

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 12-09**

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**CENTURY METAL RECYCLING PVT. LTD**

**v.**

**DACON LOGISTICS, LLC d/b/a CODA FORWARDING; GREAT AMERICAN ALLIANCE INSURANCE COMPANY; AVALON RISK MANAGEMENT; HAPAG-LLOYD AMERICA, INC.; and MITSUI OSK LINES**

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**ORDER FOR COMPLAINANT TO SUPPLEMENT MOTION FOR DEFAULT;  
ORDER FOR RESPONDENT DACON TO RESPOND AND TO SHOW CAUSE**

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**BACKGROUND**

On October 19, 2012, complainant Century Metal Recycling Pvt. Ltd. (Century Metal) commenced this proceeding by filing a Complaint alleging that respondents Dacon Logistics, LLC d/b/a CODA Forwarding (Dacon), Great American Alliance Insurance Company (Great American), Avalon Risk Management (Avalon), Hapag-Lloyd America, Inc. (Hapag-Lloyd), and Mitsui OSK Lines (Mitsui) violated the Shipping Act of 1984. The Complaint alleges that Century Metal paid Dacon, a non-vessel-operating common carrier licensed by the Commission (License No. 021544) \$60,500.00 to transport thirty containers of aluminum and zinc to India. Dacon then engaged Hapag-Lloyd to transport one shipment of ten containers and Mitsui to transport three shipments of ten, seven, and three containers. Hapag-Lloyd and Mitsui refused to release the containers to Century Metal in India because Dacon allegedly did not pay Hapag-Lloyd and Mitsui. Century Metal contacted Dacon at least twice and Dacon promised it would tend to the problem. As of the date of the filing of the Complaint, however, the containers had not been released and Century Metal was incurring “approximately \$3,000-\$4000.00 per day in detention fees.” (Complaint ¶¶ IV.H and IV.L.)

Century Metal contends that Dacon’s failure to pay the Hapag-Lloyd and Mitsui charges violates section 10(d)(1) of the Act: “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, storing, or delivering property.” 46 U.S.C. § 41102(c). As a result of Dacon’s violations:

Century Metal has sustained and continues to sustain injuries and damages, including but not limited to daily detention fees in the amount of approximately \$3,000-\$4000.00 per day, economic considerations, lost business, foregone business and other damages amounting to a sum of over one million dollars to be determined more precisely at hearing.

(Complaint ¶ VI.A.) Century seeks the following relief:

(a) An Order compelling Dacon to make payment in the amounts owed to Hapag-Lloyd and Mitsui to facilitate the release of Century Metal’s containers;

(b) An Order compelling Dacon to pay the injured Century Metal by way of reparations in the amount of actual injury to be determined at hearing, including the amounts paid to suppliers and compensatory damages, including interest paid to bankers on such payments;

(c) An Order requiring Dacon to compensate Century Metal for its attorneys’ fees and expenses incurred in this matter;

(d) An order requiring the release of the bond posted by Dacon with this Commission in favor of Century Metal.

(Complaint ¶ VII.)

The Secretary served the Complaint on October 25, 2012. All Respondents except Dacon responded to the Complaint, settled the claims against them, and were dismissed from the proceeding. *Century Metal Recycling Pvt. Ltd v. Dacon Logistics, LLC d/b/a Coda Forwarding; Great American Alliance Insurance Company; Avalon Risk Management; Hapag-Lloyd America, Inc.; and Mitsui OSK Lines*, FMC No. 12-09 (ALJ Dec. 11, 2012) (Order Granting Request to Dismiss Complaint Against Hapag-Lloyd America, Inc.), Notice Not to Review (FMC Jan. 11, 2013); *Century Metal v. Dacon Logistics, LLC*, FMC No. 12-09 (FMC Jan. 10, 2012) (Notice of Voluntary Dismissal of Complaint against Great American Alliance Insurance Company and Avalon Risk Management); *Century Metal v. Dacon Logistics, LLC*, FMC No. 12-09 (ALJ Apr. 4, 2013) (Order Granting Request to Dismiss Complaint Against Mitsui OSK Lines).

Dacon did not answer or otherwise respond to the Complaint. On December 21, 2012, Century Metal filed a motion for initial decision on default against Dacon, contending that by not responding to the Complaint, “Dacon has waived its right to appear and contest the allegations of the Complaint and [has] authorized the presiding officer to enter an initial order on default.” (Motion for Initial Decision on Default at 1-2.) Dacon did not respond to the motion. The motion for initial decision on default was denied without prejudice for three reasons, including: “Century

Metal has resolved its dispute with Great American, Avalon, and Hapag-Lloyd and may have resolved its dispute with Mitsui. If Century Metal received any compensation for its damages in those settlements, despite the default, Dacon may be entitled to a setoff on Century Metal's claims." *Century Metal v. Dacon Logistics, LLC*, FMC No. 12-09, Order at 4 (ALJ Feb. 11, 2013) (Order Denying without Prejudice Complainant's Motion for Initial Decision on Default as to Dacon Logistics, LLC).

**ORDER FOR COMPLAINANT TO SUPPLEMENT SECOND MOTION FOR INITIAL DECISION ON DEFAULT AS TO DACON LOGISTICS, LLC**

On April 12, 2013, Century Metal served its second Complainant's Motion for Initial Decision on Default as to Dacon Logistics, LLC (Second Motion for Default). Century Metal addressed the reasons stated for denying without prejudice the first motion and attached a number of documents it contends support its claim for a reparation award. Century Metal states:

[T]he Commission's Order questioned whether Century Metal had been partially compensated for its harm in its settlement with Hapag-Lloyd and Mitsui. As noted in the Affidavit offered up as Exhibit A, Century Metal was not compensated in any part by Hapag-Lloyd or Mitsui in the settlements. As the Bills of Lading and invoices evidence, Century Metal paid the full [detention] fees and ground rent charges it claims as actual damages in order to release the containers.

(Second Motion for Default at last page.)

Although the Exhibit A affidavit sets forth the amount Century Metal contends it paid for release of the containers, it does not state that "Century Metal was not compensated in any part by Hapag-Lloyd or Mitsui in the settlements." Furthermore, it does not state whether Century Metal received any compensation in its settlements with Great American or Avalon.

In consideration of the foregoing, it is hereby

**ORDERED** that on or before April 24, 2013, Complainant file an affidavit or declaration stating whether it received any monetary compensation in its settlements with Great American, Avalon, Hapag-Lloyd, and/or Mitsui, and if it did, how much it received.

**NOTICE OF DEFAULT AND ORDER FOR RESPONDENT DACON LOGISTICS, LLC TO SHOW CAUSE**

I take official notice, 46 C.F.R. § 502.226, of Commission records establishing the following facts. On October 25, 2013, the Secretary served the Complaint on Dacon by UPS. UPS records obtained by the Secretary indicate that UPS delivered the package on November 8, 2012 at 9:37 A.M. and that "Rose" signed for it.

On April 12, 2013, Century Metal served its second Complainant's Motion for Initial Decision on Default as to Dacon Logistics, LLC (Second Motion for Default). Dacon still has not answered or otherwise responded to the Complaint.

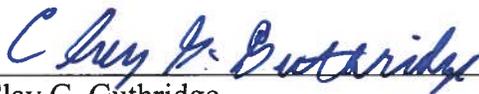
Dacon is currently in default. There may be some valid reason why Dacon has failed to respond to the Complaint. Therefore, it will be granted additional time to respond to the Complaint, to respond to Century Metal's second motion for initial decision on default, and to show cause why judgment should not be entered against it. If Dacon fails to respond to this Order by April 29, 2013, an initial decision on default may be entered against it. It is noted that Century Metal seeks a reparation award in the amount of \$329,423.71 plus interest, attorney's fees, and other damages as appropriate.

For the reasons stated above, it is hereby

**ORDERED** that on or before April 29, 2013, respondent Dacon Logistics, LLC d/b/a CODA Forwarding answer or otherwise respond to the Verified Complaint. It is

**FURTHER ORDERED** that on or before April 29, 2012, respondent Dacon Logistics, LLC d/b/a CODA Forwarding respond to Complainant's Motion for Initial Decision on Default as to Dacon Logistics, LLC filed April 12, 2013. It is

**FURTHER ORDERED** that on or before April 29, 2012, respondent Dacon Logistics, LLC d/b/a CODA Forwarding show cause why an initial decision on default should not be entered against it.

  
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Clay G. Guthridge  
Administrative Law Judge