

Federal Maritime Commission
Washington, D.C.

Edaf Antillas, Inc.,

Docket No. 14-04

Complainant

v.

**Crowley Caribbean Logistics, LLC,
IFS International Forwarding, S.L.
and IFS Neutral Maritime Services,**

Respondents.

**IFS INTERNATIONAL FORWARDING, S.L.'s AND IFS NEUTRAL
MARITIME SERVICE, INC.'S MOTION TO DISMISS THE COMPLAINT**

Respondents IFS International Forwarding, S.L. ("IFS") and IFS Neutral Maritime Service, Inc. ("Neutral") (collectively, "Respondents"), by and through their attorneys, Betancourt, Van Hemmen, Greco & Kenyon LLC, hereby moves the Federal Maritime Commission ("Commission") for an Order dismissing the Complaint of Edaf Antillas, Inc. ("Edaf" or "Complainant" herein) in toto as against IFS and Neutral.

POINT I

THE COMMISSION LACKS JURISDICTION OVER EDAF'S CLAIM

Edaf has attempted to couch this action under the Shipping Act of 1984, as amended (the "Act"). Edaf has alleged damages arising out of the alleged delayed delivery of its cargo of books from Spain to San Juan, Puerto Rico (the "Cargo"). However, the Commission lacks jurisdiction to hear claims for loss or damage stemming from the

delayed delivery of cargo. Accordingly, Edaf's claim must fail.

The Commission has long recognized its lack of jurisdiction over such delay, damage and loss claims. Pilgrim Furniture Co. v. American-Hawaiian S.S. Co., 2 U.S.M.C. 517 (Feb. 13, 1941). In Pilgrim Furniture, complainant sought to have furniture delivered from New York to Seattle in time for a particular exhibition, but the furniture was delayed in its delivery. The United States Maritime Commission found:

Defendant's bill of lading, which is part of its legally filed tariff, specifically provides that "the ship-owner shall not be required to deliver the goods at port of discharge at any particular time, or to meet any particular market or in time for any particular use." The furniture was finally delivered at Seattle in a damaged condition, but too late for the exhibitions.

An examination of the various acts from which we derive our jurisdiction fails to disclose that we have any authority to adjudicate loss and damage claims or to award damages because of a carrier's failure to follow instructions to ship on a particular voyage.

Id. at 518 (emphasis added). But cf. DSW Int'l, Inc. v. Commonwealth Shipping, Inc., FMC Docket No. 1898(F) (Mar. 29, 2011).

The Commission's decision in Pilgrim was followed in A.N. Deringer, Inc. v. Marlin Marine Servs., Inc., FMC Informal Docket No. 1652(I), 1990 WL 427469 (Nov. 14, 1990). In Deringer, complainant ocean freight forwarder, Deringer, sought recovery from respondent NVOCC, Marlin, for the loss of twelve cartons of complainant's cargo. The decision recognized that Deringer was seeking to avoid application of COGSA's one-year statute of limitations by couching its claim as a violation of the Shipping Act, and held that

it was “clear that C.O.G.S.A. was enacted to clarify the responsibilities as well as the rights and immunities of carrier and ship with respect to loss and damage claims. Consequently, the use of the [Act] to circumvent C.O.G.S.A. provisions would constitute a wholly unwarranted frustration of Congressional intent.” Id., at *5. Rejecting Deringer’s Shipping Act claim, the decision recognized that the Commission “has never asserted jurisdiction over damage and loss claims, and, in fact, its predecessor agency specifically, denied such jurisdiction as long ago as 1941. Nothing in the law, including the passage of the Shipping Act of 1984, has since cast doubt on that conclusion[.]” Id. See also Exportorient Ansari v. Am. President Lines, Ltd., FMC Informal Docket No. 1716(I) (Jun. 22, 1994) (recognizing in that case that “[t]he bill of lading states that claims for damages are governed by COGSA. Such matters do not fall within the 1984 Act, nor the Commission’s jurisdiction”). Loss and damage claims include those claims for loss or damage caused by delay. Commercio Transito Int’l v. Lykes Bros. S.S. Co., 243 F.2d 683, 686 (2d Cir. 1957) (“[w]e conclude that ‘loss or damage’ includes loss or damage caused by delay”).

The instant case, which allegations trace those contained in Pilgrim Furniture and A.N. Deringer, is an action seeking recovery for loss or damage stemming from an alleged delayed delivery, and therefore does not arise under the Shipping Act. Accordingly, Edaf’s claims must be dismissed for lack of jurisdiction.

POINT II

EDAF'S DELAYED DELIVERY CLAIM IS PROHIBITED BY THE BILL OF LADING

In the alternative, should the Commission find that it has subject matter jurisdiction over Edaf's claims, Neutral's bill of lading prohibits claims based on delayed delivery. If this action is not dismissed for lack of subject matter jurisdiction, the clear terms of the bill of lading prohibit the Commission from entertaining Edaf's claims in any event. It is axiomatic that "[a]n ocean carrier is not liable for delayed delivery of goods absent an agreement or awareness of the necessity of the arrival of a shipment by a specific date."¹ THOMAS J. SCHOENBAUM, *Admiralty and Maritime Law*, § 10-38, n.7 (4th ed. 2004). The Supreme Court has long recognized that carriers are entitled to rely upon the contractual defenses contained within their bills of lading, including those contractual defenses disclaiming liability for delay damages. See Leigh Ellis & Co. v. Davis, 260 U.S. 682 (1923). See also Maersk, Inc. v. Am. Midwest Commodities Export Co., 1999 A.M.C. 268, 275 n.6 (S.D.N.Y. 1998).

The bill of lading under which Edaf's Cargo was shipped contains a provision expressly prohibiting Edaf from asserting any claim for damages due to delay:

Save as otherwise provided herein, the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay or any other cause whatsoever and howsoever caused. Without prejudice to the fore-going, if the Carrier is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the transport.

Complaint at Exhibit 3.¹ Provisions such as this one, have long been held valid and recognized by the federal courts as sufficient to release carriers from liability for damages due to delay. Accordingly, Respondents are entitled to rely on their contractual defense, and therefore may not be held liable for any potential damages suffered by Edaf due to the delay alleged in this matter. Edaf's Complaint should therefore be dismissed.

POINT III

EDAF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

In the alternative, Edaf's Complaint must fail as Edaf has failed to state a claim upon which relief can be granted. Rule 12 of the Commission's Rules of Practice and Procedure ("Rules") provides that the Federal Rules of Civil Procedure ("Federal Rules") are to be followed in the event that a situation is not covered by a specific Rule. 46 C.F.R. § 502.12. The Rules do not address motions to dismiss for failure to state a claim, so Federal Rule 12(b)(6) applies. Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc., FMC Docket No. 09-01 (Aug. 1, 2011). Federal Rule 12(b)(6) provides for dismissal of an action for "failure to state a claim upon which relief can be granted."

In order to survive a motion to dismiss pursuant to Federal Rule 12(b)(6), a complaint must satisfy the pleading standards clarified by the Supreme Court in Ashcroft

¹ The bill of lading attached as Exhibit 3 to the Complaint was illegible. Provided for the Commission's convenience is a legible true and correct copy of the bill of lading, appended as Exhibit 1 to the September 10, 2014 Declaration of Joshua S. Parks.

v. Iqbal, 556 U.S. 662 (2009). These standards make plain that a plaintiff cannot survive a motion to dismiss merely by alleging naked assertions devoid of further factual enhancement or by simply stating legal conclusions:

A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.

...

Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.

...

[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not shown - that the pleader is entitled to relief.

In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal

conclusions can provide the framework of a complaint, they must be supported by factual allegations.

Id., at 678-79 (internal citations and quotations omitted).

A. Edaf's Section 10(d)(1) Claim Fails

Section 10(d)(1) of the Act provides that 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." The Complaint, which seeks recovery for, inter alia, the violation of Section 10(d)(1), fails to satisfy the pleading standard promulgated in Iqbal.

The "Causes of Action" section of the Complaint contains merely a formulaic recitation of the elements of the Act that Edaf believes Respondents have violated. Regarding Respondents' alleged violation of Section 10(d)(1), Edaf accurately quotes the Act's language, then draws the bald legal conclusions that IFS and Neutral either failed to have reasonable practices in place, or failed to observe any such practices. See "Causes of Action" section of the Complaint at ¶¶A-C. The Commission should not entertain Edaf's unsupported legal conclusions couched as factual allegations.

Edaf does not allege any facts showing that IFS and Neutral failed to establish, observe, or enforce just and reasonable practices with respect to the Cargo. To the contrary, the Complaint details the very procedures and communications undertaken to

successfully import the Cargo. Edaf alleges that Customs and Border Protection (“CBP”) selected the container containing the Cargo for intensive inspection on or about August 13, 2013, (Complaint at ¶H) which resulted in the container’s removal to Sint Maarten. Edaf alleges receiving a message from CCL on September 5, 2013, explaining that the container containing Edaf’s Cargo had not yet been re-exported to Puerto Rico due to a lack of proper authorization to do so, and that CCL was working with Customs, amongst others, to alleviate the problem. Complaint at Exhibit 7. Edaf further alleges that its shipper received a letter “that detailed a procedure that would be followed to cure” the alleged importation problem. Complaint at ¶K. Edaf further alleges that the container was not authorized by CBP to be moved until September 17, 2013. Complaint at Exhibit 9. Furthermore, just a few days later, Edaf alleges receiving an email explaining that “the container is already in ST Maarten cargo to be inspected and will be departing the next weekend with one day transit. Thus, we hope to have the container in Puerto Rico by Monday, September 30.” Complaint at Exhibit 10. Edaf alleges that this delivery in fact occurred (Complaint at ¶O), and picked up the Cargo on October 11. Complaint at ¶V.

Accepting all of Edaf’s allegations as true, Edaf has simply established, if anything, that Respondents did have practices and procedures in place in accordance with Section 10(d)(1). Edaf remained in close and frequent correspondence with CCL, and in fact received the Cargo, complete and undamaged, after it had been cleared through Customs

in Puerto Rico. Edaf's factual allegations actually support Respondents' position, Edaf's unsupported legal conclusions to the contrary. Accordingly, Edaf's Section 10(d)(1) claim must be dismissed.

B. Edaf's Section 10(b)(3) Claim Fails

Edaf's allegations of violations of Section 10(b)(3) and 10(b)(8) of the Act must fail because these sections, on their faces, are entirely inapplicable to the facts as alleged in Edaf's Complaint. "Causes of Action" section of the Complaint at ¶¶D, G. Section 10(b)(3) states that a common carrier may not "retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason[.]" To the extent a breach of Section 10(b)(3) is directed to IFS and Neutral, Edaf has not set forth a single fact that IFS and Neutral retaliated against Edaf in any manner whatsoever or for any reason whatsoever. Edaf's entirely unsupported legal conclusion that Respondents "retaliated" against Edaf or resorted to "unfair or unjust discriminatory methods" must fail, particularly because the Complaint is entirely bereft of any facts remotely supporting same.

C. Edaf's Section 10(b)(8) Claim Fails

Edaf's Section 10(b)(8) allegation, to the extent directed to IFS and Neutral, must fail for the same utter lack of factual support as afflicts the 10(b)(3) claim. Section 10(b)(8)

states that a common carrier may not “for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage.” Edaf merely recites this legal conclusion. As recognized by the Supreme Court in Iqbal, supra, legal conclusions couched as factual allegations are not enough to survive a motion to dismiss for failure to state a claim upon which relief can be granted, and Edaf’s Section 10(b)(8) claim must be dismissed.

POINT IV

EDAF HAS FAILED TO STATE A CLAIM FOR DAMAGES UPON WHICH RELIEF CAN BE GRANTED

Edaf has also failed to state a claim for damages upon which relief can be granted. Edaf’s damages allegations do not arise above the mere speculative level and fail to meet the Iqbal pleading standards discussed above. Accordingly, because Edaf has failed to allege facts sufficient to support its entitlement to reparations, Edaf’s Complaint must be dismissed.

Reparations as referred to in the Act and damages are synonymous. Tienshan, Inc. v. Tianjin Hua Feng Transport Agency Co., FMC Docket No. 08-04, n.11 (Mar. 9, 2011). The Commission has long recognized that “(a) damages must be the proximate result of violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation.” James J. Flanagan Shipping Corp. v. Lake Charles

Harbor and Terminal District, FMC Docket No. 94-32 (Aug. 26, 2003) (citing Waterman v. Stockholms Rederiaktiebolag Svea, 3 F.M.B. 248, 249 (1950)). Reparations are only available for “actual injury.” See 46 U.S.C. § 41305.

“To warrant recovery, the actual detriment must be shown by competent evidence and with reasonable certainty.” California Shipping Line, Inc. v. Yangming Marine Transport Corp., FMC Docket No. 88-15 (Oct. 19, 1990). The Commission has recognized that merely hypothesizing regarding potential lost deals as a measure of damages is “so speculative and conjectural that it lacks the requisite degree of certainty.” Id. Additionally, even if a violation of the Act is shown, a complainant still needs to prove that it suffered actual injury, failure to do so is “insufficient to establish the necessary chain of causation” to entitle a complainant to damages. See Transworld Shipping (USA), Inc. v. FMI Forwarding (San Francisco), Inc., FMC Docket No. 01-02 (Aug. 3, 2001). In the instant case, Edaf’s Complaint has not adequately pled either a violation of the Act or actual injury, therefore, Edaf is not entitled to recovery and its claim must be dismissed.

A. Edaf in Fact Made a Profit from Neutral’s Services and No Damages were “Proximately Caused” by the Alleged Delayed Delivery

It is plain that Edaf has not suffered any actual damages. In fact, Edaf instead made a self-admitted profit from the goods delivered pursuant to Neutral’s bill of lading. Edaf alleged that the CIF value of the Cargo was \$21,000. Complaint at ¶8. Shortly after receiving the Cargo, Edaf sold it for \$44,000, realizing a profit of \$23,000. Id. Clearly, Edaf

has suffered no actual injury within the meaning of the Shipping Act, no damages were “proximately caused” by the alleged delayed delivery and, in fact, Edaf realized a benefit from Neutral’s services. Accordingly, Edaf’s claim for reparations must be denied because Edaf has suffered no actual injury.

B. Edaf’s Claimed Damages Do Not Withstand Scrutiny

In an effort to resurrect a claim wherein Edaf has suffered no actual injury, Edaf attempts to explain that it has somehow suffered \$158,000 in damages. A review of the claimed amounts show they do not withstand the slightest scrutiny.

1. Edaf’s Alleged \$88,000 Lost Additional Sales Damages Do Not Withstand Scrutiny

Edaf argues that it suffered losses of \$88,000 because the delayed delivery apparently prevented it from financing the purchase of additional shipments that would have lead to a profit. Complaint at ¶¶ 9-11. Edaf further alleges that these additional sales have been lost forever. Edaf’s special or consequential damages claim as alleged fails as a matter of law. The damages claimed are the sort of wholly unforeseeable, indirect and attenuated losses that are never awarded in these circumstances and are not, in any event, allowed under the “proximate cause” requirements noted above in James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal District, FMC Docket No. 94-32 (Aug. 26, 2003).

Where damages due to delayed delivery are available, the measure of actual damages is the difference between the market value at the time when the goods should have arrived and their fair market value on actual arrival. Kanematsu-Gosho Ltd. v. M/T Messiniaki Aigli, 814 F.2d 115 (2d Cir. 1987). Here, as discussed above, Edaf suffered no such damages since it sold the goods at a self-admitted profit of \$23,000. Thus, no damages were “proximately caused” by the alleged delayed delivery and Edaf is simply not entitled to reparations.

Even assuming the Commission can award special or consequential damages in these circumstances, Edaf has failed to allege facts supporting the award of such damages in this case. For special or consequential damages to be awarded, a claimant must satisfy the famous Hadley v. Baxendale, [1854] 9 Ex. 341, test, which requires proof that the carrier had notice of the special circumstances that caused the unforeseeable loss. As Schoenbaum has noted:

Special or consequential damages in excess of those awarded under the market value rule depend on the plaintiff’s being able to show that at the time of the carriage contract special facts and circumstances were communicated to the carrier and therefore that the consequential damages should have been foreseeable to the carrier. In the absence of this, consequential losses are denied. In a common carrier situation, recovery of special or consequential damages will be rare. [fn. 4] There apparently is no case in carriage of goods by sea in which consequential damages have been awarded.

1 THOMAS J. SCHOENBAUM, Admiralty and Maritime Law, § 10-39 (4th ed. 2004 (emphasis added)).

Edaf in claiming \$88,000 of special damages has utterly failed to allege any facts that support its legal entitlement to such damages. Edaf has not alleged any special facts or circumstances that were communicated to Respondents to support such a claim. The special damages claim thus fails as a matter of law based on the allegations of the Complaint.

Further, even accepting Edaf's argument, Edaf's \$88,000 figure is grossly inflated. Edaf realized a profit of \$23,000 from the \$44,000 sale of the goods delivered pursuant to Neutral's bill of lading. Complaint at ¶8. Therefore, even if Edaf had been able to convert its investment into two additional sales, the most profit it could have realized would have been \$46,000.

However, Edaf could never have converted its investment into two additional sales based on its allegations. At best, it could have converted its investment only one additional time. The earliest Edaf could ever have picked up its Cargo, had the container not been rejected by CBP, was August 19, 2013, as that was the alleged date CBP determined the container's status. Complaint at ¶I. Edaf also allegedly did not pick up its Cargo until October 11, 2013; a week and a half after the Cargo cleared for entry. Complaint at ¶V. Edaf alleges it took 40 days to receive the proceeds from sale after it picked up its Cargo. Complaint at ¶9. Thus, assuming all of Edaf's unsupported allegations as true, Edaf could only have converted its investment one additional time, not two. See Complaint at ¶11. Therefore, Edaf, in its best-case scenario, could potentially have achieved \$23,000 in profit.

Accordingly, Edaf's claim for special damages in the amount of \$88,000 should be dismissed or, in the alternative, dismissed to the extent they exceed \$23,000.

2. Edaf's Alleged \$20,000 Supply Commitments Damages Do Not Withstand Scrutiny

Edaf also claims \$20,000 in special or consequential damages based on an alleged failure to have provided the cargo to a Fortune 500 customer. Complaint at ¶12. This special damages claim similarly fails to allege any special facts of circumstances that were communicated to Respondents and was not "proximately caused" by the alleged delayed delivery in any event. Moreover, the claim is directly contradicted by the Complaint's allegation that the cargo was in fact sold for a profit of \$23,000. That it could have allegedly been sold instead to a Fortune 500 company for a profit of \$20,000 certainly does not support a damages claim. It in fact establishes precisely the opposite - that Edaf realized \$3,000 more from the actual sale than would have been realized in the sale to the Fortune 500 company. Accordingly, Edaf's \$20,000 damages claim should be denied.

3. Edaf's Alleged \$50,000 Loss of Good Will Damages Do Not Withstand Scrutiny

Edaf also seeks \$50,000 for damages for loss of good will. Complaint at ¶13. This allegation also wholly fails to satisfy the Iqbal pleading standard. "[L]oss of goodwill and business opportunities must be shown to be an actual injury incurred as a result of the respondent's illegal activities." Smart Garments v. Worldlink Logix Servs. Inc., FMC Docket No. 10-11 (Oct. 31, 2011) (citing Rose Int'l, Inc. v. Overseas Moving Network, FMC

Docket No. 96-05 (Jun. 7, 2011)). The federal courts recognize goodwill damages are frequently unquantifiable and refuse to issue “purely speculative” awards. Lawton v. Melville Corp., 116 F.3d 1472 (2d Cir. 1997); see Business Trends Analysts, Inc. v. Freedonia Group, Inc., 887 F.2d 399, 407 (2d Cir. 1989).

Edaf’s Complaint does not provide any factual allegations supporting its claim that it suffered “damages to good will in the amount of \$50,000.” Edaf’s Complaint wholly fails to satisfy the pleading standard promulgated in Iqbal. In this instance, Edaf does not even make a “formulaic recitation of the elements” of a loss of good will claim. Accordingly, Edaf’s claim for \$50,000 for loss of good will damages must be dismissed.

POINT V

EDAF’S DAMAGES ARE LIMITED TO \$500 PER PACKAGE IN ANY EVENT

In the alternative, Edaf’s damages must be limited to \$500 per package in accordance with the Carriage of Goods by Sea Act (“COGSA”) and as provided on the bill of lading that governs the shipment at issue. COGSA applies to contracts for the carriage of goods by sea. 46 U.S.C. § 1302. COGSA contains a package limitation, which limits the liability of the carrier to \$500 per package in the event the shipped goods become lost or damaged during transit, unless the shipper declares a higher value. 46 U.S.C. § 1304(5). The Supreme Court recognizes the validity of the \$500 per package limitation promulgated by COGSA and often referenced in bills of lading. Norfolk Southern Railway Co. v. Kirby, 543 U.S. 14 (2004).

In the instant case, Edaf's Cargo was shipped pursuant to the COGSA \$500 per package limitation. The bill of lading expressly incorporated COGSA and its package limitation:

Bill of Lading: "(B) Package or Shipping Unit Limitation" "Where the Hague Rules or any legislation making such Rules compulsorily applicable (such as COGSA or COGWA) to this Bill of Lading apply, the Carrier shall not, unless a declared value has been noted in accordance with (C) below, become liable for any loss or damage to or in connection with the Goods in an amount per package or shipping unit in excess of the package or shipping unit limitation as laid down by such Rules or legislation. Such limitation amount according to COGSA is US\$500 and according to COGWA is Can \$500. If no limitation amount is applicable under such Rules or legislation, the limitation shall be US\$500."

Complaint at Exhibit 3. Clearly, should the Commission find that Edaf is entitled to damages, they would in any event be limited to \$500 per package.

At best for Edaf, depending upon how the facts are developed, Edaf might possibly recover based on a package limitation of 53 packages of books. See Complaint at Exhibit 3. This would limit Edaf's recovery to an absolute maximum of \$26,500. However, Respondents contend that the proper number of packages that should be considered for COGSA purposes are the two pallets that the Cargo was loaded on within the container. See Complaint at Exhibit 3. This would limit Edaf's recoverable damages to \$1,000. Accordingly, in the alternative, Edaf's claim for damages should be dismissed to the extent it claims damages in excess of \$26,500 pending determination of the number of packages at issue.

POINT VI

EDAF'S CLAIMS AGAINST IFS MUST BE DISMISSED FOR LACK OF JURISDICTION

Edaf's claims must be dismissed as against IFS in any event because IFS is not an entity that falls within the jurisdiction of the Commission. In order to hold a respondent liable for a breach of the Act, the Act must apply to that respondent. See *Sea-Land Dominica, S.A. v. Sea-Land Service, Inc.*, FMC Docket No. 91-30 (Sept. 25, 1992). IFS, which operates overseas, is not an entity that is regulated by the Shipping Act, and is not subject to the jurisdiction of the Commission.

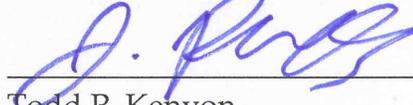
Edaf has alleged that IFS is located in Spain. Complaint at ¶3. Edaf has further alleged that IFS is an ocean freight forwarder. Complaint at ¶6. Ocean freight forwarders are defined within the Act as a person that "in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers[.]" 46 U.S.C. § 40102(18). IFS, which is plainly not a person in the United States, does not satisfy the definition of an "ocean freight forwarder" under the Act. Accordingly, the Act does not apply to IFS, and IFS is not subject to the jurisdiction of the Commission. Therefore Edaf's claims must be dismissed entirely as against IFS in any event.

Conclusion

For the aforementioned reasons, the Commission should dismiss Edaf's claims against IFS and Neutral in toto, or in the alternative as discussed above.

Dated: September 10, 2014

Respectfully Submitted,



Todd P. Kenyon

Joshua S. Parks

Betancourt, Van Hemmen, Greco & Kenyon LLC

151 Bodman Place, Suite 200

Red Bank, NJ 07701

Tel.: 732-530-4646

Fax: 732-530-9536

Email: tkenyon@bvgklaw.com

Email: jparks@bvgklaw.com

Federal Maritime Commission
Washington, D.C.

Edaf Antillas, Inc.,

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Complainant

v.

Crowley Caribbean Logistics, LLC,
IFS International Forwarding, S.L.
and IFS Neutral Maritime Services,

Respondents.

**DECLARATION OF JOSHUA S. PARKS IN SUPPORT OF
IFS INTERNATIONAL FORWARDING, S.L.'s AND IFS NEUTRAL
MARITIME SERVICE, INC.'S MOTION TO DISMISS THE COMPLAINT**

JOSHUA S. PARKS hereby declares under penalty of perjury:

1. I am an attorney and associate with the firm Betancourt, Van Hemmen, Greco & Kenyon LLC, attorneys for Respondents IFS International Forwarding, S.L. and IFS Neutral Maritime Service, Inc. I submit this Declaration in support of the aforementioned Respondents' Motion to Dismiss the Complaint.

2. Attached as Exhibit 1 is a true and correct legible copy of IFS Neutral Maritime Service, Inc.'s bill of lading no. 424555, an illegible copy of which was attached as Exhibit 3 to Complainant Edaf Antillas, Inc.'s Complaint.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed at Red Bank, New Jersey this 10th day of September, 2014.



Joshua S. Parks

EXHIBIT 1

Shipper:
 EDITORIAL EDAF, S.L.
 JORGE JUAN, 68
 MADRID, ESPAÑA
 TEL: 91 435 82 60 FAX: 91 431 52 81

BILL OF LADING IFSM

Bill of lading no.:
 424555

Consignee:
 EDAF ANTILLAS, INC.
 1594 PIÑERO AVE CAPARRA TERRACE
 SAN JUAN PR. 00921-1413, PUERTO RICO
 TEL: (787) 707 17 92 FAX: (787) 707 17 97
 ATT.: SR. D. CARLOS MATOS



Notify party:
 EL MISMO

For particulars of delivery apply with this B/L to:
 CROWLEY CARIBBEAN LOGISTICS LLC
 CENTRO MERCANTIL INT. - Edif. 11 - PO BOX 361927
 PUERTO RICO 00936-7314 - 00936
 PUERTO RICO
 Phone: 787-793.8575 al 8579 - Fax: 787-793.8717

Ocean vessel: MIDAS
Voyage: AH31R

Place of receipt: VALENCIA
Port of loading: VALENCIA

Port of discharge: SAN JUAN DE PTO. RICO
Place of delivery: SAN JUAN

E X P R E S S B L

Marks & Nos.:	No. packag.	Kind of pack	Description of goods	Gross weight Kg	M3
EDAF ANTILLAS LCL/LCL	53 BULTOS	s.l.w.a.c.	53 BULTOS INTO 2 PALLETS BOOKS, PARTIDA ARANCELARIA: 4901.9900 EXPRESS B/L FREIGHT COLLECT ON BOARD	1.202,00	2,640
	A.M.S.				
	IFSM424555				
	H.S. Code;				
	490199				

PLEASE READ BL CLAUSLATE ATTACHED

Container N°: DVRU0610860	Total number of packages or other units received by "IFS" (in words) FIFTY THREE	Received in apparent good order and condition except as otherwise noted the total number of containers, or other packages or units shown above for transportation from the place of receipt or the port of discharge subject to the terms hereof. All statement in this Bill of Lading, such as "s.l.w.a.c." or "s.l.s.a.c." mean that the goods were loaded, packed or stuffed by the Merchant and have not been checked by the Carrier. One of the original Combined Transport Bills of Lading must be surrendered duly endorsed in exchange for the Goods of Delivery Order. In accepting this Bill of Lading the merchant (as defined by Article 1 on the back hereof) agrees to be bound by all the stipulations, exceptions, terms and conditions on face and back hereof whether, typed, stamped, processed or printed, as fully as, signed by the Merchantant, any local custom or privilege to the contrary notwithstanding and agrees that all agreements or freight for the Goods engagements are superseded by this Bill of Lading. In the witness whereof the number of original Bill of Lading stated below, all of the same tenors and da te have been signed one of which being accomplished the other(s) to be void.
Seal N°: B5635389		

Freight & Charges	Rate	Per	Curr.	Prepaid	Collect
EX WORKS CHARGES USI			USD		452,00
TRANSMISION AMS USD			USD		56,40
OCEAN FREIGHT ALL IN			USD		103,40

Prepaid /Payable at Destination	Number of original B/Ls 0/ Zero	Place and date of B/L issue VALENCIA, JULY 21TH,2013
Forwading agents SPACE CARGO EXPORT, S.A. (EXP) Phone: 917482991/CONT:917482995 Fax: 913293525	4302376	IFS AS AGENTS OF NEUTRAL MARITIME SERVICE AS CARRIER

DEFINITIONS

"Carrier" means the Company stated on the front of this Bill of Lading as being the Carrier and on whose behalf this Bill of Lading has been signed.

"Merchant" includes the shipper, the consignee, the receiver of the Goods, the holder of this Bill of Lading, any person owning or entitled to the possession of the Goods or this Bill of Lading, any person having a present or future interest in the Goods or any person acting on behalf of any of the above mentioned persons.

"Goods" includes the cargo supplied by the Merchant and includes any Container not supplied by or on behalf of the Carrier. "Container" includes any container, trailer, transportable tank, lift van, flat, pallet or any similar article of transport used to consolidate goods. "Carriage" means the whole of the operations and services undertaken or performed by or on behalf of the Carrier in respect of the Goods.

"Combined Transport" arises where the Carriage is effected by this Bill of Lading in Port of Loading and Port of Delivery and the Place of Receipt and the Place of Delivery are not indicated on the front of this Bill of Lading or if both the Place of Receipt and the Place of Delivery indicated are ports and the Bill of Lading does not in the nomination of the Place of Receipt or the Place of Delivery on the front hereof specify any place or spot within the area of the port so nominated.

"Hague Rules" means the provisions of the International Convention for Unification of Certain Rules relating to Bills of Lading signed at Brussels on 23rd February 1924. "Hague-Visby Rules" means the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968. "COGSA" means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936. "COGWA" means the Carriage of Goods by Water Act 1936 of Canada. "Charges" includes freight and all expenses and money obligations incurred and payable by the Merchant. "Shipping Unit" includes freight unit and the term "unit" as used in the Hague Rules and Hague-Visby Rules.

"Person" includes an individual, a partnership, a body corporate or other entity. "Stuffed" includes filled, consolidated, packed, loaded or secured.

2. CARRIER'S TARIFF

The provisions of the Carrier's applicable Tariff, if any, are incorporated herein. Copies of such provisions are obtainable from the Carrier or its agents upon request, where applicable, from a government body with whom the Tariff has been filed. In the case of inconsistency between this Bill of Lading and the applicable Tariff, this Bill of Lading shall prevail.

3. WARRANTY

The Merchant warrants that in agreeing to the terms hereof he is or is the agent of and has the authority of the person owning or entitled to the possession of the Goods or any person who has a present or future interest in the Goods.

4. NEGOTIABILITY AND TITLE TO THE GOODS

(1) This Bill of Lading shall be non-negotiable unless made out "to order" in which event it shall be negotiable and shall constitute title to the Goods and the holder shall be entitled to receive or to transfer the Goods herein described.

(2) This Bill of Lading shall be prima facie evidence of the taking in charge by the Carrier of the Goods as herein described. However, proof to the contrary shall not be admissible when this Bill of Lading has been negotiated or transferred for valuable consideration to a third party acting in good faith.

5. CERTAIN RIGHTS AND IMMUNITIES FOR THE CARRIER AND OTHER PERSONS

- (1) The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage.
- (2) The Merchant undertakes that no claim or allegation shall be made against the person or vessel whatsoever, other than the Carrier, including, but not limited to, the Carrier's servants or agents, any independent contractor and his servants or agents, and all others by whom the whole or any part of the Carriage, whether directly or indirectly, is procured, performed or undertaken, which imposes obligations to impose upon any such person or vessel any liability whatsoever in connection with the Goods or the Carriage, and if any claim or allegation should nevertheless be made to defend, indemnify and hold harmless the Carrier against all consequences thereof. Without prejudice to the foregoing every such person and vessel shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for his benefit and in entering into this contract the Carrier, to the extent of such provisions, does so not only on his own behalf but also as agent trustee for such persons and vessels and such persons and vessels shall to the extent he or she may be deemed to be parties to this contract.
- (3) The Merchant shall defend, indemnify and hold harmless the Carrier against claim or liability (and any expense arising therefrom) arising from the Carrier's Goods insofar as such claim or liability exceeds the Carrier's liability under this Bill of Lading.
- (4) The defenses and limits of liability provided for in this Bill of Lading shall apply in any action against the Carrier whether the action be found in contract or in tort.

6. CARRIER'S RESPONSIBILITY

(1) CLAUSE PARAMOUNT

- (1) Subject to clause 13 below, this Bill of Lading insofar as it relates to the carriage by any vessel whether named herein or not shall have effect subject to the Hague Rules or any legislation making such Rules or the Hague-Visby Rules (whichever is applicable) (such as COGSA or COGWA) to this Bill of Lading and notwithstanding the provisions of the Hague Rules or applicable legislation shall be deemed incorporated herein. The Hague Rules (or COGSA or COGWA if this Bill of Lading is subject to U.S. or Canadian law respectively) shall apply to the carriage of Goods by inland waterways and reference to carriage by sea in such Rules or legislation shall be deemed to include reference to inland waterways, if and to the extent that the provisions of the Harter Act of the United States of America 1893 would otherwise be compulsorily applicable to regulate the Carrier's responsibility for the Goods during any period prior to loading on or after discharge from the vessel the Carrier's responsibility shall instead be determined by the provisions of 6(3) below, but if such provisions are found to be invalid such responsibility shall be subject to COGSA.
- (2) The Carrier shall be entitled to (and nothing in this Bill of Lading shall operate to deprive or limit such entitlement) the full benefit of, and rights to, all limitations and exclusions of liability and all rights conferred or authorized by any applicable law, statute or regulation of any country (including, but not limited to, where applicable any provisions of sections 4281 to 4287, inclusive, of the Revised Statutes of the United States of America and amendments thereto and where applicable any provisions of the laws of the United States of America) and without prejudice to the generality of the foregoing also any law, statute or regulation available to the Owner of the vessel (s) in which the Goods are carried.

(2) PORT TO PORT SHIPMENT

The responsibility of the Carrier is limited to that part of the Carriage from and during loading into the vessel up to and during discharge from the vessel and the Carrier shall not be liable for any loss or damage whatsoever in respect of the Goods or for any other matter arising during any other part of the Carriage even though Charges for the whole Carriage have been charged by the Carrier. The Merchant constitutes the Carrier as agent to enter into contracts on behalf of the Merchant with others for transport, storage, handling or any other services in respect of the Goods prior to loading and subsequent to discharge of the Goods from the vessel without responsibility for any act or omission whatsoever on the part of the Carrier or others and the Carrier may as such agent enter into contracts with others on any terms whatsoever including terms less favorable than the terms in this Bill of Lading.

(3) COMBINED TRANSPORT

Save as is otherwise provided in this Bill of Lading, the Carrier shall be liable for loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery to the extent set out below:
(A) Where the stage of Carriage where the loss of damage occurred cannot be proved:
(i) The Carrier shall be entitled to rely upon all exclusions of liability under the Rules or legislation that would have applied under 6(1)(A) above had the loss or damage occurred as set out, or, if there was no carriage by sea, under the Hague Rules (or COGSA or COGWA if this Bill of Lading is subject to U.S. or Canadian law respectively).
(ii) Where under (i) above, the Carrier is not liable in respect of some of the factors causing the loss or damage, he shall only be liable to the extent that those factors for which he is liable have contributed to the loss or damage.
(iii) Subject to 6(4)(C) below, where the Hague Rules or any legislation applying such Rules or the Hague-Visby Rules (such as COGSA or COGWA) is not compulsorily applicable, the Carrier's liability shall not exceed US\$2.00 per kilo of the gross weight of the Goods lost, damaged or in respect of which the claim arises or the value of such Goods, whichever is the lesser.
(iv) The value of the Goods shall be determined according to the commodity exchange price at the place and time of delivery to the Merchant or at the place and time when they should have been so delivered or if there is no such price according to the current market price by reference to the normal value of Goods of the same kind and quality, at such place and time.

(B) Where the stage of Carriage where the loss or damage occurred can be proved:

- (i) The liability of the Carrier shall be determined by the provisions contained in any international convention or national law of the country which provisions:
(a) cannot be departed from by private contract to the detriment of the Merchant, and (b) would have applied if the Merchant had made a contract with the Carrier in respect of the particular stage of Carriage where the loss or damage occurred and had received as evidence thereof any particular document which must be issued in order to make such international convention or national law applicable.

(ii) with respect to the transportation in the United States of America or in Canada to the Port of Loading or from the Port of Loading of from the Port of Discharge, the responsibility of the Carrier shall be to procure transportation by carriers (one or more) and such transportation shall be subject to the inland carriers' contract of carriage and tariffs and any law compulsorily applicable. The Carrier guarantees the fulfillment of such inland carriers' obligations under their contracts and tariffs; (iii) where neither (i) or (ii) above apply, any liability of the Carrier shall be determined by 6(1)(A) above.

(4) GENERAL PROVISIONS

(A) Delay, Consequential Loss

Save as otherwise provided herein, the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay or in any case whatsoever and however caused. Without prejudice to the foregoing, if the Carrier is found liable for delay, liability shall be limited to the freight applicable to the relevant stage of the transport.

(B) Package or Shipping Unit Limitation

Where the Hague Rules or any legislation making such Rules compulsorily applicable (such as COGSA or COGWA) to this Bill of Lading apply, the Carrier shall, unless a declared value has been noted in accordance with (C) below, be become liable for any loss or damage to or in connection with the Goods in amount per package or shipping unit in excess of the package or shipping unit limitation as laid down by such Rules or legislation. Such limitation amounts according to COGSA is US\$500 and according to COGWA is Can\$500. If no limitation amount is applicable under such Rules or legislation, the limitation shall be US\$500.

(C) Ad Valorem: Declared Value of Package or Shipping Unit

The Carrier's liability may be increased to a higher value by a declaration or writing of the value of the Goods by the shipper upon delivery to the Carrier of the Goods for shipment, such higher value being inserted on the front of this Bill of Lading in the space provided and, if required by the Carrier, extra freight paid. In such case, if the actual value of the Goods shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the Carrier's liability, if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

(D) Definition of Package or Shipping Unit

Where a Container is used to consolidate Goods and such Container is stuffed by the Carrier, the number of packages or shipping units stated on the face of this Bill of Lading in the box provided shall be deemed the number of packages or shipping units for the purpose of any limit of liability per package or shipping unit provided in any international convention or national law relating to the carriage of Goods by sea. Except as aforesaid the Carrier shall be considered the package or shipping unit. The words "shipping unit" shall include any physical unit or piece of cargo not shipped in a package, including articles and things of any description whatsoever, except Goods shipped in bulk, and irrespective of the weight or mass-measure unit employed in calculating freight charges. As to Goods shipped in bulk, the limitation applicable thereto shall be the limitation provided in such convention or law which may be applicable, and in no event shall anything herein be construed to be a waiver of limitation as to Goods shipped in bulk.

(E) Rest, etc.

It is agreed that superficial rust, oxidation or any like condition due to moisture is not a condition of damage but is inherent to the nature of the Goods and acknowledgment of receipt of the Goods in apparent good order and condition is a representation that such conditions of rust, oxidation or the like did not exist on receipt.

(F) Notice of Loss or Damage

The Carrier shall be deemed prima facie to have delivered the Goods as described in this Bill of Lading unless notice of loss of, or damage to, the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier or to his representative at the place of delivery before or at the time of removal of the Goods into the custody of the person entitled to delivery thereunder in this Bill of Lading or if the loss or damage is not apparent, within three consecutive days thereafter.

(G) Time-bar

The Carrier shall be discharged of all liability unless suit is brought in the proper form and written notice thereof received by the Carrier within nine months after delivery of the Goods or the date when the Goods should have been delivered. In the event that such time period shall be found contrary to any convention or law compulsorily applicable, the period prescribe by such convention or law shall then apply but in that circumstance only.

7. MERCHANT'S RESPONSIBILITY

- (1) The description and particulars of the Goods set out on the face hereof furnished by the Merchant and the Merchant warrants to the Carrier that the description and particulars included, but not limited to, weight, content, measure, quantity, quality, condition, marks, numbers and value are correct.
- (2) The Merchant shall comply with all applicable laws, regulations and requirements of customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses and losses incurred or suffered by reason thereof or by reason of any illegal incorrect or insufficient marking, numbering or addressing of the Goods.
- (3) The Merchant undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws, regulations and requirements which may be applicable.
- (4) No Goods which are or may become dangerous, inflammable or damaging or which are or may become liable to damage any property or person whatsoever shall be tendered to the Carrier for Carriage without the Carrier's express consent in writing and without the Carrier or other covering in which the Goods are to be transported and the Goods being distinctly marked on the outside so as to indicate the nature and character of any such articles and so as to comply with all applicable laws, regulations and requirements. If any such articles are delivered to the Carrier without such written consent and marking of if in the opinion of the Carrier the articles are or are liable to become of a dangerous, inflammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned, or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to charges.
- (5) The Merchant shall be liable for the loss, damage, contamination, soiling, detention or demurrage, before, during and after the Carriage of the property (including, but not limited to, Containers) of the Carrier on any person or vessel (other than the Merchant) referred to in 5(2) above caused by the Merchant or any person acting on his behalf or for which the Merchant is otherwise responsible.
- (6) The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, claim, liability or expense whatsoever arising from any breach of the provisions of this clause 7 or from any cause in connection with the Goods for which the Carrier is not responsible.

8. CONTAINERS

- (1) Goods may be stuffed by the Carrier in or on Containers and Goods may be stuffed with other Goods.
- (2) The terms of this Bill of Lading shall govern the responsibility of the Carrier in connection with or arising out of the use of a Container to the Merchant, whether supplied before or after the Goods are received by the Carrier or delivered to the Merchant.
- (3) If a Container has been stuffed by or on behalf of the Merchant:
(A) The Carrier shall not be liable for loss of or damage to the Goods;
(i) caused by the manner in which the Container has been stuffed;
(ii) caused by the unsuitability of the Goods for Carriage in Containers;
(iii) caused by the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Carrier, this paragraph (iii) shall only apply if the unsuitability or defective condition arose
(a) without any want of due diligence on the part of the Carrier or (b) would have been apparent upon reasonable inspection by the Merchant at or prior to the time when the Container was stuffed;
(iv) if the Container is not sealed at the commencement of the Carriage except where the Carrier has agreed to seal the Container.
(B) The Merchant shall defend, indemnify and hold harmless the Carrier against any loss, damage, claim, liability or expense whatsoever arising from one or more other matters covered by (A) above except for (A)(i)(a) above.
- (4) Where the Carrier is instructed to provide a Container, in the absence of written request by the contrary, the Carrier is not under an obligation to provide a Container of any particular type or quality.

9. TEMPERATURE CONTROLLED CARGO

- (1) The Merchant undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice (and filing in the box on the front of this Bill of Lading if this Bill of Lading has been prepared by the Merchant or a person acting on his behalf) of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Merchant further undertakes that the Container has been properly pre-cooled, that the Goods have been properly stuffed in the Container and that its thermostatic controls have been properly set by the Merchant before receipt of the Goods by the Carrier.
(2) If the above requirements are not complied with the Carrier shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

(2) The Carrier shall not be liable for any loss of or damage to the Goods arising from defects, derangement, breakdown, stoppage of, the temperature controlling machinery, plant insulation or any apparatus of the Container, provided that the Carrier has before or at the beginning of the Carriage exercise due diligence to maintain refrigerated Container in an efficient state.

10. INSPECTION OF GOODS

The Carrier or any person authorized by the Carrier shall be entitled, but under no obligation, to open any Container or package at any time and to inspect the Goods.

11. MATTERS AFFECTING PERFORMANCE

- (1) If at any time the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including the condition of the Goods), whenever and however arising (whether or not the Carriage has commenced) the Carrier may:
(A) without notice to the Merchant abandon the Carriage of the Goods and where reasonably possible place the Goods or any part of them at the Merchant's disposal at any place which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease;
(B) without prejudice to the Carrier's right subsequently to abandon the Carriage under (A) above, continue the Carriage. In any event the Carrier shall be entitled to full Charges on Goods received for Carriage and the Merchant shall pay any additional costs resulting from the abandonment circumstances.
(2) The liability of the Carrier in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with the orders or recommendations given by any government or authority or any person acting or purporting to act as on behalf of such government or authority.

12. METHODS AND ROUTE OF TRANSPORTATION

- (1) The Carrier may at any time and without notice to the Merchant:
(A) use any means of transport or storage whatsoever; load or carry the Goods on any vessel whether named on the front hereof or not; transfer the Goods from one conveyance to another including transhipping or carrying the same on another vessel than that named on the front hereof or by any other means of transport whatsoever, at any place unasked and remove Goods which have been stuffed in or on a Container and forward the same in any manner whatsoever; proceed at any speed by any route in his discretion (whether or not the nearest or most direct or customary or advertised route) and proceed to or stay at any place whatsoever once or more often and in any order; load or unload the Goods from any conveyance at any place (whether or not the place is a port named on the front hereof as the intended Port of Loading or intended Port of Discharge); comply with any orders or recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority or having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions; permit the vessel to proceed with or without pilots, to tow or be towed or to be dry-docked; permit the vessel to carry livestock. Goods of all kinds, dangerous, or otherwise, contraband, explosives, munitions or warlike stores and sailormen or unladen.
(2) The liberties set out in (1) above may be invoked by the Carrier for any purpose whatsoever whether or not connected with the Carriage of the Goods. Anything done in accordance with (1) above or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation of whatsoever nature or degree.

13. DECK CARGO (AND LIVESTOCK)

- (1) Goods of any description whether containerised or not may be stowed on or under deck without notice to the Merchant and such stowage shall not be a deviation of whatsoever nature or degree. Subject to (2) below such Goods whether carried on deck or under deck shall participate in General Average and such Goods (other than livestock) shall be deemed to be within the definition of Goods for the purposes of the Hague Rules or any legislation making such Rules or the Hague-Visby Rules compulsorily applicable (such as COGSA or COGWA) to this Bill of Lading.
- (2) Goods (not being Goods stuffed in or on Containers other than open flats or pallets) which are stowed on the front of this Bill of Lading to be carried on deck and which are so carried (and livestock, whether or not carried on deck) are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during the Carriage by sea or inland waterway whether caused by unseaworthiness or negligence or any other cause whatsoever. The Merchant shall defend, indemnify and hold harmless the Carrier against all and any extra cost incurred for any reason whatsoever in connection with carriage of such livestock.

14. DELIVERY OF GOODS

If delivery of the Goods or any part thereof is not taken by the Merchant at the time and place when and where the Carrier is entitled to call upon the Merchant to take delivery thereof, the Carrier shall be entitled without notice to remove from the Carrier the Goods or that part thereof if stuffed in or on a Container and to store the Goods or that part thereof ashore, afloat, in the open or under cover at the seaport and expense of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier on receipt of the Goods or that part thereof shall cease.

15. BOTH-TO-BLAME COLLISION

If the vessel in which the Goods are carried (the carrying vessel) comes into collision with any other vessel or object (the non-carrying vessel or object) a result of the negligence of the non-carrying vessel or object or the owner of, charter of or person responsible for the non-carrying vessel or object, the Merchant undertakes to defend, indemnify and hold harmless the Carrier against all claims by liability to (and any expense arising therefrom) any vessel or person in respect of any loss of, or damage to, or any claim whatsoever of the Merchant paid or payable to the Merchant by the non-carrying vessel or object or the owner of, charter of or person responsible for the non-carrying vessel or object and self-off, recouped or recovered by such vessel, object or person(s) against the Carrier, the carrying vessel or harrowers or charterers.

16. GENERAL AVERAGE

- (1) The Carrier may declare General Average which shall be adjustable according to the York/Antwerp Rules of 1974 at any place at the option of the Carrier and the Amended Janus Clause as approved by BIMCO to be considered as incorporated herein and the Merchant shall provide such security as may be required by the Carrier in this connection.
 - (2) Notwithstanding (1) above, the Merchant shall defend, indemnify and hold harmless the Carrier in respect of any claim (and any expense arising therefrom) of a General Average nature which may be made on the Carrier and shall provide such security as may be required by the Carrier in this connection.
 - (3) The Carrier shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Merchant.
- ### 17. CHARGES
- (1) Charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.
 - (2) The Charges have been calculated on the basis of particulars furnished by or on behalf of the Merchant. The Carrier shall be entitled to production of the commercial invoice for the Goods or true copy thereof and to inspect, weigh, re-measure and re-evaluate the Goods and if the particulars are found by the Carrier to be incorrect the Merchant shall pay the Carrier the correct Charges (credit being given for the Charges charged) and the costs incurred by the Carrier in establishing the correct particulars.
 - (3) All Charges shall be paid without any set-off, counter-claim, deduction or stay of execution.

18. LEN

The Carrier shall have a lien on the Goods and any documents relating thereto for all sums whatsoever due at any time to the Carrier from the Merchant and for General Average contributions to whomsoever due and for the costs of reworking same and the Carrier shall have the right to sell the Goods and documents by public auction or private treaty, without notice to the Merchant and at the Merchant's expense and without any liability towards the Merchant.

19. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized or ratified in writing by a director or officer of the Carrier who has the actual authority of the Carrier so to waive or vary.

20. PARTIAL INVALIDITY

If any provision in this Bill of Lading is held to be invalid or unenforceable by any court or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall attach only to such provision. The validity of the remaining provisions shall not be affected thereby and this Bill of Lading contract shall be carried out as if such invalid or unenforceable provision were not contained therein.

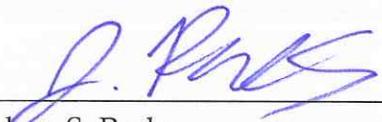
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing IFS International Forwarding, S.L.'s and IFS Neutral Maritime Service, Inc.'s Motion to Dismiss and Declaration of Joshua S. Parks in Support of IFS International Forwarding, S.L.'s and IFS Neutral Maritime Service, Inc.'s Motion to Dismiss upon the following addressees by e-mail:

Carlos E. Matos Malec, Esq.
Edaf Antillas, Inc.
P.O. Box 11249
San Juan, PR 00922-1249
(787) 707-1792
carlos@forsapr.com

Eric C. Jeffrey, Esq.
Lindsey M. Nelson, Esq.
Nixon Peabody LLP
401 Ninth Street, N.W., Suite 900
Washington, D.C. 20004-2128
(202) 585-8000
ejeffrey@nixonpeabody.com
lnelson@nixonpeabody.com

Dated: September 10, 2014



Joshua S. Parks