the Federal Maritime Commission lacks subject matter jurisdiction over the matter.

However, even if this Commission finds that it has jurisdiction over the claim made herein, Bimsha International failed to meet its burden of proof, as Bimsha International did not put forward admissible evidence or proper Proposed Findings of Fact to support its claim. Accordingly, the Commission should rule against Complainant and dismiss its Complaint.

**II. The agreement between Bimsha International and Rich Kids Jeans Corporation is a novation that extinguishes the obligations previously owed to Bimsha International under the bills of lading.**

After Rich Kids Jeans Corporation received the three containers of denim garments that are the subject of the pending complaint, Mr. Sheikh of Bimsha International met with Mr. Yogi of Rich Kids Jeans Corporation. The two gentlemen decided that because Rich Kid Jeans Corporation took possession of the three shipments without paying for them, that Rich Kids Jeans Corporation would enter into an agreement to fully pay Bimsha International for all monies owed. See Respondent's Proposed Findings of Fact, ¶¶ 8-12. Thereafter, Bimsha International and Rich Kids Jeans Corporation entered into an agreement. The agreement stated that "Rich Kids is committed to make payments to Bimsha for the outstanding payments," and detailed a planned schedule of payment dates and amounts. See Respondent's Appendix, Ex. 2. This payment agreement was executed by, among others, Mr. Sheikh of Bimsha International and Yogesh Anand of Rich Kids Jeans Corporation.

Execution of the agreement served as a novation that nullified the obligations created by the bills of lading that Chief Cargo Services, Inc. was allegedly in breach of as a result of the three containers being released to Rich Kids Jeans Corporation. A novation is the substitution of

a new contract between either the same or different parties. The elements of a novation are "(1) a previously valid obligation; (2) an agreement of all parties to the new contract; (3) extinguishment of the old contract; and (4) a valid new contract supported by consideration." See *French Am. Banking Corp. v. Flota Mercante Grancolombiana, S.A.*, 609 F.Supp. 1352, 1357-58 (S.D.N.Y. 1985).

In the pending matter, the four requirements for an effective novation between Rich Kids Jeans Corporation and Bimsha International were all met. First, there was a previously valid obligation stemming from the bills of lading issued by Chief Cargo Services, Inc. Second, the three parties – Rich Kids Jeans Corporation, Bimsha International and Chief Cargo Services, Inc. – all agreed to fashion a new contract for the payments owed on the three shipments. Third, the obligations of payment created through the bills of lading were extinguished by way of payment responsibilities being agreed upon in the agreement. And fourth, the agreement between Rich Kids Jeans Corporation and Bimsha International was supported by valid consideration, namely that Bimsha International would permit Rich Kids Jeans Corporation to retain possession of the three shipments of denim garments in exchange for scheduled payments. As such, all four elements of an enforceable novation were satisfied.

The novation agreement applies to the three bills of lading corresponding to the allegedly unpaid shipments and extinguishes any obligations owed by Chief Cargo Services, Inc. under those bills of lading. See *In re K.G.L. Contracting Servs., Inc.*, 118 B.R. 881, 885 (Bankr. S.D. Fla. 1990). Accordingly, Bimsha International is estopped from bringing any claims against Chief Cargo Services, Inc. because Chief Cargo Services, Inc. owes no responsibility to Bimsha International for the alleged improper release of containers without endorsed bills of lading. For

this reason, this Commission should rule against Complainant Bimsha International and dismiss the claim against Respondent Chief Cargo Services, Inc.

**CONCLUSION**

Wherefore, Respondent, Chief Cargo Services, Inc., respectfully requests that this Honorable Commission reject Complainant's Proposed Findings of Fact, adopt Respondent's Proposed Findings of Fact, dismiss the Complaint of Bimsha International, and grant Chief Cargo Services, Inc. such further and other relief that is just and proper.

**Bennett, Giuliano, McDonnell & Perrone, LLP**  
Attorneys for Respondent Chief Cargo Services, Inc.



---

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E-mail: [mcowan@bgmplaw.com](mailto:mcowan@bgmplaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by Federal Express overnight delivery and by e-mail, the foregoing document upon:

Office of the Secretary  
Federal Maritime Commission  
800 North Capital Street, N.W.  
Washington D.C. 20573  
Tel: 202-523-5725  
Fax: 202-523-0014  
E-mail: secretary@fmc.gov

Allen M. Schwartz  
*Attorney for Complainant*  
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New York, New York 10118  
Tel: 212-643-8250  
Fax: 212-643-8256  
E-mail: aslawoffice350@aol.com

Dated at, New York, New York, this 28<sup>th</sup> day of July, 2011.

**Bennett, Giuliano, McDonnell & Perrone, LLP**  
*Attorneys for Respondent Chief Cargo Services, Inc.*



---

Matthew J. Cowan, Esq.

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 10-08**

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**BIMSHA INTERNATIONAL**

**V.**

**CHIEF CARGO SERVICES, INC. AND KAISER APPAREL, INC.**

---

**RESPONDENT'S APPENDIX**

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# Exhibit

# 1

**Respondent's Appendix  
Docket No.: 10-08**

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FEDERAL MARITIME COMMISSION

DOCKET NO: 10-08

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BIMSHA INTERNATIONAL,

Claimant,

-against-

CHIEF CARGO SERVICES, INC. AND KAISER

APPAREL, INC.

Respondent.  
-----X

350 Fifth Avenue  
New York, New York  
June 2, 2011  
Time: 10:20 AM

Examination Before Trial of Claimant, BIMSHA INTERNATIONAL, by ADEEB IQBAL SHEIKH, held pursuant to Order, at the above time and place, before Jacqueline Maltby, a Notary Public of the State of New York.

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-Adeeb Iqbal Sheikh-

everything that's being said. You were sworn in, obviously. I'm going to ask you a series of questions. I'm going to ask you for answers. If you don't understand anything, either feel free to ask me or Mr. Schwartz to explain.

If, at any time you need a break, just let us know. Because the court reporter is here, she can only take down obviously one person speaking at a time so if I'm speaking, I'm going to ask you to wait until I'm done. It will help the court reporter and the record, and certainly when you're speaking, I will not interrupt you.

Do you have any questions at this point?

A. No.

Q. Could you please spell your entire name for the record?

A. Spell my name?

Q. Yes.

A. Adeeb, A-D-E-E-B, Iqbal, I-Q-B-A-L, Sheikh, S-H-E-I-K-H. Adeeb Iqbal Sheikh.

MR. SCHWARTZ: Middle name is Iqbal, I-Q-B-A-L.

Q. What is your current address?

1                   -Adeeb Iqbal Sheikh-

2           A.       Bimsha International in Lahore.

3           Q.       Is that your residence or is that  
4 your business address?

5           A.       Business address.

6           MR. SCHWARTZ: If you want a card,  
7 we'll give you a card.

8           MR. COWAN: All right.

9           Q.       Where do you currently reside?  
10 Where do you live?

11          A.       I live in Lahore, Pakistan.

12          Q.       How long have you lived there for?

13          A.       My birth is there.

14          Q.       What is your birthday?

15          A.       Fifth January 1970.

16          Q.       What is your position with Bimsha  
17 International?

18          A.       I'm the owner.

19          Q.       How long have you been the owner  
20 for?

21          A.       From when it started.

22          Q.       When? I'm sorry.

23          A.       When we started this company?

24          Q.       When did you start?

25          A.       Yes.

-Adeeb Iqbal Sheikh-

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Q. What was the date that you started?

A. We started in '96.

Q. Is that a Pakistani corporation?

A. It is a Pakistani company? I  
couldn't understand.

MR. SCHWARTZ: That's a yes or a no.

Q. Is it a company?

A. It is a proprietorship.

Q. Are you the sole owner of Bimsha?

A. Yes.

Q. How many employees do you have?

A. I have near 115 employees.

Q. Do you hold another position besides  
owner?

A. I can look at everything, so  
documentation, export document I can make, export  
documentation.

Q. Is there a CEO, chief executive  
officer?

A. Yes.

Q. And who is that?

A. Same.

Q. You?

A. Yes.

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-Adeeb Iqbal Sheikh-

Q. What is Bimsha International in the business of doing?

A. Manufacturing of denim garments, producer of denim garments.

Q. Manufacturing of denim garments, is that what the company has been doing since 1996?

A. Yes, sir.

Q. Is it just manufacturing or is it also a shipping component of the company?

A. Manufacture and exporter.

Q. Do you own related companies that work with Bimsha?

A. Pardon?

Q. Do you own other companies besides Bimsha?

A. No.

Q. Does Bimsha have a U.S. agent?

A. No.

Q. Does Bimsha have a Pakistani agent?

A. Pakistani agent?

Q. Let me rephrase that. When Bimsha exports, who sets up the export?

A. Direct.

Q. It's direct?

1 -Adeeb Iqbal Sheikh-

2 A. Direct with buyers.

3 Q. Is that buyers in the United States?

4 A. United States, Europe.

5 Q. Is Rich Kids Jeans one of Bimsha's  
6 buyers?

7 A. Yes.

8 Q. Is Kaiser Apparel one of Bimsha's  
9 buyers, one of your customers?

10 A. Yes, consigning.

11 Q. Do you personally deal with anyone  
12 at Kaiser Apparel?

13 A. Kaiser Apparel?

14 Q. Yes.

15 A. No.

16 Q. Do one of your employees deal with  
17 someone at Kaiser Apparel?

18 A. We deal Rich Kids and they want  
19 Kaiser Apparel name in bill of lading.

20 MR. SCHWARTZ: It's not mentioned in  
21 the bill of lading as a second notified --

22 MR. COWAN: Second notified partner.

23 A. I don't know but they want Kaiser  
24 Apparel name.

25 Q. Rich Kids wants Kaiser Apparel's

1 -Adeeb Iqbal Sheikh-

2 name?

3 A. You can say yes.

4 Q. But you don't know why.

5 A. Yes, I don't know why.

6 Q. Do you personally deal with anyone  
7 at Rich Kids Jeans, speak with, work with?

8 A. Yes, Mr. Yogi.

9 Q. Can you spell that?

10 MR. SCHWARTZ: Y-O-G-I.

11 Q. How long has Bimsha done business  
12 with Rich Kids Jeans?

13 A. Starting from, I think, 2008.

14 Q. Can you approximate how many  
15 transactions Bimsha has done with Rich Kids Jeans  
16 since --

17 A. Five containers.

18 Q. Five containers?

19 A. Yes.

20 Q. And the complaint brought herein has  
21 to do with three of the containers; is that  
22 correct?

23 A. Pardon?

24 Q. The complaint --

25 A. Yes, correct, three containers

1 -Adeeb Iqbal Sheikh-

2 complaints.

3 Q. When is the last time that you spoke  
4 with Mr. Yogi?

5 A. Last year when I came here. 2009, I  
6 think 2009.

7 MR. SCHWARTZ: Two years.

8 THE WITNESS: Two years.

9 MR. SCHWARTZ: 2009.

10 THE WITNESS: Yes.

11 MR. SCHWARTZ: That's two years.

12 Q. Was that prior to the problem that  
13 you had with these three containers?

14 A. Yes, I have problem.

15 Q. Did you speak to Mr. Yogi before  
16 that?

17 A. Before?

18 Q. Before the problem with the three  
19 containers, or did you speak with him after the  
20 problem with the three containers?

21 A. Well, we will speak after. Also  
22 before we talk, Mr. Yogi, yes. The problem that  
23 after that we also speak with Mr. Yogi.

24 MR. SCHWARTZ: So the problem was --  
25 you spoke after. The problem was not

1 -Adeeb Iqbal Sheikh-

2 who prepared that, Matt?

3 MR. COWAN: That's what -- yes.

4 MR. SCHWARTZ: Who prepared that  
5 paper?

6 THE WITNESS: Chief Cargo.

7 MR. SCHWARTZ: Chief Cargo or --

8 THE WITNESS: Chief Cargo here in  
9 Pakistan.

10 Q. Is that MR Group?

11 A. Yes.

12 Q. Did you speak with someone at  
13 MR Group?

14 A. Yes.

15 Q. You personally?

16 A. Yes.

17 MR. SCHWARTZ: What is MR Group?

18 THE WITNESS: MR group is in  
19 Pakistan.

20 Q. Is that Chief Cargo Services' agent  
21 in Pakistan?

22 A. You can say yes.

23 Q. Who did you speak with at MR Group?

24 A. Rich Kids.

25 MR. SCHWARTZ: Who did you speak

1                   -Adeeb Iqbal Sheikh-

2                   with at MR Group? That's the company in  
3                   Pakistan, the agent.

4                   THE WITNESS: Who? Mr. Athar.

5                   MR. SCHWARTZ: From MR Group?

6                   THE WITNESS: Yes.

7                   MR. SCHWARTZ: Do you happen to know  
8                   the name?

9                   MR. COWAN: A-T-A-R?

10                  THE WITNESS: A-T-H-A-R.

11                  MR. SCHWARTZ: Can we go off the  
12                  record?

13                  MR. COWAN: Yes.

14                  (Discussion held off the record.)

15                  Q.        Go ahead.

16                  MR. SCHWARTZ: Rephrase the  
17                  question.

18                  A.        We have a shipment. This is Chief  
19                  Cargo bill of lading, that's why. And I have  
20                  send the document to my bank for endorsement but  
21                  the shipment has released without there is no  
22                  document. Still I have this document --

23                  MR. SCHWARTZ: He didn't ask that  
24                  question. That's the next step.

25                  MR. COWAN: Exactly.

1                    -Adeeb Iqbal Sheikh-

2                    THE WITNESS: Yes, conversation.

3                    Q.                Did Mr. Yogi when you spoke to  
4 Mr. Yogi in November, did he have all three  
5 containers?

6                    A.                Yes.

7                    Q.                Did you ask him for payment?

8                    A.                Yes.

9                    Q.                What did he say to you?

10                   A.                I'll give you. I'll give you.

11                   Q.                Since then have you received any  
12 payments?

13                   A.                Yes, I think you can see from there  
14 after that we have received payments.

15                   MR. COWAN: Can I mark this as one  
16 exhibit as Exhibit 7, please?

17                   (Respondent's Exhibit 7 marked for  
18 identification.)

19                   Q.                I'm going to show you, Mr. Sheikh,  
20 what's been marked as Exhibit 7. Can you tell me  
21 what these are; what these documents are?

22                   A.                These are payments received.

23                   Q.                Payment by whom; by what company?

24                   A.                Rich Kids.

25                   Q.                To Bimsha?

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-Adeeb Iqbal Sheikh-

A. Yes.

Q. And the first payment is in November 2009, correct?

A. Yes.

MR. SCHWARTZ: They may not be in order. They are not necessarily in order.

Q. So the first payment is October 2009?

A. Yes.

Q. Did you speak with Mr. Yogi to arrange for these payments?

A. Yes.

Q. So you spoke to him before November 2009, right?

A. This payment before November, yes.

Q. What was the arrangement that Bimsha had with Rich Kids regarding payment?

A. Arrangements?

Q. Arrangement, the set up?

A. They send payments to our bank.

Q. Was there a schedule?

A. No schedule. I request many time I'm very -- my condition is not good -- okay, they send 2,000 and also when I sue to Chief

1                    -Adeeb Iqbal Sheikh-

2                    Cargo, they stop the payment. When I sue Chief  
3                    Cargo, they stop. After that I didn't receive a  
4                    single penny. Maybe they are trying to case to  
5                    Rich Kids as Chief Cargo.

6                    MR. SCHWARTZ: Answer his question.  
7                    Are you guessing or are you just giving an  
8                    opinion?

9                    THE WITNESS: Sorry.

10                  Q. Have you sued Rich Kids Jeans for  
11                  payment?

12                  A. No.

13                  Q. Why?

14                  A. Because the first part is Chief  
15                  Cargo. They have released the goods without  
16                  endorsement.

17                  Q. Is there a written agreement between  
18                  you and Rich Kids for partial payments?

19                  A. Yes. Edmond has make a document.

20                  Q. Edmond knows with Chief Cargo. Is  
21                  there an arrangement --

22                  A. Chief Cargo arrangement.

23                  MR. SCHWARTZ: He asked you is there  
24                  an arrangement with Rich Kids he said.

25                  THE WITNESS: Yes.

1 -Adeeb Iqbal Sheikh-

2 MR. SCHWARTZ: Off the record,  
3 please?

4 (Discussion held off the record.)

5 MR. SCHWARTZ: Did you have an  
6 agreement with Rich Kids that they should  
7 pay you money?

8 Q. With Mr. Yogi.

9 A. When I came here --

10 MR. SCHWARTZ: You came here in  
11 November 2009.

12 A. November I met Edmond and Edmond  
13 have make me -- okay, make it just a sign a copy  
14 that that's this, this type of copy.

15 MR. COWAN: Can I mark this as  
16 Exhibit 8, please?

17 A. No one can --

18 MR. SCHWARTZ: Is this the schedule?

19 THE WITNESS: No. I can't receive  
20 payment with this schedule.

21 MR. SCHWARTZ: What is this?

22 MR. COWAN: One second. Let me just  
23 mark it first before we discuss it.

24 (Respondent's Exhibit 8 marked for  
25 identification.)

1                   -Adeeb Iqbal Sheikh-

2                   Q.       Mr. Sheikh, I'm going to hand you  
3 what's been marked as Exhibit 8. Have you seen  
4 this document before today?

5                   A.       Yes.

6                   Q.       When did you see this document?

7                   A.       When I came here.

8                   Q.       In November 2009?

9                   A.       Yes.

10                  Q.       Is your handwriting anywhere on this  
11 document?

12                  A.       Yes, this is my sign.

13                  Q.       Your signature is in the middle of  
14 the document?

15                  A.       Yes.

16                               MR. SCHWARTZ: Where is it, here?

17                  Q.       Can you mark with a pen? Just put  
18 an X near to where your signature is.

19                                       (Indicating.)

20                  Q.       Thank you. Who prepared this  
21 document, if you know?

22                  A.       This person who made the sign.

23                  Q.       Have you ever met Mr. Yogesh Anand?

24                  A.       Yes, sir.

25                  Q.       Does he work with Mr. Yogi?

1                    -Adeeb Iqbal Sheikh-

2                    A.            Yes.

3                    Q.            In November 2009 did you meet with  
4 Mr. Yogesh Anand?

5                    A.            Yes.

6                    Q.            Exhibit 8 shows a payment schedule;  
7 is that correct?

8                    A.            Yes.

9                    Q.            And this is payments from Rich Kids  
10 to Bimsha?

11                   A.            Yes.

12                   Q.            And it shows seven total payments  
13 that are to be made; is that correct?

14                   A.            Yes.

15                   Q.            Now, these seven payments, is that  
16 to cover all three containers?

17                   A.            Yes. Maybe a little bit difference.

18                   Q.            Did you receive all of these  
19 payments?

20                   A.            No.

21                   Q.            Which, if any, of these payments did  
22 you receive?

23                   A.            Yes, I receive -- would you like to  
24 see? I give you the copies.

25                   Q.            That's what -- the payments you've

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-Adeeb Iqbal Sheikh-

received is what is contained in Exhibit 7; the partial payments?

A. Yes. This is the copies.

MR. SCHWARTZ: Can I just ask you who signed the paper besides you? Who is this name?

THE WITNESS: Moshin.

MR. SCHWARTZ: Who is that?

THE WITNESS: The person working in Rich Kids.

MR. SCHWARTZ: What is the name here?

THE WITNESS: This one is Moshin Mattmood and I don't know who this one is. This is Zia.

MR. SCHWARTZ: Who is that?

THE WITNESS: The person who look after Pakistan Rich Kids.

MR. SCHWARTZ: How did it get on here? When did he make the signature? It says January 13, '09?

MR. COWAN: No, November 13, '09.

MR. SCHWARTZ: November 13, '09.

THE WITNESS: Yes.

1                    -Adeeb Iqbal Sheikh-

2                    MR. SCHWARTZ: Was he there?

3                    Q.                When this was signed, was everyone  
4 who signed this in the same room?

5                    A.                Yes.

6                    Q.                Where did that meeting take place?

7                    A.                This meeting take place by  
8 Mr. Edmond Yau, Chief Cargo, bring meeting in  
9 Rich Kids office.

10                   Q.                Where is Rich Kids office located?

11                   A.                It's Broadway.

12                   Q.                In New York City or Queens?

13                   A.                New York City, Broadway,  
14 14-something. I don't know exactly.

15                   Q.                The purpose of this agreement,  
16 Exhibit 8, was for Bimsha to receive full and  
17 complete payment from Rich Kids for the three  
18 containers?

19                   A.                Yes.

20                   (Discussion held off the record.)

21                   Q.                In Exhibit 7, the last payment in  
22 chronological order is May 2010. To your  
23 knowledge is that the last date you received a  
24 payment?

25                   A.                This is the date.

1                                -Adeeb Iqbal Sheikh-

2                                (Indicating.)

3                                Q.            May 28, 2010?

4                                A.            Yes.

5                                Q.            Since May 28, 2010 has Bimsha  
6 received any payments from Rich Kids?

7                                A.            No.

8                                (Discussion held off the record.)

9                                Q.            Since May 28, 2010, have you spoken  
10 to anyone from Rich Kids Jeans?

11                               A.            No.

12                               Q.            Why not?

13                               A.            Because I sue Chief Cargo. That's  
14 why.

15                               Q.            But you haven't spoken to anyone  
16 from Rich Kids Jeans about receiving payment?

17                               A.            No.

18                               Q.            Have you done any more business with  
19 Rich Kids Jeans?

20                               A.            No.

21                               Q.            When did you file suit? When did  
22 you file suit against --

23                               A.            June.

24                               Q.            June 2010?

25                               A.            Yes, sir.

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-Adeeb Iqbal Sheikh-

only Chief Cargo.

MR. SCHWARTZ: No, anybody else?

Q. Have you sued anyone else?

MR. SCHWARTZ: In connection with  
this claim?

THE WITNESS: No, only them.

MR. SCHWARTZ: Do you have any other  
claims you're suing?

THE WITNESS: No, no one else.

Q. Not in Pakistan?

A. No. First time.

Q. First time?

A. First time in my life.

Q. Are you familiar with the Shipping  
Act of 1984?

A. No.

Q. Are you familiar with the Ocean  
Shipping Reform Act of 1998?

A. No.

Q. Are you familiar with the Bill of  
Lading Act?

A. No.

Q. Is Bimsha International registered  
to do business in United States?

# Exhibit

# 2

**Respondent's Appendix  
Docket No.: 10-08**

MOU

Payment Commitment For Bimsha  
Date Nov13, 2009

Rich Kids is committed to make payments to Bimsh for the outstanding payments.  
Following will be the schedule to make the payments.

|            |     |     |
|------------|-----|-----|
| Nov 13, 09 | USD | 10k |
| Nov 20     | "   | 10k |
| Nov 25     | "   | 99k |
| Dec 02     | "   | 37k |
| Dec 08     | "   | 37k |
| Dec 15     | "   | 37k |
| Dec 29     | "   | 37k |

~~WE~~ WE WILL MAKE EVERY EFFORD TO FULL FILL THIS

PLAN  
*Yogesh Anand*  
Mr. Yogesh Anand  
For Rich Kids Jeans Company

*Aswini G.*  
*13/11/2009*

*Adar*

*11/13/09*

*AS WITNESS*  
MANSUR MAHMUD  
13/11/2009

*(E J)*

# **EXHIBIT 2**

S E R V E D  
October 22, 2010  
FEDERAL MARITIME COMMISSION

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

**DOCKET NO. 10-08**

**BIMSHA INTERNATIONAL**

**v.**

**CHIEF CARGO SERVICES, INC. AND KAISER APPAREL, INC.**

---

**MEMORANDUM AND ORDER ON MOTION TO DISMISS IN LIEU OF ANSWER**

---

**BACKGROUND**

On July 28, 2010, the Commission received a Complaint filed by Bimsha International (Bimsha) alleging that respondents Chief Cargo Services, Inc. (Chief Cargo) and Kaiser Apparel, Inc. (Kaiser) violated the Shipping Act of 1984. Bimsha alleges that it is in the business of manufacturing garments in Pakistan. It further alleges that Chief Cargo and Kaiser perform "freight forwarding and cargo handling services paying freight charges, paying import duties and performing US Customs clearance services for its customers." (Complaint ¶ V.) I take official notice that Chief Cargo is licensed by the Commission as a non-vessel-operating common carrier (NVOCC). FMC OTI list, 014365, [http://www2.fmc.gov/oti/nvos\\_listing.aspx](http://www2.fmc.gov/oti/nvos_listing.aspx) last visited Oct. 20, 2010. *See also* Complaint, Exhibit 1 (Chief Cargo bills of lading stating "OTI License No. 14365N").

Bimsha alleges that Chief Cargo and Kaiser transported three shipments for Bimsha from Pakistan to the United States on May 30, July 4, and September 13, 2009. (Complaint ¶ IV.) "Upon information and belief the Respondents fraudulently and unlawfully/wrongfully released the shipments without Bills of Lading to the customer," (Complaint ¶ III), thereby violating several sections of the Shipping Act and other federal statutes, including 46 U.S.C. § 41102(c), which it also cites as section 10(d)(1) of the Act. (*Id.*) Section 10(d)(1) provides: "A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling,

Bills of lading for the carriage of goods by sea are maritime contracts, and jurisdiction over maritime contracts is granted to the judicial branch of the federal government by Article III, Section 2 of the United States Constitution . . . . The exercise of judicial power to redress a party for injuries suffered as a result of an alleged breach of a bill of lading, and not a services [*sic*] contract, is beyond the subject matter jurisdiction of the . . . Commission. *Cargo One Inc.*, [28 S.R.R. at 1645].

None of Bimsha International's allegations involve elements peculiar to the Shipping Act of 1984, and therefore, the . . . Commission should not adjudicate the action.

(Motion to Dismiss in Lieu of Answer at 1-3.)

Bimsha filed an opposition to the motion to dismiss. Bimsha contends that:

USC TITLE 46, SEC [41301] et seq. . . . provides claimant may file complaint alleging a violation withing three (3) years after the claim accrues with the FMC seeking reparations for any injury to the complainant cause by the violation.

USC TITLE 49, SEC 80111 provides for the common carrier's liability for damages for delivery of goods wrongfully.<sup>[2]</sup>

\*

\*

\*

On information and belief, the Respondents' conspired with the buyer, RICH KIDS JEANS CORPORATION to release the shipments without the required bank endorsements. Claimant's claim against the Respondents is grounded in negligence and/or fraud, which claim lies within the jurisdiction of the FMC Court.

(Opposition to Motion to Dismiss in Lieu of Answer at 1-2.)

### DISCUSSION

The Commission's Rules of Practice and Procedure (Rules) do not explicitly provide for a motion to dismiss for lack of subject matter jurisdiction. The Rules do provide that "[i]n proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice." 46 C.F.R. § 502.12. Civil Rule 12(b)(1) permits a pleader to raise by motion lack of jurisdiction over the subject matter. Fed. R. Civ. P. 12(b)(1). I find that it is consistent with sound administrative practice to follow Rules 12(b)(1).

---

<sup>2</sup> I note that the Commission does not have jurisdiction to enforce 49 U.S.C. § 80111.

storing, or delivering property.” 46 U.S.C. § 41102(c).<sup>1</sup> Bimsha alleges that it suffered actual injury as a result of Respondents’ violations of the Act and seeks reparations in the sum of \$207,809.74. (Complaint ¶ VIII.)

On August 2, 2010, the Secretary served the Complaint and the Notice of Filing of Complaint and Assignment on Respondents. *Bimsha Int’l v. Chief Cargo Services, Inc. and Kaiser Apparel, Inc.*, FMC No. 10-10 (FMC Aug. 2, 2010) (Notice of Filing of Complaint and Assignment). Each Respondent also received a letter from the Secretary advising Respondents that pursuant to Commission Rules, Respondents were required to answer the Complaint within twenty days. See Letters dated August 2, 2010, from Karen V. Gregory to Respondents. See also 46 C.F.R. § 502.64(a) (“Respondent shall file with the Commission an answer to the complaint and shall serve it on complainant as provided in Subpart H of this part within twenty (20) days after the date of service of the complaint by the Commission.”). Information in the “correspondence” section of the Commission’s docket indicates that on August 4, 2010, Federal Express delivered the Complaint, Notice, and letter to Kaiser. Kaiser has not answered or otherwise responded to the Complaint. On August 9, 2010, counsel entered an appearance for Chief Cargo, but did not answer or otherwise respond to the Complaint.

On September 20, 2010, Chief Cargo served a motion to dismiss contending that the Commission does not have subject matter jurisdiction over Bimsha’s complaint. Chief Cargo argues that:

Bimsha International cannot rebut the presumption against it that its “claim is no more than a simple contract breach claim.” *Cargo One Inc. v. COSCO Container Lines Co., Ltd.*, [28 S.R.R. 1635, 1645 (FMC 2000)]. Bimsha International has the burden to demonstrate that its allegations comprise more than just a contract law claim. *Id.* Because Bimsha International has not established such through its complaint and the exhibits attached thereto, its claim should be dismissed by this Commission.

. . . Bimsha International contends that Respondents released the goods without obtaining the endorsed Bill of Lading. The relationship between Bimsha International and Chief Cargo . . . is governed by the applicable bills of lading, not services [*sic*] contracts, and the claim made herein is contractual in that it stems from the obligations created by the bills of lading.

---

<sup>1</sup> On October 14, 2006, the President signed a bill reenacting the Shipping Act as positive law. The bill’s purpose was to “reorganiz[e] and restat[e] the laws currently in the appendix to title 46. It codifies existing law rather than creating new law.” H.R. Rep. 109-170, at 2 (2005). The Commission often refers to provisions of the Act by their section numbers in the Act’s original enactment, references that are well-known in the industry. See, e.g., *Sinicway Int’l Logistics Ltd. – Possible Violations of Sections 10(a)(1) and 10(b)(2) of the Shipping Act of 1984*, FMC No. 10-09 (Aug. 20, 2010) (Order of Investigation and Hearing). I follow that practice in this memorandum.

The standards for motions to dismiss are well established.

A motion to dismiss under Rule 12(b)(1) may assert either a factual attack or a facial attack to jurisdiction. See [*McElmurray v. Consol. Gov't of Augusta-Richmond County*, 501 F.3d 1244, 1251 (11th Cir. 2007)]; *Lawrence v. Dunbar*, 919 F.2d 1525, 1528-29 (11th Cir. 1990). A factual attack challenges “the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered.” *Lawrence*, 919 F.2d at 1529. In a facial attack, on the other hand, the court examines whether the complaint has sufficiently alleged subject matter jurisdiction. As it does when considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court construes the complaint in the light most favorable to the plaintiff and accepts all well-pled facts alleged by in the complaint as true. *McElmurray*, 501 F.3d at 1251 (noting in a Rule 12(b)(1) facial challenge a plaintiff has “safeguards similar to those retained when a Rule 12(b)(6) motion to dismiss for failure to state a claim is raised”).

Although it must accept well-pled facts as true, the court is not required to accept a plaintiff's legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. ----, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (noting “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions”). In evaluating the sufficiency of a plaintiff's pleadings, we make reasonable inferences in Plaintiff's favor, “but we are not required to draw plaintiff's inference.” *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005). Similarly, “unwarranted deductions of fact” in a complaint are not admitted as true for the purpose of testing the sufficiency of plaintiff's allegations. *Id.*; see also *Iqbal*, 129 S. Ct. at 1951 (stating conclusory allegations are “not entitled to be assumed true”).

*Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260-1261 (11th Cir. 2009). “The party asserting federal subject matter jurisdiction bears the burden of proving its existence.” *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010), citing *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

Chief Cargo brings a facial attack on the Commission's jurisdiction to adjudicate Bimsha's Complaint. Therefore, I must “construe[] the complaint in the light most favorable to [Bimsha] and accept all well-pled facts alleged by in the complaint as true.” *Sinaltrainal v. Coca-Cola Co.*, *supra*. *Inter alia*, the Complaint alleges and the bills of lading confirm that Chief Cargo is a common carrier. It further alleges that Respondents “fraudulently and unlawfully/wrongfully released the shipments without Bills of Lading to the customer” in violation of section 10(d)(1) of the Act which provides that “[a] common carrier . . . may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c). As the Commission stated in *Cargo One*:

we find that the alleged violations of section[] . . . 10(d)(1), involving unfair or unjustly discriminatory practices, undue or unreasonable preferences, undue or unreasonable prejudice or disadvantage, and just and reasonable regulations and practices, are inherently related to Shipping Act prohibitions and are therefore appropriately brought before the Commission.

*Cargo One Inc.*, 28 S.R.R. at 1645. See also *Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, 30 S.R.R. 991, 999 (FMC 2006) (Commission has jurisdiction over complaint alleging respondent committed acts prohibited by the Shipping Act).

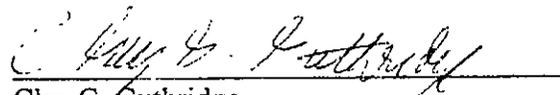
Bimsha's Complaint alleges that Chief Cargo, a common carrier, committed acts prohibited by section 10(d)(1) of the Shipping Act when it released the cargo without having received the bills of lading. Therefore, the Commission has subject matter jurisdiction. The motion to dismiss is denied.

On September 20, 2010, I ordered Bimsha to prosecute this proceeding and take action by October 6, 2010. *Bimsha Int'l v. Chief Cargo Services, Inc. and Kaiser Apparel, Inc.*, FMC No. 10-10 (ALJ Sept. 20, 2010) (Order Requiring Complainant to Prosecute Proceeding). It responded to Chief Cargo's motion, but has not taken any action against Kaiser Apparel. Bimsha is reminded of this Order.

### ORDER

Upon consideration of the Motion to Dismiss in Lieu of Answer filed by respondent Chief Cargo Services, Inc., the opposition thereto, and the record herein, and for the reasons stated above, it is hereby

**ORDERED** that the Motion to Dismiss in Lieu of Answer be **DENIED**.



Clay G. Guthridge  
Administrative Law Judge

**EXHIBIT 3**

1 -Adeeb Iqbal Sheikh-

2 who prepared that, Matt?

3 MR. COWAN: That's what -- yes.

4 MR. SCHWARTZ: Who prepared that  
5 paper?

6 THE WITNESS: Chief Cargo.

7 MR. SCHWARTZ: Chief Cargo or --

8 THE WITNESS: Chief Cargo here in  
9 Pakistan.

10 Q. Is that MR Group?

11 A. Yes.

12 Q. Did you speak with someone at  
13 MR Group?

14 A. Yes.

15 Q. You personally?

16 A. Yes.

17 MR. SCHWARTZ: What is MR Group?

18 THE WITNESS: MR group is in  
19 Pakistan.

20 Q. Is that Chief Cargo Services' agent  
21 in Pakistan?

22 A. You can say yes.

23 Q. Who did you speak with at MR Group?

24 A. Rich Kids.

25 MR. SCHWARTZ: Who did you speak

1 -Adeeb Iqbal Sheikh-

2 with at MR Group? That's the company in  
3 Pakistan, the agent.

4 THE WITNESS: Who? Mr. Athar.

5 MR. SCHWARTZ: From MR Group?

6 THE WITNESS: Yes.

7 MR. SCHWARTZ: Do you happen to know  
8 the name?

9 MR. COWAN: A-T-A-R?

10 THE WITNESS: A-T-H-A-R.

11 MR. SCHWARTZ: Can we go off the  
12 record?

13 MR. COWAN: Yes.

14 (Discussion held off the record.)

15 Q. Go ahead.

16 MR. SCHWARTZ: Rephrase the  
17 question.

18 A. We have a shipment. This is Chief  
19 Cargo bill of lading, that's why. And I have  
20 send the document to my bank for endorsement but  
21 the shipment has released without there is no  
22 document. Still I have this document --

23 MR. SCHWARTZ: He didn't ask that  
24 question. That's the next step.

25 MR. COWAN: Exactly.

**EXHIBIT 4**

**CHIEF CARGO SERVICES INC.**

175-41 148th Road, Jamaica, NY 11434 U.S.A.

Tel: (718) 656-6222

Fax: (718) 244-0383 / 244-1624

TP-4

23 SEPTEMBER 2008

To: M.R Group

Attn: Athar Baig

Re: Kaiser Apparel

Under professional procedure please be advice that Chief cargo Services, hereby guarantee that we will not release any shipment without proper endorsed Bill of lading. This is for all shipment under the account of Kaiser Apparel handle between M.R Group and Chief Cargo Services Inc

Sincerely,



Edmond Yau  
President

**CERTIFICATE OF SERVICE**

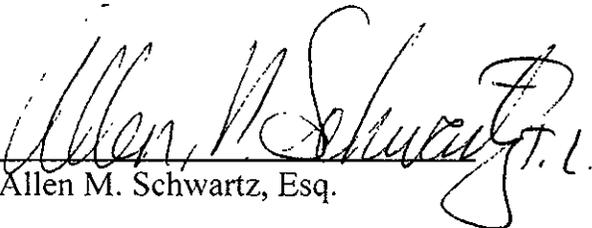
I hereby certify that I have this day served the original by email and six (6) copies  
by Federal Express overnight delivery the foregoing upon:

Office of the Secretary  
Federal Maritime Commission  
800 North Capital Street, N.W.  
Washington D.C. 20573  
Tel (202)523-5725  
Fax (202)523-0014  
Email: [secretary@fmc.gov](mailto:secretary@fmc.gov)

and copy of the above Reply to:

Bennett Giuliano, McDonnell & Perrone, LLP  
Attorneys for Respondent Chief Cargo Services, Inc.  
Joseph J. Perrone, Esq.  
494 Eighth Avenue, 7th Floor  
New York, New York 10001  
Tel: 646-328-0120  
Fax: 646-328-0121  
E-Mail: [jperrone@bgmplaw.com](mailto:jperrone@bgmplaw.com)

Dated at, New York, New York,  
This 15<sup>th</sup> day of August, 2011.

  
Allen M. Schwartz, Esq.

FEDERAL MARITIME COMMISSION

\_\_\_\_\_  
BIMSHA INTERNATIONAL

X

DOCKET NO. 10-08

Claimant,

- against -

CHIEF CARGO SERVICES, INC, AND  
KAISER APPAREL, INC.

Respondents,  
\_\_\_\_\_

X

**COMPLAINANT'S REPLY TO RESPONDENT'S REPLY TO COMPLAINANT'S  
PROPOSED FINDINGS OF FACTS, AND COMPLAINANT'S BRIEF**

**ALLEN M. SCHWARTZ**

Attorney for Claimant

Office and Post Office Address, Telephone

350 Fifth Avenue, Suite 4414

(Empire State Building)

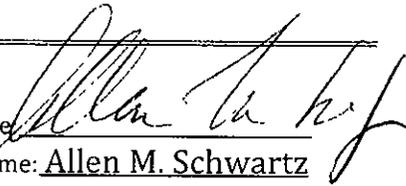
New York, New York 10118

T(212) 643-8250

F(212)643-8256

(RULE 130-1.1)

Dated: August 15, 2011

Signature 

Print Name: Allen M. Schwartz

Service of a copy of the within

Dated,

is hereby admitted.

Attorney(s) for Defendant

Sir: - Please take notice

Notice of Entry

that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the  
within named court on 2011

Notice of Settlement

that an order and judgment  
of the within named court,

on . at

Dated, Yours, etc

**Allen M. Schwartz, Esq.**  
**350 Fifth Avenue, Suite 4414**  
**Empire State Building**  
**New York, New York 10118**  
**Tel: (212) 643-8250**  
**Fax: (212)643-8256**