

FEDERAL MARITIME COMMISSION

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

**BIMSHA
INTERNATIONAL,
CLAIMANT**

V.

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

**CLAIMANT'S EXCEPTIONS TO INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE DATED DECEMBER 14, 2011**

**Dated: New York, NY
January 4, 2012**

Respectfully Submitted,

**Allen M. Schwartz, Esq.
Attorney for Claimant
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**MEMORANDUM OF EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE DECISION**

Claimant, Bimsha International (Bimsha)

Respondents, Chief Cargo Services, Inc (Chief Cargo) and Kaiser Apparel, Inc (Kaiser)

EXCEPTION

Claimants served its claim and evidentiary documentary evidence for the foundation needed in its Supplemental Appendix and Exhibits on October 14, 2011, and in earlier exhibits as:

Exhibit 3:

- Bill of Lading, CC-586-003 – NYK
- Bill of Exchange for \$88,404
- Commercial Invoice for \$88,404
- Packing List for 19,272 pieces
- Inspection Certificate for 19,272 pieces valued at \$88,404

Exhibit 4:

- Bill of Lading, CC-592-003-NYK
- Commercial Invoice for \$99,090
- Packing List for 21,912 pieces
- Inspection Certificate of 21,912 pieces valued at \$99,090
- Mixed carton details

Exhibit 5:

- Bill of Lading, CC-598-001-NYK
- Commercial Invoice for \$99,315.74
- Packing List for 22,726 pieces
- Inspection Certificate of 22,726 pieces valued at \$99,315.74

Exhibit 6:

- Bank Finance Charges through June 11, 2011, \$63,080
- Travel Expenses, (for Deposition) 5/16/11, amount \$3,650
- Travel Expenses, 11/8/09 for collection efforts, amount \$4,500

- Legal Expenses through 6/28/11, amount \$8,101

Claimant has adequately met its burden of proving damages based upon the documents prepared by Claimant in the ordinary course of business on the shipments made by the Claimant to Chief Cargo and Kaiser Apparel.

Claimant contends it is entitled to invoke the business record exception to the hearsay rule which allows of the introduction for business records when:

- the record was made at or near the time of the occurrence
- it was the regular practice of the business to make such records
- there are no indications of untrustworthiness in the record
- the information in the records was made by a knowledgeable person
- the record was made and kept in the normal course of business
- the record was not objected to by the Respondents
- there are no indications of unreliability or lack of trustworthiness

The Respondents did not deny the accuracy or worthiness of the documents annexed but argued jurisdiction of the FMC Court.

EXCEPTION

The administrative judge should not have dismissed the claim filed against Kaiser Apparel, Inc. Kaiser Apparel was noticed on several of the documents acting on behalf of Chief Cargo, Inc., including Bills of Lading, the letter of guarantee and became a party to the transactions occurring in the sale of the goods (res gestae).

WHEREFORE, once the FMC determined the Respondents had violated the Shipping Act, the Claimant had established the evidentiary foundation needed for its

entitlement to reparations, and the exhibits annexed should have not been dismissed by the administrative judge.

Petitioner is entitled to a judgment for the amount of the claim filed plus reasonable costs and attorney's fees.

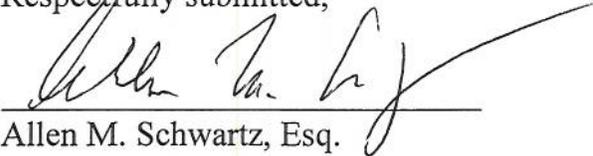
Dated New York, NY
January 4, 2012

To:
Office of the Secretary
Federal Maritime Commission
800 North Capital Street, N.W.
Washington D.C. 20573

and

Bennett Giuliano, McDonnell & Perrone, LLP
Joseph J. Perrone, Esq
494 Eighth Avenue, 7th Floor
New York, New York 10001

Respectfully submitted,



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AFFIDAVIT OF MAILING

STATE OF NEW YORK, COUNTY OF NEW YORK

I, Tiana Lopez, being sworn, say: I am not a party to the action, am over 18 years of age and reside at 350 Fifth Avenue, Suite 4414, New York NY 10118.

On Jan. 4, 2012 I served the within: **Claimant's Exception to Initial Decision of Administrative Law Judge Dated December 14, 2011**

**Service
By Mail or
E-Mail**

by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the Federal Express Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

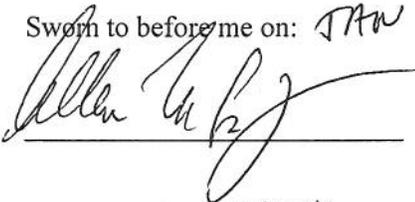
**Office of the Secretary
Federal Maritime Commission
800 North Capital Street, N.W.
Washington D.C. 20573**

**Bennett Giuliano, McDonnell & Perrone, LLP
Joseph J. Perrone, Esq.
494 Eighth Avenue, 7th Floor
New York, New York 10001**

**Personal
Service on
Individual**

by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

Sworn to before me on: *JAN 4, 2012*



Allen M. Schwartz
Notary Public, State of NY
02SC8868750 Qual in NY Cnty
Comm Expires 7/31/14



Tiana Lopez

