

RECEIVED

JUN 16 2011 10:55

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

1 DENNIS A. CAMMARANO/BAR NO. 123662
2 CAMMARANO LAW GROUP
3 555 East Ocean Boulevard, Suite 501
4 Long Beach, California 90802
5 Telephone: (562) 495-9501
6 Facsimile: (562) 495-3674
7 E-mail: dcammarano@camlegal.com

8 Attorneys for Respondent,
9 AIR 7 SEAS TRANSPORT LOGISTICS, INC.

10
11 **FEDERAL MARITIME COMMISSION**
12 **WASHINGTON, D.C.**

13 NDAHENDEKIRE BARBARA

14 Claimant,

15 vs.

16 AFRICAN SHIPPING; NJOROGE
17 MUHIA; ALCO LOGISTICS, LLC;
18 BRENDA ALEXANDER; U.S. LINES
19 AGENCIES, INC.; AIR 7 SEAS
20 TRANSPORT LOGISTICS, LLC.

21 Respondents.

22 AIR 7 SEAS TRANSPORT LOGISTICS,
23 LLC

24 Cross-Claimant,

25 vs.

26 AFRICAN SHIPPING; NJOROGE
27 MUHIA; ALCO LOGISTICS, LLC;
28 BRENDA ALEXANDER; U.S. LINES
AGENCIES, INC.

Cross-Respondents.

Docket No.: 11-08

**ANSWER AND CROSS-CLAIM ON
BEHALF OF AIR 7 SEAS
TRANSPORT LOGISTICS, INC.**

TO THE HONORABLE JUDGE ERIN M. WIRTH, ALL PARTIES AND TO
THEIR ATTORNEYS OF RECORD:

1 Responding to the complaint of NDAHENDEKIRE BARBARA (“Complainant”), AIR 7
2 SEAS TRANSPORT LOGISTICS, LLC (“Air 7 Seas”) avers as follows:

3 1. As to Paragraph I of the Complaint, Air 7 Seas lacks sufficient knowledge or
4 information to admit or deny the allegations, and on that basis, denies the allegation therein.

5 2. As to Paragraph II of the Complaint, Air 7 Seas admits it is one of the named
6 Respondents in the complaint and that the addresses identified for Air 7 Seas are accurate. Air 7
7 Seas further avers that it is a freight forwarding company operating under Federal Maritime
8 Commission License Number 2724NF.

9 3. As to Paragraph III of the Complaint, Air 7 Seas denies it is in violation of the
10 Shipping Act 1984, as amended by the Ocean Shipping Reform Act of 1998. It lacks sufficient
11 knowledge or information to admit or deny the remaining allegations, and on that basis, denies
12 them.

13 4. As to Paragraph IV, Subparagraphs A through K, inclusive, of the Complaint, Air
14 7 Seas lacks sufficient knowledge or information to admit or deny the allegations, and on that
15 basis, denies the allegations therein.

16 5. As to Paragraph IV, Subparagraph L, Air 7 Seas admits it had not been paid the
17 freight charges for the movement of the chassis. Beyond that, Air 7 Seas lacks sufficient
18 knowledge or information to admit or deny the allegations and, on that basis, denies them, with
19 specific denial that Air 7 Seas was in any way involved with the booking, forwarding or
20 transportation of containers; Air 7 Seas’ only involvement concerned the chassis.

21 6. As to Paragraph IV, Subparagraph M, Air 7 Seas denies sufficient knowledge or
22 information to admit or deny, and on that basis, denies the allegations therein.

23 7. As to Paragraph IV, Subparagraph N, Air 7 Seas lacks sufficient knowledge or
24 information to admit or deny the first two (2) sentences of Paragraph N and, on that basis, denies
25 those allegations.

26 Air 7 Seas admits Ms. Barbara contacted Mr. Benny of Air 7 Seas and was informed by
27 Air 7 Seas that the two chassis were in Belgium and were being held there until outstanding
28 freight charges were paid. Air 7 Seas further admits that Mr. Benny advised Ms. Barbara that

1 the measurements for the chassis that were provided by ALCO were understated. Air 7 Seas
2 further admits that Air 7 Seas' Mr. Benny explained that the chassis were sent to Belgium in
3 route to Mombassa, consistent with the bill of lading which identifies Antwerp, Belgium as the
4 port of discharge and Mombassa, the place of delivery.

5 Air 7 Seas further states that Mr. Benny was unable to explain anything about the
6 container since Air 7 Seas was not involved with the movement of the containers (as opposed to
7 the chassis).

8 Also, Air 7 Seas lacks sufficient knowledge or information regarding Ms. Barbara's
9 purported conversation with Mr. Muhia and Ms. Alexander following Mr. Benny being
10 disconnected from the telephone conference, and on that basis, Air 7 Seas denies the allegation
11 identified in the last sentence of Paragraph IV, Subparagraph N.

12 8. As to Paragraph IV, Subparagraph O, Air 7 Seas lacks sufficient knowledge or
13 information to admit or deny, and on that basis, denies the allegation therein.

14 9. As to Paragraph IV, Subparagraph P, Air 7 Seas admits the allegations therein.

15 10. As to Paragraph IV, Subparagraph Q, Air 7 Seas denies knowledge or information
16 sufficient to admit or deny, and on that basis, denies the allegation therein.

17 11. As to Paragraph IV, Subparagraph S, Air 7 Seas admits the allegations therein.

18 12. As to Paragraph IV, Subparagraph T, Air 7 Seas lacks sufficient knowledge or
19 information to admit or deny, and on that basis, denies the allegation.

20 13. As to Paragraph IV, Subparagraph U, Air 7 Seas admits the allegation therein,
21 including the authenticity of attached Exhibit F.

22 14. As to Paragraph IV, Subparagraph V, Air 7 Seas lacks sufficient knowledge or
23 information to admit or deny, and on that basis, denies them.

24 15. As to Paragraph V, Air 7 Seas denies it has violated the Shipping Act of 1984, as
25 amended by the Ocean Shipping Reform Act of 1998 or otherwise breached any contract.

26 Air 7 Seas further avers that Petitioner did not have any contract, binding or otherwise,
27 with Air 7 Seas and, denies that any actions by Air 7 Seas were not justified. Responding to the
28 balance of allegations in Paragraph V, Air 7 Seas denies sufficient knowledge or information to

1 admit or deny, and on that basis, denies the allegations therein.

2 16. As to Paragraph VI of the Complaint, Air 7 Seas denies that Petitioner has been
3 injured or damaged as alleged.

4 17. As to Paragraph VII of the Complaint, Air 7 Seas prays that Petitioner take
5 nothing by way of her complaint; that the complaint be dismissed, with prejudice; that Air 7 Seas
6 be awarded its costs and, that the Commission grants such other and further relief to Air 7 Seas
7 as is justified under the facts and law of the matter.

8 **AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION**

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Cause of Action)**

11 1. Cross-complainant's Cross-complaint, and each cause of action therein, fails to
12 state facts sufficient to constitute a cause of action against AIR 7 SEAS.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Acts/Omissions of Third Parties)**

15 2. The loss, if any, was caused by the criminal acts/omissions, negligence or other
16 culpability of persons or entities over which AIR 7 SEAS had no control, and for whom AIR 7
17 SEAS has no legal obligations.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Limitation)**

20 3. AIR 7 SEAS' liability, if any, is limited pursuant to the terms of any purported
21 written agreement with Petitioner and/or her agents or representatives.

22 **FOURTH AFFIRMATIVE DEFENSE**

23 **(Lack of Subject Matter Jurisdiction)**

24 4. The Commission lacks subject matter jurisdiction to resolve this dispute and/or
25 claims therein.

26 ///

27 ///

28 ///

1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(Laches/Estoppel)**

3 5. Petitioner's Complaint and each and every cause of action and claim, if any,
4 contained therein, are barred by the doctrines of laches and equitable estoppel.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Default)**

7 6. All damages, if any, sustained by Petitioner were proximately or legally caused by
8 the act or default of Petitioner or other persons/entities whose conduct is imputed to Petitioner.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 **(Third Party Negligence)**

11 7. All damages sustained by Cross-complainant, if any, were proximately caused and
12 contributed to by the carelessness and negligence of carriers, freight forwarders, ocean
13 transportation intermediaries, shipper's agents into whose actual custody or control the shipment
14 was placed during the course of the transportation.

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 **(Bill of Lading/Contracts/etc.)**

17 8. AIR 7 SEAS is entitled to each and every defense and/or limitation of liability
18 contained in all its, as well as carrier's and/or freight forwarder's, bills of lading, customs brokers
19 powers of attorney forms, invoices, and/or contracts, and all such defenses and limitations of
20 liability are incorporated herein by reference.

21 **NINTH AFFIRMATIVE DEFENSE**

22 **(Comparative/Contributory Negligence)**

23 9. AIR 7 SEAS is informed and believes, on that basis alleges, that Petitioners'
24 alleged damages, if any, are wholly or in part, directly and proximately caused by the acts,
25 omissions, negligence or wrongdoing of Petitioner or its agents, or other persons or entities for
26 whom Petitioner are/is legally responsible. In the alternative, AIR 7 SEAS' liability, if any,
27 should be reduced and mitigated in the proportion to the fault of Petitioner and her agents, and
28 others for whom Petitioner is responsible.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TENTH AFFIRMATIVE DEFENSE

(Failure to File a Claim)

10. Petitioner's recovery is precluded because of her failure to file a timely and/or valid or recognizable claim.

ELEVENTH AFFIRMATIVE DEFENSE

(Lack of Necessary Third Parties)

11. The action should be dismissed in that essential and indispensable third parties have not been sued and are beyond the jurisdiction of the Commission. Proceeding in this jurisdiction without such third parties would result in a subversion of justice.

TWELFTH AFFIRMATIVE DEFENSE

(Lack of Standing)

12. Petitioner lacks standing to bring suit in that she has not sustained any damage.

THIRTEENTH AFFIRMATIVE DEFENSE

(Lack of Reliance)

13. Petitioner is barred from recovering damages with regard to any alleged conduct, breach of contract, misrepresentation or estoppel by AIR 7 SEAS due to a lack of reliance by Petitioner on any alleged conduct, breach of contract, misrepresentation or estoppel by this answering Respondent.

FOURTEENTH AFFIRMATIVE DEFENSE

(Prior Breach)

14. Petitioner has breached her contractual obligations to AIR 7 SEAS and, therefore, the present action is barred.

FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Good Faith)

15. Petitioner is barred from recovery because Petitioner lacked good faith in the performance and enforcement of any alleged contract.

///
///

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 **(Ratification)**

3 16. If Petitioner suffered any loss, injury, damage or detriment, the Petitioner
4 consented to and ratified the acts/omissions of AIR 7 SEAS, and by reason thereof, Petitioner is
5 barred from recovery as to this answering Respondent.

6 **SEVENTEENTH AFFIRMATIVE DEFENSE**

7 **(Failure to Mitigate Damages)**

8 17. AIR 7 SEAS alleges that Petitioner has failed to properly mitigate her damages, if
9 any in fact there are, and to the extent of such failure to mitigate, any damages awarded to
10 Petitioner should be reduced accordingly.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 **(Performance of Duties)**

13 18. AIR 7 SEAS alleges it has fully performed any of any contractual, statutory and
14 any other duties owed to Petitioner. Therefore, Petitioner is estopped to assert any cause of action
15 against AIR 7 SEAS.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 **(Consent)**

18 19. AIR 7 SEAS alleges that by themselves or through their agents, Petitioner
19 consented to all conduct of AIR 7 SEAS. Therefore, AIR 7 SEAS is precluded from asserting any
20 cause of action against AIR 7 SEAS.

21 **TWENTIETH AFFIRMATIVE DEFENSE**

22 **(Real Party In Interest)**

23 20. Petitioner is not the real party in interest to bring or maintain suit. Therefore, the
24 Complaint should be dismissed.

25 **TWENTY FIRST AFFIRMATIVE DEFENSE**

26 **(Justification)**

27 21. AIR 7 SEAS alleges that it was justified in doing, or not doing, any of the things
28 and/or actions alleged in the Complaint. Therefore, Petitioner is barred from asserting any cause

1 of action against AIR 7 SEAS.

2 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

3 **(Tariff)**

4 22. AIR 7 SEAS is entitled to each and every defense and/or limitation of liability
5 contained in or available to Respondents by the terms of their tariffs and such defenses and
6 limitations of liability are incorporated herein by reference.

7 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

8 **(Failure of Performance)**

9 23. AIR 7 SEAS alleges that Petitioner has failed to perform all of the terms,
10 conditions, covenants and promises this answering Respondent is due. Therefore, Petitioner is
11 precluded from asserting any cause of action against this answering Respondent.

12 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

13 **(General Reservation)**

14 24. AIR 7 SEAS reserves the right to assert such additional defenses as may be found
15 warranted after further investigation and discovery and to otherwise avoid manifest injustice.

16 **CROSS-CLAIM**

17 Cross-claimant, AIR 7 SEAS TRANSPORT LOGISTICS, LLC, (hereinafter "AIR 7
18 SEAS") for a Cause of Action against Cross-respondents, and each of them, alleges as follows:

19 **GENERAL ALLEGATIONS**

20 **(AGAINST ALL CROSS-RESPONDENTS)**

21 1. Cross-complainant is informed and believes and thereupon alleges that Cross-
22 respondents, AFRICAN SHIPPING; NJOROGE MUHIA; ALCO LOGISTICS, LLC;
23 BRENDA ALEXANDER; and U.S. LINES AGENCIES, INC., (hereinafter "Cross-
24 respondents") now and at all times herein mentioned were corporations, except NJOROGE
25 MUHIA, and BRENDA ALEXANDER who are individuals.

26 2. A complaint has been filed against AIR 7 SEAS in the Federal Maritime
27 Commission, Washington, D.C., and in response an answer generally denying the allegations and
28 raising certain affirmative defenses is filed concurrently herewith. Said complaint and answer

1 are incorporated herein by reference as though fully set forth at length for the purpose of
2 indicating the contents thereof but not admitting the truth thereof.

3 3. Cross-respondents, and each of them, were individuals and entities which
4 performed acts or failed to perform acts alleged in Claimant, NDAHENDEKIRE
5 BARBARA's complaint. AIR 7 SEAS alleges that Cross-respondents, and each of them, were
6 at all times herein mentioned, the agents, employees and/or joint venturers of their Co-cross-
7 respondents and were acting within the course and scope of such agency, employment and/or
8 joint venture.

9 4. If the allegations in the complaint are determined to be true and a judgment is
10 recovered against AIR 7 SEAS, such liability is the result of the failure of Cross-respondents to
11 satisfy their contractual and legal obligations, leaving Cross-claimant, AIR 7 SEAS, liable for
12 their breaches of duty and contract, and accordingly, AIR 7 SEAS is entitled to recover over
13 against said Cross-respondents for any judgment which might be recovered against them.

14 **FIRST CAUSE OF ACTION**

15 **(TOTAL INDEMNITY AGAINST ALL CROSS-RESPONDENTS)**

16 5. Cross-claimant repeats and realleges the allegations contained in paragraphs 1
17 through 5 of the general allegations as though fully set forth at length.

18 6. If the allegations in the complaint are determined to be true and a judgment is
19 recovered against AIR 7 SEAS, such liability is the sole result of the failure of Cross-respondents
20 to satisfy their legal duties and contractual obligations, leaving AIR 7 SEAS liable for their
21 contractual breaches and legal breaches of duty, and accordingly, AIR 7 SEAS is entitled to total
22 indemnity from said Cross-respondents for any judgment which Claimant might recover against
23 AIR 7 SEAS.

24 **SECOND CAUSE OF ACTION**

25 **(TOTAL INDEMNITY AND CONTRIBUTION AGAINST ALL** 26 **CROSS-RESPONDENTS)**

27 7. Cross-claimant repeats and realleges the allegations contained in paragraphs 1
28 through 5 of the general allegations as though fully set forth at length.

1 contained in Claimant's complaint.

2 WHEREFORE Cross-claimant, AIR 7 SEAS, prays for judgment against Cross-
3 respondents, and each of them, as follows:

4 1. That Cross-claimant, AIR 7 SEAS, recover judgment against Cross-respondents,
5 and each of them, for the total amount of any sum in which it is adjudged to be liable to
6 Claimant, plus costs and attorneys' fees as well as other consequential damage;

7 2. That Cross-claimant recover judgment against Cross-respondents, and each of
8 them, for a sum in proportion to fault for any sum which Cross-claimant is adjudged to be liable
9 to the Claimant, under implied indemnity;

10 3. For a declaration that Cross-respondents, and each of them, are obligated to
11 provide Cross-claimant herein with a defense against the aforementioned action by Claimant and
12 to indemnify Cross-claimant for any judgment rendered against it, plus costs of defense including
13 reasonable attorneys' fees;

14 4. For costs of suit herein incurred; and

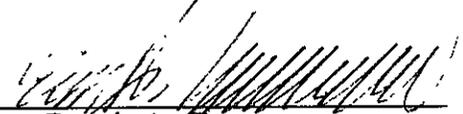
15 5. For such other and further relief as the Court deems just and proper.

16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

CAMMARANO LAW GROUP

Dated: May 26, 2011

By: 
Dennis A. Cammarano
Attorneys for Respondent and
Cross-claimant,
AIR 7 SEAS TRANSPORT
LOGISTICS, INC.
3112answer.wpd

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

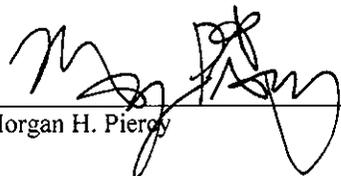
3 I am employed in the County of Los Angeles, State of California, am over the age of 18, and not a party to
4 this action. My business address is 555 East Ocean Boulevard, Suite 501, Long Beach, California 90802. On June 8,
5 2011, I served the foregoing document(s) described as **ANSWER AND CROSS-CLAIM ON BEHALF OF AIR 7
SEAS TRANSPORT LOGISTICS, INC.** on the interested parties by placing a true copy thereof enclosed in a
sealed envelope addressed as follows:

6 PLEASE SEE ATTACHED SERVICE LIST

- 7 **BY PERSONAL DELIVERY.** I delivered such envelope by hand to the offices of the addressee.
- 8 **BY MAIL.** I caused such envelope with postage thereon fully prepaid to be placed in the U.S. Mail at
9 Long Beach, California. I am "readily familiar" with the firm's practice of collection and processing
10 correspondence and pleadings for mailing. Under that practice, it would be deposited with the U.S. postal
11 service on that same day with postage thereon fully prepaid at Long Beach, California in the ordinary
course of business. I am aware that on motion of the party served, service is presumed invalid if postage
cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- 12 **BY FACSIMILE TRANSMISSION.** I caused such document to be transmitted to the addressee(s)
13 facsimile number(s) noted herein. The facsimile machine used complies with California Rule of Court 2003
and no error was reported by the machine. Pursuant to California Rules of Court 2006, et al., I caused the
14 machine to print a transmission record of the transmission and the transmission record was properly issued
by the transmitting facsimile machine.
- 15 **BY OVERNIGHT CARRIER.** I caused such envelope(s) to be given to an overnight mail service at Long
16 Beach, California, to be hand delivered to the office of the addressee(s) on the next business day.
- 17 **BY E-MAIL.** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I
18 caused the document to be sent to the persons at the e-mail addresses listed above. I did not receive, within
a reasonable time after the transmission, any electronic transmission, any electronic message or other
indication that the transmission was unsuccessful.

19 Executed on June 8, 2011, at Long Beach, California

- 20 (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct.
- 21 (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction
22 the service was made. I declare under penalty of perjury under the laws of the United States of America
23 that the foregoing is true and correct.

24 
25 Morgan H. Piercy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Terri Herron, Esq. LAW OFFICE OF TERRI HERRON, LLC 470 E. Paces Ferry Rd. NE Atlanta, Georgia 30305	AFRICAN SHIPPING 114 Whitefield Way Woodstock, Georgia 30188
Njoroge Muhia 2260 Robinson Road Marietta, Georgia 30068	Brenda Alexander ALCO LOGISTICS, LLC 4799 Aviation Parkway, Suite I Atlanta, Georgia 30349
The Honorable Erin M. Wirth 800 North Capitol Street NW Washington, D.C. 20573	