

BEFORE THE
FEDERAL MARITIME COMMISSION

Docket No. 13-04

STREAK PRODUCTS, INC.,
COMPLAINANT,

v.

UTi UNITED STATES, INC.,
RESPONDENT.

**COMPLAINANT'S REPLY BRIEF IN SUPPORT OF
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

UTi opposes the Motion to File an Amended Complaint based upon the premise that it may be able to avoid liability for its admittedly illegal actions on the grounds that Streak is not a party to the contracts of carriage under which the goods moved. UTi's contention is contrary to the plain language of its bills of lading, which identify the owner of the goods being moved (Streak), as a party to the contract. Further, because the claims asserted on behalf of SYX Distribution, Streak's affiliate and distribution agent, are identical to those asserted in the original Complaint, such claims relate back to the original Complaint. Finally, even if the assertion was true, which it is not, that some of SYX Distribution's claims are time-barred, that would not provide a legitimate basis for denying the Motion for Leave to Amend.

Streak is a Party to the Transportation Services Contracts at Issue

The obvious motivation for UTi's Opposition to the Motion for Leave to Amend is the hope that by arguing that Streak is not a party to the transportation services at issue, and that some claims by SYX Distribution are time-barred, it can avoid liability for its admittedly illegal conduct. This

hope is misplaced.

The plain language of the Terms and Conditions of UTi's bills of lading,¹ under which the goods at issue moved, expansively define the parties to the contract. The bill of lading defines the term "Merchant" as including the "shipper, the consignee, the receiver, the holder of this Bill of Lading, the owner of the Goods or person entitled to the possession of the Goods and the servants or agents of any of these." See Exhibit A at ¶ 2(c), page 1. Carriers intentionally draft the term Merchant in their bill of lading broadly to spread the net of whom they can sue for breach of contract as widely as possible. See, e.g., *Lite-On Peripherals, Inc. v. Burlington Air, Express Inc.*, 255 F.3d 1189, 1194 (9th Cir. 2001). Not surprisingly, having done so, courts recognize that anyone falling within that definition can also pursue a claim against the carrier. *Id.* at 1194. "Burlington cannot see to include a broad range of parties within the contract's definition of 'merchant,' and then claim that one of those parties has no standing so to enforce" its terms. See also, *One Beacon Ins. Co. v. Haas Ind., Inc.*, 634 F.3d 1092, 1098-99 (9th Cir. 2011) (carrier cannot include a broad range of parties within bill of lading's definition of merchant and then claim that one of those parties lacks standing enforce bill of lading).

Here, the parties with whom UTi contracted include not only SYX Distribution but also Streak, the owner of the goods at issue. Thus, SYX Distribution, as the shipper, and Streak, as the owner of the goods, are both parties to the same contracts under which suit here was originally brought and both may pursue claims for Shipping Act violations against UTi.

¹ The Terms and Conditions of UTi's bills of lading are attached as Exhibit A.

The Amended Complaint Relates Back to the Original Complaint

UTi's contention that the Amended Complaint would not relate back to the date of the Original Complaint because there is insufficient identity of interest between Streak and SYX Distribution and their claims for the Amended Complaint to relate back is baseless. As reflected in the Memorandum in Support of the Motion for Leave to File an Amended Complaint, Streak seeks Permission to file the Amended Complaint in order to add its affiliate, SYX Distribution, which acted as its distribution agent and helped coordinate the shipments at issue. UTi relies upon the First Circuit's holding in *Allied Int'l Inc. v. Int'l Longshoremen Ass'n*, 814 F.2d 32, 35-36 (1st Cir. 1987) as authority for the proposition that the standards for relation back are stringent. In fact, however, the court there admitted a new plaintiff to be added and held that the claim related back because the amended complaint arose out of the same conduct, transaction or occurrence reflected in the original complaint, and because there was sufficient identity of interest between the plaintiffs that the defendant had fair notice of the new plaintiff's claim against them and thus, suffered no undue prejudice. *Id.* at 36. "We are in full agreement with the district court that the defendant was on clear notice of all of the actual claims from the inception of the suit." *Id.* at 36.

UTi's reliance upon *Immigration Assistance Project of Los Angeles County Federation of Labor v. INS*, 306 F.3d 842, 858 (9th Cir. 2001), as authority for denying relation back is equally misplaced. There the Ninth Circuit held that the claims related back because the original complaint gave the defendant notice of the claims being asserted, the defendant would not be unduly prejudiced by the amendment and there was an identity of interest between the original and new plaintiff. *Id.* at 857. In terms of identity of interest, the court held that all that was required to satisfy the standard under Rule 15(c) is that the parties are "similarly situated," *i.e.*, "the circumstances giving rise to the

claim remained the same under the amended complaint as under the original complaint.” *Id.* at 858, citing, *Raynor Brothers v. American Cyanamid Co.*, 695 F.2d 382, 384 (9th Cir. 1982).

UTi’s argument that courts should take a narrow view of a plaintiff’s right to amend its complaint to add a new plaintiff is contrary to the express goal of Fed. R. Civ. P. 15. As *Wright and Miller* recognizes, the problem of relation back generally is easier to resolve in the context of adding a plaintiff than when a court is presented with a change in defendants. See 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure §1501 at p. 154 (2d ed. 1990). “Thus, as long as defendant is fully apprised of a claim arising from a specified conduct and has prepared to defend that action, his ability to protect himself will not be prejudicially affected if a new plaintiff is added, and he should not be permitted to invoke a limitations defense. This seems particularly sound inasmuch as the court will require the scope of the amended pleading to stay within the ambit of the conduct, transaction, or occurrence set forth in the original pleading.” *Id.* at pp. 154-155.

Wright and Miller further recognizes that such an approach is consistent with the Advisory Committee Notes to the 1966 amendments to Rule 15(c) reflecting “the liberal attitude toward substitution of the real party in interest prescribed by both Rule 17(a) and Rule 15(c) . . . “ *Id.* at pp. 157-159; see also, 3 James Wm. Moore et al., Moore’s Federal Practice § 15.19[3][a] at pp. 15-102, 15-102.1 (3d ed. 1997) (“the purpose of Rule 15(c) is to provide the opportunity for a claim to be tried on its merits, rather than being dismissed on procedural technicalities when the policy behind the statute of limitations has been addressed.”); *Krupski v. Costa Crociere, SpA*, 130 S.Ct. 2485 (2010) (purpose of relation back is “to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule

15 in particular, for resolving disputes on the merits”); *Goodman v. Praxair, Inc.* 494 F.3d 458, 468 (4th Cir. 2007) (“Rule 15(c) must be understood to be freely merit amendment of pleadings and their relation—back as long as the policies of statute of limitations have been effectively served.”).

Not surprisingly, in light of the goals reflected in the Federal Rules of having cases decided on the merits, rather than on technicalities, courts have held that claims relate back when the added plaintiff is essentially asserting the same claim and the defendant is not prejudiced as a result of that addition. *See, e.g., Immigration Assistance Project of Los Angeles County Federation of Labor v. INS*, 306 F.3d 842, 858 (permitting replacement of original plaintiff with new plaintiffs because they are “similarly situated” and thus satisfy the identity of interest requirements of Rule 15(c); *Staren v. Am. Nat’l Bank & Trust Co.*, 529 F.2d 1257, 1263 (7th Cir. 1976) (substitution of parties after the applicable statute of limitation may have run is not significant when the change “in no way alters the known facts and issues on which the action is based”) *Hernandez Jiminez v. Calero Toledo*, 604 F.2d 99, 103 (1st Cir. 1979) (sufficient identity of interest when original and added plaintiff are parent corporation and affiliate); *Raynor Brothers v. Am. Cyanimid Co.*, 695 F.2d 382, 384 (9th Cir. 1982) (finding identity of interest requirement of Rule 15(c) met because “the circumstances giving rise to the claim remained the same under the amended complaint as under the original complaint”). *Brauer v. Republic Steel Corp.*, 460 F.2d 801, 804 (10th Cir. 1972) (permitting other plaintiffs who owned adjacent oil leases to be added as co-plaintiffs because “issues presented by the original complaint and by amended complaint arose out of the same transaction or occurrence and there was no showing that the defendant was prejudiced by the relation back”).

Here UTi would in no way be prejudiced by having the Amended Complaint relate back to the time of the filing of the original Complaint. Indeed, the Amended Complaint asserts claims based

upon the identical shipments referenced in the original Complaint. Further, even prior to the time when the original Complaint suit was filed, UTi had already been provided charts identifying specific shipments at issue, which documents identified SYX Distribution as a party to those shipments. Any suggestion that UTi was not fully aware that it was providing services for SYX Distribution on behalf of Streak is belied by the fact that it has already produced in discovery over 500 pages of invoices, with each of its invoices bearing the legend “by order and on account of STREAK PRODUCTS.”

The invoices also identify Systemax Distribution Inc. as the “ship to” party on behalf of Streak Products. Under these circumstances there can be no legitimate dispute that the Amended Complaint asserts a claim arising out of the same conduct, transaction, or occurrence set out in the original complaint, and that UTi was fully aware that a claim was being asserted based upon the shipments at issue. Accordingly, because UTi was fully apprised of a claim arising from specified conduct, its ability to defend its actions will not be prejudiced by the addition of SYX Distribution as a co-plaintiff.

The Amended Complaint is Not Futile

As Your Honor recognized in the October 23, 2013, Order Denying UTi’s Motion to Dismiss, a statute of limitations defense is an affirmative defense upon which UTi bears the burden of proof. Order at 12. Further, even assuming the statute of limitations barred some of the claims asserted by SYX Distribution and Streak, UTi “would be hard-pressed to establish that claims” arising within three years of the filing of the Complaint are time-barred. *Id.* Here, the original Complaint and the Amended Complaint assert claims relating to shipments through 2011. *See* Verified Amended Complaint at ¶ IV(E). Thus, on its face UTi’s Opposition lacks any articulable basis.

Respectfully submitted,



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Streak Products, Inc.

DATE: January 3, 2014

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was delivered to the following addressees at the addresses stated by depositing same in the United State mail, first class postage prepaid, and/or by electronic transmission, this 3rd day of January 2014

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EXHIBIT A

UTI

Org. # 017576		Rules Tariff
Tariff Number: 1	Tariff Name: Import Tariff	
Rule Number: 8	Rule Name: BILL(S) OF LADING	
Amendment Number:	Sub Rule:	
Filed Date: 01/02/00	Effective: 01/02/00	Expires:

Notes

1. (a) Except as otherwise provided herein, this Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States of America, approved April 16, 1936, which shall not be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. The provisions stated in said Act (except as otherwise specifically provided herein) shall govern before loading on and after discharge from the vessel and throughout the entire time the Goods are in the custody of the Carrier. If this Bill of Lading is issued or delivered in a locality where there is in force a compulsorily applicable Carriage of Goods by Sea Act, Ordinance or Statute of a nature similar to the International Convention for the Unification of Certain Rules Relating to Bills of Lading dated at Brussels, August 25, 1924, it shall be subject to the provisions of said Act, Ordinance or Statute and rules thereto annexed. (b) The Carrier shall be entitled to the full benefit of, and right to, all limitations of or exceptions from, liability authorized by any provisions of Sections 4281 to 4288, inclusive, of the Revised Statutes of the United States and amendments thereto and of any other provisions of the laws of the United States or of any other country whose laws shall apply.

2. In this Bill of Lading: (a) "Carrier" means and includes Carrier named on the face side hereof, the vessel, her owner, Master, operator, demise character, and if bound hereby, the time charterer, and any substitute Carrier whether the owner, operator, charterer or Master shall be acting as carrier or bailee. (b) "Vessel" means and includes the ocean vessel on which the Goods are shipped, named on the face hereof, or any substitute vessel, also any feeder ship, ferry, barge, lighter or any other watercraft used by the Carrier in the performance of this contract. (c) "Merchant" means and includes the shipper, the consignee, the receiver, the holder of this Bill of Lading, the owner of the Goods or person entitled to the possession of the Goods and the servants or agents of any of these. (d) "Charges" means and includes freight and all expenses and money obligations incurred and payable by the Merchant. (e) "Goods" means and includes the cargo received from the shipper and described on the face side hereof and any Container not supplied by or on behalf of the Carrier. (f) "Container" means and includes any container, van, trailer, transportable tank, flat, pallet or any similar article of transport. (g) "Person" means and includes an individual, corporation, partnership or other entity as the case may be. (h) "Participating Carrier" means and shall include any other water, land or air carrier performing any stage of the Combined Transport.

3. It is understood and agreed that other than the said Carrier, no person whatsoever (including the Master, officers and crew of the vessel, all servants, agents, employees, representatives, and all stevedores, terminal operators, crane operators, watchmen, carpenters, ship cleaners, surveyors and other independent contractors whatsoever) is or shall be deemed to be liable with respect to the goods as carrier, bailee or otherwise howsoever, in contract or in tort. If, however, it should be adjudged that any other than said carrier is under any responsibility with respect to the Goods, all limitations of and exonerations from liability provided by law or by the terms hereof shall be available to such other persons as herein described. In contracting for the foregoing exemptions, limitations and exonerations from liability, the Carrier is acting as agent and trustee for and on behalf of all persons described above, all of whom shall to this extent be deemed to be a party to this contract evidenced by this Bill of Lading, it being always understood that the said beneficiaries are not entitled to any greater or further exemptions, limitations or exonerations from liability, than those that the Carrier has under this Bill of Lading in any given situation.

4. Subject to all rights, privileges and limitations of and exonerations from liability granted to the ocean carrier under this Bill of Lading or by law, any liability by the respective participating carriers for loss or damage to the Goods or packages carried hereunder shall be governed by the following: (a) If loss or damage occurs while the goods or packages are in the custody of the ocean carrier, only the ocean carrier shall be responsible therefore, and any liability of the ocean carrier shall be determined by the terms and conditions of this Bill of Lading and any law compulsorily applicable. (b) If loss or damage occurs while the Goods or packages are in the custody of a participating domestic or foreign Carrier, only the participating domestic or foreign Carrier(s) shall be responsible therefore, and any liability of such participating domestic or foreign Carrier(s) shall be determined, in respective order, by the terms, conditions and provisions of the applicable participating domestic or foreign Carrier's Bill(s) of Lading, whether issued or not, tariff(s) and law compulsorily applicable in the circumstances. (c) Notwithstanding subdivision (a) and (b) hereof, it is contemplated that the Goods or packages will from time to time be carried in through transportation that will include inland transportation within the United States by Railroad and sea carriage by one or more of the other Carriers above defined (When used on or endorsed on this Bill of Lading the words "on board" shall mean and include on board the original carrying vessel when the Goods or packages are being transported from the continental United States to a foreign port or place "on board" shall mean and include on board a rail car operated by the originating carrier and enroute by rail to the port of loading for loading on board the Carrier's or participating Carrier's vessel). (d) If loss or damage occurs after receipt of the Goods or packages hereunder, and it cannot be determined from the records of the ocean Carrier or participating domestic or foreign Carrier(s) whether such damage or loss occurred during ocean, domestic or foreign carriage, it shall be conclusively presumed that the loss or damage occurred on board the vessel and while the Goods or packages were in the custody of the ocean Carrier. (e) At all times when the Goods or packages are in the custody of the above-mentioned participating domestic or foreign Carriers, such Carriers shall be entitled to all the rights, defenses, exceptions from or limitations of liability and immunities of whatsoever nature referred to or incorporated herein applicable or granted to the Carrier as herein defined, to the full extent permitted to such domestic and foreign Carriers under this Bill(s) of Lading, tariffs and any other laws applicable or relating thereto, provided however, that nothing contained in this Bill of Lading shall be deemed a surrender by these domestic or foreign Carriers of any of their rights and immunities or an increase of any of their limitations of and exonerations from liability under their said Bill(s) of Lading, tariffs or laws applicable or relating to said carriage. (f) In making any arrangements for transportation by participating domestic or foreign Carriers of the Goods or packages carried hereunder, either before or after ocean carriage, it is understood and agreed that the ocean Carrier acts solely as agent of the Merchant, without any other responsibility whatsoever, and it assumes no responsibility as Carrier for such domestic or foreign transportation. (g) Notice of loss or damage and claim against the ocean Carrier, where applicable, shall be given to the ocean Carrier, and suit commenced as provided for in Clauses 30 and 31 hereof. Notice of loss or damage against the participating domestic or foreign Carrier(s), where applicable, shall be filed with the participating domestic or foreign Carrier(s) and suit commenced as provided for in the terms, conditions and provisions of said Carrier(s) Bill(s) of Lading or by law applicable thereto. It is understood by the Merchant that such terms, conditions and provisions, as they pertain to notice of, and claim for, loss or damage and commencement of suit, contain different requirements than

those requirements pertaining to ocean Carriage as contained in Clauses 30 and 31 hereof. 5. The goods carried hereunder are subject to all the terms and provisions of the Carrier's applicable Tariff or Tariffs on file with the Federal Maritime Commission, Interstate Commerce Commission or any other regulatory body which governs a particular portion of this carriage, and the terms and provisions of the said Tariff or Tariffs are hereby incorporated herein as part of the Terms and Conditions of this Bill of Lading. Copies of the relevant provisions of the applicable Tariff or Tariffs are obtainable from the Carrier, Federal Maritime Commission, Interstate Commerce Commission or other regulatory body upon request. In the event of any conflict between the terms and provisions of such Tariff or Tariffs and the Terms and Conditions of this Bill of Lading, this Bill of Lading shall prevail. 6. The Merchant warrants that in agreeing to the Terms and Conditions hereof, he is, or has authority of, the person owning and entitled to the possession of the Goods and this Bill of Lading. 7. (a) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by the Carrier in relation to the Goods. (b) As to through transportation, the Carrier undertakes to procure such services as necessary and shall have the right at its sole discretion to select any mode of land, sea or air transport and to arrange participation by other Carriers to accomplish the combined transport from place of receipt to place of delivery. Whenever any stage of the combined transport is accomplished by any land or air Carrier or any other water Carrier, each such stage shall be controlled according to any law compulsorily applicable to such stage and according to the contracts, rules and tariffs of each participating Carrier, the same as if such contracts, rules and tariffs were fully set forth herein. 8. The Carrier shall be entitled but under no obligation to open any Container at anytime and to inspect the contents unless applicable law prohibits same. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried or carried further, either at all or without incurring any additional expense or taking any measures in relation to the Container or its contents or any part thereof, the Carrier may abandon the transportation thereof and/or take any measures and/or incur any reasonable additional expense to carry or to continue the carriage or to store the same ashore or afloat under cover or in the open, at any place, which storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any unreasonable additional expense so incurred. 9. Carrier may containerize any Goods or packages. Containers may be stowed on deck or under deck and when so stowed shall be deemed for all purposes to be stowed under deck, including for General Average and U.S. Carriage of Goods by Sea Act, 1936 and similar legislation. 10. Deck cargo (except goods carried in containers on deck) and live animals are received and carried solely at Merchant's risk (including accident or mortality of animals), and the Carrier shall not in any event be liable for any loss or damage thereto arising or resulting from any matters mentioned in Section 4, Sub-Section 2(a) to (p), inclusive, of the United States Carriage of Goods by Sea Act, or from any other cause whatsoever not due to the fault of the Carrier, any warranty of seaworthiness in the premises being hereby waived, and the burden of proving liability being in all respects upon the Merchant. Except as provided above, such shipments shall be deemed Goods and shall be subject to all terms and provisions of this Bill of Lading relating to Goods. 11. Special containers with heating or refrigeration units will not be furnished unless contracted for expressly in writing at time of booking and, when furnished, may entail an increased freight rate or charge. Shipper shall advise Carrier of desired temperature range when delivering Goods to Carrier, and Carrier shall exercise due diligence to maintain the temperature within a reasonable range while the containers are in its custody or control. The Carrier does not, however, accept any responsibility for the functioning of heated or refrigerated containers not owned or leased by Carrier. 12. The scope of the voyage herein contracted for shall include usual or customary or advertised ports of call whether named in this contract or not, also ports in or out of the advertised, geographical or usual route or order, even though in proceeding thereto the vessel may sail beyond the port of discharge named herein or in a direction contrary thereto, or return to the original port, or depart from the direct or customary route and includes all canals, straits, and other waters. The vessel may call at any port for the purpose of the current, prior or subsequent voyages. The vessel may omit calling at any port whether scheduled or not, and may call at the same port more than once, may discharge the goods during the first or subsequent call at the port of discharge, may for matters occurring before or after loading, and either with or without the goods on board, and before or after proceeding towards the port of discharge, adjust compasses, drydock with or without cargo on board, stop for repairs, shift berths, make trial trips or tests, take fuel or stores, remain in port, lie on bottom, aground or at anchor, sail with or without pilots, tow and be towed, and save or attempt to save life or property, and all of the foregoing are included in the contract voyage. The vessel may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and sail armed or unarmed, and with or without convoy. The Carrier's sailing schedules are subject to change without notice, both as to the sailing date and date of arrival. If this is a Through Bill of Lading, no Carrier is bound to transport the shipment by any particular train, truck, aircraft, vessel or other means of conveyance, or in time for any particular market or otherwise. No Carrier shall be liable for delay and any Carrier shall have the right to forward the goods by substitute Carrier. 13. If at any time the performance of the contract evidenced by this Bill of Lading is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind which cannot be avoided by the exercise of reasonable endeavours, the Carrier (whether or not the transport is commenced) may without notice to the Merchant treat the performance of this contract as terminated and place the Goods or any parts of them at the Merchant's disposal at any place or port which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full freight and charges on Goods received for transportation and the Merchant shall pay any additional costs of carriage to and delivery and storage at such place or port. 14. If the Carrier makes a special agreement, whether by stamp hereon or otherwise, to deliver the Goods at a specified dock or place, it is mutually agreed that such agreement shall be construed to mean that the Carrier is to make such delivery only if, in the sole judgment of the Carrier, the vessel can get to, lie at, and leave said dock or place, always safely afloat, and only if such dock or place is available for immediate receipt of the Goods and that otherwise the Goods shall be discharged as otherwise provided in this Bill of Lading, whereupon all responsibility of Carrier shall cease. 15. The port authorities are hereby authorized to grant a general order for discharging immediately upon arrival of the vessel and the Carrier, without giving notice either of arrival or discharge, may, immediately upon arrival of the vessel at the designated destination, discharge the goods continuously, Sundays and Holidays included at all such hours by day or by night as the Carrier may determine no matter what the state of the weather or custom of the port may be. The Carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharge or any part of the time that the Goods are upon the wharf, craft or other loading or discharging place. Landing and delivery charges and pier dues shall be at the expense of the Goods unless included in the freight herein provided for. If the Goods are not taken away by the consignee by the expiration of the next working day after the Goods are at his disposal, the Goods may, at Carrier's option and subject to Carrier's lien, be sent to store or warehouse or be permitted to lie where landed, but always at the expense and risk of the Goods. The responsibilities of the Carrier in any capacity shall altogether cease and the Goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of Customs or other Authorities, or into that of any municipal or governmental concessionaire or depository. The Carrier shall not be required to give any notification of disposition of the Goods, except as may be otherwise provided in this Bill of Lading. 16. At ports or places where, by local law, authorities, or custom, the Carrier is required to discharge cargo to lighters or other craft, or where it has been so agreed, or where wharves are not available which the ship can get to, lie at, or leave, always safely afloat, or where conditions prevailing at the time render discharge at a wharf dangerous, imprudent, or likely to delay the vessel, the Merchant, shall promptly furnish lighters or other craft to take

delivery alongside the ship, at the risk and expense of the Goods. If the Merchant, fails to provide such lighters or other craft, Carrier, acting solely as agent for the Merchant, may engage such lighters or other craft at the risk and expense of the Goods. Discharge of the Goods into such lighters or other craft shall constitute proper delivery and any further responsibility of Carrier with respect to the Goods shall thereupon terminate.
