

S E R V E D  
November 25, 2014  
FEDERAL MARITIME COMMISSION

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**DOCKET NO. 14-04**

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**EDAF ANTILLAS, INC.**

**v.**

**CROWLEY CARIBBEAN LOGISTICS, LLC;  
IFS INTERNATIONAL FORWARDING, S.L.; and  
IFS NEUTRAL MARITIME SERVICES**

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**ORDER ON CROWLEY CARIBBEAN LOGISTICS, LLC'S  
MOTION FOR RECONSIDERATION AND MOTION FOR STAY**

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On November 6, 2014, I entered an order granting in part and denying in part two motions to dismiss: One filed by respondents IFS International Forwarding, S.L. (IFS) and IFS Neutral Maritime Service (Neutral) and one filed by respondent Crowley Caribbean Logistics, LLC (CCL). *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (ALJ Nov. 6, 2014) (Order on Motions to Dismiss). CCL asks for reconsideration of the portion of the Order denying the motion to dismiss the section 10(d)(1) claims against it regarding transportation of complainant Edaf Antillas, Inc.'s shipment between St. Martin and San Juan.<sup>1</sup> Familiarity with that Order and its underlying facts is assumed for this Order.

Section 10(d)(1) of the Shipping Act 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, storing, or delivering property." 46 U.S.C. § 41102(c). The Act defines common carrier.

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<sup>1</sup> The Order dismissed the section 10(d)(1) claims against CCL for the transportation from Spain to Puerto Rico. *Edaf Antillas v. Crowley Caribbean Logistics*, FMC No. 14-04, Order at 19 (ALJ Nov. 6, 2014) (Order on Motions to Dismiss).

The term “common carrier”– (A) means a person that – (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation; (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 U.S.C. § 40102(6).

In its motion to dismiss, CCL argued:

CCL does not meet either of the two criteria set out in the definition of a common carrier. Most obviously, CCL did not take responsibility for the transportation from origin to destination. CCL had nothing to do with the cargo at origin, or indeed until after the cargo was unloaded in Puerto Rico. Complainant itself avers that the cargo was delivered for shipment not to CCL, but to IFS. And it was IFS, not CCL, that issued the bill of lading to Complainant’s shipper. Thus, CCL was not a “common carrier” with respect to the transaction at bar. *See [Landstar Express America, Inc. v. FMC, 569 F.3d 493, 497 (D.C. Cir. 2009)] (“[a]n agent of a disclosed principal . . . does not ordinarily assume responsibility for the transportation of the cargo as the principal bears the burden of liability”)*.

(CCL Mot. Dism. at 6 (footnotes omitted).) *See also Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services, FMC No. 14-04, Order at 17-18 (ALJ Nov. 6, 2014) (Order on Motions to Dismiss) (setting forth CCL’s argument on the motion to dismiss in greater detail).*

The Order denied CCL’s motion to dismiss the section 10(d)(1) claim against it for the transportation of container DVRU0610860 after Customs and Border Protection barred its entry.

CCL issued a bill of lading assuming responsibility for transporting Editorial Edaf’s shipment in container DVRU0610860 for its return from St. Martin to San Juan, identifying Editorial Edaf as the shipper, Edaf Antillas as the consignee, St. Martin as the port of loading, and San Juan as the point of discharge. (Complaint Exh. 14.) Therefore, CCL operated as a common carrier on the shipment. It is not clear whether CCL was involved at all in the dispute about payment for transportation that allegedly delayed the shipment from San Juan to St. Martin and its return, or whether its transportation role commenced after that dispute had been resolved. Nevertheless, the allegations in the Complaint are detailed and informative enough to enable CCL to respond. [*Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, 32 S.R.R. 126, 136 (FMC 2011).] Discovery may clarify CCL’s role. Accordingly, the motion to dismiss this claim against CCL is denied.

*Id.* at 20.

On November 21, 2014, CCL filed a motion for reconsideration of this decision. CCL first contends that Edaf Antillas never made the argument that CCL acted as a common carrier for the movements between San Juan and St. Martin. (CCL Motion for Reconsideration at 3.)<sup>2</sup> The Complaint alleges that CCL operates as a non-vessel-operating common carrier. (Complaint ¶ 5.) The Complaint alleges that CCL was involved in the decision regarding how the problem with the container and its non-compliant cargo would be rectified. (Complaint Cause of Action ¶¶ I-W.) The Complaint alleges that “CCL, IFS and Neutral violated section 10(d)(1) . . . by not having reasonable regulations or practices regarding how expenses incurred in the reexportation and reimportation of non-compliant cargos would be resolved between these regulated parties.” (Complaint Causes of Action ¶ C.) As set forth in the November 6, 2014, Order, these allegations detailed and informative enough to enable CCL to respond. The motion for reconsideration of this holding is denied.

I take official notice of Commission records indicating that CCL is licensed by the Commission as a non-vessel-operating common carrier, license no. 023477. Federal Maritime Commission Ocean Transportation List, <http://www2.fmc.gov/oti/NVOCC.aspx>, last visited November 24, 2014. As a licensed NVOCC, it holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation. There is no dispute that container DVRU0610860 was transported by water between St. Martin, a foreign port, and San Juan, a United States port.

In its motion to dismiss, CCL claimed that it “did not take responsibility for the transportation from origin to destination.” (CCL Mot. Dism. at 6 (footnotes omitted).) CCL issued a CCL document with a bill of lading number marked “non-negotiable” identifying Editorial Edaf as the shipper, Edaf Antillas as the consignee, St. Martin as the port of loading, San Juan as the point of discharge, container DVRU0610860, and identifying 53 packages of books weighing 1,202.00 kg and measuring 2.640 CBM. (Complaint Exh. 14. *Compare* Complaint Exhibit 3 (IFS bill of lading with the same container, number of packages, weight, and measure).) Relying on Complaint Exhibit 14, the Order found that CCL issued a bill of lading assuming responsibility for transporting Editorial Edaf’s shipment in container DVRU0610860 from St. Martin to San Juan.

In its motion for reconsideration, CCL contends that:

Exhibit 14 to the Complaint, on which the Order relies in denying dismissal, is not an assumption of carrier responsibility, as the Order states, but merely a form of notice commonly used within the industry. Because of this material mistake of fact, and because the claim regarding Exhibit 14 was raised in the Order, and not asserted by Edaf, it must be reconsidered.

(CCL Motion for Reconsideration at 1.)

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<sup>2</sup> CCL did not number its pages. This quotation is from page 3.

Limiting consideration to the Complaint, documents attached to the Complaint as exhibits or incorporated in it by reference, matters of which judicial notice may be taken, and documents either in Edaf Antillas's possession or of which Edaf Antillas had knowledge and relied on in bringing suit, *Edaf Antillas v. Crowley Caribbean Logistics*, FMC No. 14-04, Order at 7-8 (ALJ Nov. 6, 2014) (Order on Motions to Dismiss), the Complaint states a claim that CCL violated section 10(d)(1).

CCL attached excerpts from interrogatory responses and a declaration of a CCL manager, documents not previously submitted, as purported proof of its contention that Complaint Exhibit 14 is not an assumption of carrier responsibility. Rule 12 provides: "If, on a motion under Rule 12(b)(6) . . ., matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). The excerpts from interrogatory responses and the declaration of the CCL manager attached to CCL motion for reconsideration are "matters outside the pleadings" and cannot be considered on a motion for reconsideration of a motion to dismiss just as they could not be considered on the motion to dismiss without treating the motion as one for summary decision. I do not find it appropriate to treat CCL's motion as one for summary decision at this point in the proceeding. Therefore, the interrogatory responses and declaration are excluded from consideration.

The motion for reconsideration of the order denying dismissal of the section 10(d)(1) claims against CCL for transportation between Puerto Rico and St. Martin is denied.

CCL also filed a motion to stay the November 6, 2014, Order during consideration of its motion for reconsideration. The motion to stay is dismissed as moot.

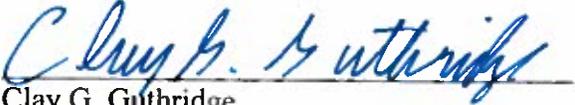
## O R D E R

Upon consideration of respondent Crowley Caribbean Logistics, LLC's Motion for Reconsideration of Order on Motions to Dismiss and the record herein, and for the reasons set forth above, it is hereby

**ORDERED** that the motion for reconsideration be **DENIED**.

Upon consideration of respondent Crowley Caribbean Logistics, LLC's Motion to Stay Order on Motion to Dismiss, it is hereby

**ORDERED** that the motion for stay be **DISMISSED** as moot.

  
Clay G. Guthridge  
Administrative Law Judge