

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-04

EDAF ANTILLAS, INC.

v.

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

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
OF CROWLEY CARIBBEAN LOGISTICS, LLC**

The Complaint asserts three causes of action under the Shipping Act of 1984 (the “1984 Act”), 46 U.S.C. § 40101 et seq. Each of those claims is fatally flawed and must be dismissed pursuant to the Federal Maritime Commission’s Rules of Practice and Procedure and Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Because Respondent Crowley Caribbean Logistics LLC (“CCL”) was, as Complainant alleges, merely an agent of Respondents IFS International Forwarding S.L. and IFS Neutral Maritime Services (collectively “IFS”),¹ the Commission lacks subject matter jurisdiction over CCL as to any of the claims. Complainant’s claims under Sections 10(b)(3) and 10(b)(8) must also be dismissed for failure to state a claim.

STATEMENT OF FACTS

CCL disputes many of the facts pled by Complainant, but for purposes of this motion alone, well-pleaded facts are taken to be true.

¹ For purposes of this motion, CCL will generally refer to the two IFS Respondents individually and collectively as “IFS.”

Background

In July 2013, Complainant's parent company delivered a consignment of books to Space Cargo, S.L. ("Space Cargo"), a forwarding agent, in Madrid, Spain. (Compl. ¶ A.) Space Cargo then "engaged the services of" IFS, which advertises itself as a Non-Vessel Operating Common Carrier ("NVOCC" or "NVO"), to consolidate said cargo for transportation to San Juan, Puerto Rico. (Compl. ¶¶ B, 3.) IFS issued a bill of lading for the shipment, loaded Complainant's cargo, as well as other cargo, into a container, and delivered it to an unnamed ocean common carrier for transportation from Madrid to San Juan. (Compl. ¶ E, Ex. 3.)

CCL, a limited liability company located in Puerto Rico, became involved in the matter only after the container arrived in San Juan on or about August 5, 2013, though the Complaint does not specify how CCL came to be involved in the shipment other than alleging that CCL is an agent of IFS. (Compl. ¶¶ H, U, 2.) CCL notified Complainant and Complainant's Customs Broker that the container had been selected by United States Customs and Border Protection ("CBP") for inspection. (Compl. ¶ H.) A pallet within the container carrying Complainant's cargo was determined to be non-compliant with CBP rules and regulations and was denied entry. (Compl. ¶ I.) As described in the Complaint, CCL's role after the container was denied entry consisted of communications relating to required documentation and Customs issues. (Compl. ¶¶ J, N, Q, R, S.) IFS maintained responsibility for notifying Complainant regarding the procedure to cure the non-compliant container. (Compl. ¶ K.)

The noncompliant container containing Complainant's cargo was moved to Sint Maarten, N.A. on or about September 23, 2013, following approval by CBP. (Compl. ¶¶ L, M.) By September 30, 2013, the now-compliant container was shipped back to the Port of San Juan, where it was then unloaded and cleared for entry into the United States. (Compl. ¶¶ O, P.)

The Complaint alleges that, at some unspecified time before the cargo was unloaded, CCL advised Complainant's Customs Broker that the House Bill of Lading had been amended. (Compl. ¶ Q.) The Complaint alleges that this caused an ISF+10 filing to be late, but does not identify any actual injury to Complainant as a result. (Compl. ¶ R, S.) Complainant picked up its cargo from a CCL warehouse on October 11, 2013. (Compl. ¶ V.)

LAW AND ARGUMENT

A. Applicable Standard for a Motion to Dismiss

Although the FMC Rules of Practice and Procedure ("Rules") do not explicitly provide for motions to dismiss, the Commission has recognized and granted such motions pursuant to the Federal Rules of Civil Procedure, as incorporated through Rule 12. *See, e.g., Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, 32 SRR 126, 136 (FMC 2011); *DNB Exports LLC v. Barsan Global Lojistiks Ve Gumruk Musavirligi A.S.*, 32 SRR 550, 553 (ALJ, Admin Final 2011). In particular, the Commission has allowed motions to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). *Id.*

The Commission evaluates motions to dismiss under criteria that "mirror[] the standard used in federal courts." *Kobel v. Hapag-Lloyd America, Inc.*, 32 SRR 40, 42 (ALJ 2011). This means that a claim must be dismissed under Rule 12(b)(6) if the complaint fails to allege all essential elements, or if it otherwise fails to allege facts that would, if established, entitle complainant to relief. *See, e.g., Coleman v. Napolitano*, No. 13-cv-1307, 2014 U.S. Dist. LEXIS 118254, at *5-6 (D.D.C. Aug. 25, 2014). A claim must be dismissed under Rule 12(b)(1) if the Commission does not have a statutory right to adjudicate the claim. *See San Diego Unified Port District v. Pacific Maritime Association*, 30 SRR 31, 35 (ALJ 2003); *see also Virginia*

International Terminals v. Virginia Electric & Power Co., No. 4:13-cv-118, 2014 U.S. Dist. LEXIS 70626, at *6-7 (EDVA May 22, 2014).

While the Commission views a complaint in the light most favorable to the plaintiff, it does not accept inferences that are unsupported by facts alleged in the complaint, or mere legal conclusions cast in the form of factual allegations. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To survive a motion to dismiss under 12(b)(1) or 12(b)(6), a complaint must contain “more than labels and conclusions [or] a formulaic recitation of the elements of a cause of action,” and must instead set forth “sufficient factual matter . . . to ‘state a claim for relief that is plausible on its face.’” *Twombly*, 550 U.S. at 555; *Mitsui O.S.K. Lines*, 32 SRR at 136 (quoting in part from *Twombly*).² The factual allegations must rise above “a speculative level,” and must allow the Commission to draw the reasonable inference that the respondent is liable for the alleged violation. *Twombly*, 550 U.S. at 557; *Mitsui O.S.K. Lines*, 32 SRR at 136.

It is Complainant’s burden to establish that the FMC has subject matter jurisdiction. *See DNB Exports LLC*, 32 SRR at 553. In addition, the Commission must “give the plaintiff’s factual allegations closer scrutiny when resolving a 12(b)(1) motion” given that jurisdiction question goes to the Commission’s “power to hear the claim.” *Jin v. Ministry of State Security*, 475 F. Supp. 2d 54, 60 (D.D.C. 2007).

B. Complainant’s Claims Fail for Lack of Subject Matter Jurisdiction

Complainant asserts that CCL violated three sections of the 1984 Act – Section 10(d)(1), Section 10(b)(8), and Section 10(b)(3).³ Those sections do not apply to CCL here.

² To like effect, see *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949-52 (2009) (“[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice”).

³ These sections are respectively codified as 46 U.S.C. §§ 41102(c), 41104(8), and 41104(3).

Each of the three sections applies by its terms to a “common carrier.” Section 10(d)(1) also applies to a “marine terminal operator, or ocean transportation intermediary.” CCL in this case was none of those. Rather, as Complainant itself admits (Compl. ¶ U), CCL was merely an agent for the IFS Respondents.

Because Complainant has not alleged that CCL acted as an MTO, and by definition CCL was not acting as an ocean freight forwarder (which applies only to export shipments)⁴, the only question is whether CCL was acting as a “common carrier.”⁵ We show below that it was not.

1. CCL was not a Common Carrier

To determine whether CCL was a common carrier, it is necessary to start with the statutory language.⁶ The 1984 Act defines a “common carrier” in pertinent part as:

[A] person that – (i) holds itself out to the general public to provide transportation by water of customers or cargo between the United States and a foreign country for compensation; [and] (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination 46 U.S.C. §40102(6).

The D.C. Circuit has instructed that “where the Shipping Act includes a precise definition, ‘the limits of the Commission’s jurisdiction to regulate carriers under [the Act] must necessarily upon the meaning and interpretation of the [statutory] definition.’”⁷ There, the court

⁴ The 1984 Act defines an “ocean freight forwarder” as, in pertinent part, a person that “dispatches shipments *from* the United States via a common carrier.” 46 U.S.C. § 40102(18) (emphasis added). As the shipment at issue is averred to be an import shipment from Spain to Puerto Rico, there was no ocean freight forwarder.

⁵ While the term Ocean Transportation Intermediary also includes NVOs, such entities by definition must be “common carriers”, so need not be addressed twice.

⁶ See, e.g., *El Paso Natural Gas Co. v. United States*, 750 F.3d 863, 875 (D.C. Cir. 2014); *Mail Order Association of America v. United States Postal Service*, 986 F.2d 509, 514-16 (D.C. Cir. 1993).

⁷ *Landstar Express America, Inc. v. FMC*, 569 F.3d 493, 496 (D.C. Cir. 2009) (bracketed material in original; quoting from *Austasia Intermodal Lines, Ltd. v. FMC*, 580 F.2d 642, 644 (D.C. Cir. 1978)).

held that an agent of an NVO is **not** a “common carrier” unless it fully meets the statutory definition, even if it may be providing some NVO services.

CCL does not meet either of the two criteria set out in the definition of a common carrier.⁸ 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*, 569 F.3d at 497 (“[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”).⁹

2. CCL’s NVO License does not Create Subject Matter Jurisdiction

As Complainant asserts, CCL is a licensed and bonded NVOCC. This of course gives the FMC “personal” jurisdiction over CCL. The courts and the Commission have held, however, that this does *not* create “subject matter” jurisdiction in a particular instance unless CCL meets the statutory definition with respect to that specific transaction, which, as shown above, it does not.

In *American Association of Cruise Passengers, Inv. v. Carnival Cruise Lines, Inc.*, 911 F.2d 786 (D.C. Cir. 1990), for example, the D.C. Circuit held that the FMC’s subject matter

⁸ As the court explained in *Landstar*, “a person or entity that provides NVOCC falls within the ambit of [the definition] *only* when it” meets the statutory criteria. 569 F.3d at 497.

⁹ Although irrelevant in light of the second criterion, CCL also did not meet the first criterion. It did not hold itself out to Complainant at all. Neither Complainant nor Complainant’s Shipper hired CCL; IFS did. CCL did not provide any transportation by water between Spain and the United States; IFS did. And CCL was not compensated by Complainant or its Shipper for providing any such ocean transportation. As Complainant itself states, and the CCL invoice to Complainant shows, CCL acted merely as a collection agent for IFS, forwarding the portion involving ocean transportation to IFS, and retaining only the portion relating to its Customs clearance activities performed for IFS.

jurisdiction over carriers depends entirely on whether the carrier acted as a Shipping Act “common carrier” in the specific instance under review. There, in an antitrust action against cruise lines, the court determined that the decision whether a claim could go forward in federal court or was subject to the exclusive jurisdiction of the FMC had to be decided by reference to each individual voyage. More specifically, the court held that if a particular cruise involved both a U.S. port and a foreign port, the cruise line was a common carrier for that voyage, and any relief had to be sought at the FMC. In contrast, if that same cruise line operated a voyage in foreign-foreign commerce, the operator did not meet the definition of “common carrier” for that voyage, and relief lay only in the courts.

On remand, the district court misread the appellate court’s meaning, and dismissed all of the claims, asserting that they belonged before the FMC. On appeal, the D.C. Circuit reversed, and reaffirmed its earlier holding that the statutory definition of “common carrier” determined which forum had subject matter jurisdiction:

AACP’s suit must be understood to consist of two distinct claims: one . . . pertains only to the defendant cruise lines common carriage operations; . . . the other . . . pertains only to the defendants’ non-common carriage operations Although there are issues of fact common to both claims, the claims are nonetheless legally distinct, and must be brought in separate fora – the FMC and the district court respectively. 31 F.3d 1184, 1186 (D.C. Cir. 1994).

The FMC likewise has held that its jurisdiction over carriers turns on whether a particular carrier is acting as a “common carrier” in the specific circumstances at issue. In *Foreign-to-Foreign Agreements*, 24 SRR 1448 (FMC 1988), reconsideration denied, 25 SRR 455 (FMC 1989), the Commission held that it could not accept for filing – even on a voluntary basis – agreements among common carriers operating in the U.S.-foreign trades, to the extent such agreements involved foreign-foreign ocean transportation. In so doing, the FMC rejected the

argument that because the carriers were in other circumstances ocean common carriers subject to the 1984 Act, the FMC could exercise authority over their closely related (e.g., Canada/Mexico) foreign-foreign activities.

In that decision, the Commission explained that jurisdiction under the 1984 Act is strictly limited both by the nature of the entity involved and by what actions the entity undertakes in a specific case: “the Shipping Act . . . regulates only *particular* activities engaged in by *particular* entities.” 24 SRR at 1458 (emphasis added). And citing *Austasia*, it affirmed that the FMC’s regulatory authority over carriers “is ultimately coextensive with the statutory definition of ‘common carrier.’” *Id.* Further, in denying reconsideration, the FMC recognized that the 1984 Act draws a distinct line between “personal” jurisdiction and “subject matter” jurisdiction: “The fact that the Commission lawfully can effect service process upon a carrier because it has some operations subject to the Shipping Act does not warrant a conclusion that all of that carrier’s operations indiscriminately fall under the Act.” 25 SRR at 462. The Ninth Circuit upheld the FMC’s decision, noting, among other things, that it “agree[d] with the D.C. Circuit [in *Austasia*] that the definition of common carrier places limits on the FMC’s jurisdiction.” 951 F.2d 950, 954 (9th Cir. 1991).¹⁰

¹⁰ The Commission subsequently reaffirmed that its jurisdiction extends only to parties and activities that meet the definition of “common carrier.” In a revised rule on service contracts, it allowed ocean common carriers to file so-called “global” service contracts that address both U.S.-foreign and foreign-foreign commerce. The Commission took pains to note, however, that it would *not* exercise any authority over the aspects of service contracts lying outside its statutory jurisdiction:

The Commission’s intent was to allow parties to enter into service contracts which fit their commercial needs, and relieve them of the burden of negotiating contracts which ‘carve out’ the U.S. trades simply because of U.S. filing requirements. Again we confirm that [the] Commission will not assert jurisdiction over foreign-to-foreign matters due solely to the fact that they are included in a service contract filed with the Commission. 64 Fed. Reg. 11205 (“voluntary filing of global contracts will not subject the non-U.S. matters to FMC jurisdiction”).

This rule that subject matter turns on meeting statutory definitions has also been applied in the context of marine terminal operators (MTOs). In *Puerto Rico Ports Authority v. FMC*, 919 F.2d 799 (1st Cir. 1990), the First Circuit held that even though the Puerto Rico Port Authority (PRPA) was an admitted marine terminal operator at two nearby ports in Puerto Rico, it was *not* an MTO with respect to the Port of Ponce, because it did not meet the statutory definition at that port. The FMC had concluded that PRPA was an MTO at Ponce based on its control over certain activities there, but had not relied on PRPA’s general MTO status. In overruling the Commission, the court emphasized: “While PRPA may furnish terminal facilities at San Juan and Mayaguez, the Commission properly did not base its jurisdiction on those activities.” *Id.* at 802.

C. Complainant’s Section 10(b)(3) And 10(b)(8) Allegations Fail to State A Claim

Although Complainant’s claims against CCL all must be dismissed for lack of subject matter jurisdiction, the claims under Section 10(b)(3) and Section 10(b)(8) must in any event be dismissed for failure to state a claim upon which relief could be granted.

1. Complainant’s Section 10(b)(3) Claim is Entirely Unsustainable

The Complaint asserts that CCL violated Section 10(b)(3) by failing “to take reasonable, prudent and sufficient measures to cure the non-compliant container.” (Compl. ¶ E.) Leaving aside the obvious point that remediation of the alleged failure by IFS to properly treat the container was the responsibility of IFS, not CCL, these allegations cannot stand up to either the statutory language or the case law.

Section 10(b)(3) forbids a common carrier to:

“[R]etaliat[e] 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.” 46 U.S.C. §41103(3) (emphasis added).

The Complaint does not explain in any way beyond conclusory parroting of the statutory language how CCL’s actions were either unfair or unjustly discriminatory. More importantly, Complainant has not pled an essential element of a Section 10(b)(3) claim – retaliation.

The Commission has expressly ruled that a complainant cannot make out a claim under Section 10(b)(3) unless it demonstrates retaliation by respondent for complainant patronizing another carrier or for filing a complaint. In *California Shipping Lines, Inc. v. Yangming Marine Transport Corp.*, 25 SRR 1213, 1224-25 (FMC 1990) – when current 10(b)(3) was denominated as 10(b)(5)¹¹ – the Commission flatly rejected argument that “a carrier can violate section 10(b)(5) without retaliating against anybody,” ruling instead that “section 10(b)(5) of the 1984 Act applies *solely* to *retaliatory* acts of a carrier against a shipper who has sought the services of another carrier”¹² See, e.g., *Western Overseas Trade & Development Corp. v. ANERA*, 26 SRR 1066, 1079 (ALJ 1993) (dismissing claim for failure to allege retaliation); *North River Insurance Co. v. Federal Commerce & Navigation Co.*, 20 SRR 1078 (ALJ, Admin. Final 1981) (rejecting argument that section 10(b)(3) applies to unfair or discriminatory actions not involving retaliation). Most recently, in *DSW International, Inc. v. Commonwealth Shipping, Inc.*, the Presiding Judge here found no violation of section 10(b)(3) because the section requires retaliation and there was nothing to show that respondents “took any action against

¹¹ Pub. L. No. 105-258 (commonly known as the Ocean Shipping Reform Act of 1998) merely redesignated then section 10(b)(5) as section 10(b)(3), making no changes to the statutory language).

¹² The major reason for this conclusion was that a broader reading would render the statutory prohibitions on discrimination or preference/prejudice mere surplusage. *Id.* at 1225 (“If section 10(b)(5) were applied to any act of discriminatory conduct . . . it could render other provisions of the Act prohibiting discrimination superfluous”).

[complainant] because it patronized another carrier or filed a complaint.” Docket No. 1898, 2011 FMC LEXIS 39, at *41 (Init. Dec. Mar. 29, 2011).

2. Complainant’s Section 10(b)(8) claim is Irremediably Defective

The Complaint vaguely asserts that “Respondents violated section 10(b)(8) when they required and demanded payment for expenses that would be incurred in curing the defective cargo from one or more of the Respondents and/or the shipper or consignee” (Compl. ¶ D.) Even apart from the confusion regarding who allegedly demanded payment from whom, Complainant’s allegations are fatally defective.

Section 10(b)(8) forbids a common carrier to give any undue preference/advantage or impose any unreasonable prejudice or disadvantage “*for service pursuant to a tariff*” (emphasis added). The Complaint does not allege that any of the Respondents provided service to it pursuant to a tariff, and certainly cannot allege that CCL did so. Accordingly, the claim against CCL must be dismissed.

Even apart from this fatal defect, Complainant has failed to plead the essential elements of a Section 10(b)(8) claim. In *Ceres Marine Terminal, Inc. v. Maryland Port Administration*, 27 SRR 1251, 1270-71 (FMC 1997), the Commission explained that a complainant must establish four things in order to make out a claim of unreasonable preference or prejudice: (1) two parties are similarly situated or in a competitive relationship; (2) the parties were accorded different treatment; (3) the unequal treatment is not justified by differences in transportation factors; and (4) the resulting prejudice or disadvantage is the proximate cause of injury. Complainant has failed to adequately plead any of these.

Complainant has not pled what is often known as a “triangular” relationship – i.e., an identifiable third party that was preferred, while complainant was disadvantaged. Interpreting

the Supreme Court's holding in *Volkswagenwerk v. FMC*, 390 U.S. 261 (1968), the FMC has instructed: "discriminatory treatment will not be found to exist in the absence of a determination that a third party has enjoyed an unfair advantage over the complainant. The favored entity need not have been in direct competition with the complainant, but it must have been similarly situated in that both were seeking the benefit which was denied to the complainant." *New Orleans Stevedoring Co. v. Board of Commissioners of the Port of New Orleans*, 29 SRR 345, 352 (ALJ 2001), *aff'd*, 29 SRR 1066 (FMC 2002).¹³

The Complaint on its face alleges that Respondents gave an "undue or unreasonable preference or advantage to" Complainant itself (the offending shipper). Complainant can hardly claim injury by dint of being preferred.¹⁴

Even ignoring the actual words of the Complaint and assuming *arguendo* that Complainant meant the reverse of what it wrote – that the allegedly preferred parties were "shippers whose cargo was compliant," this does not meet the standard of *Volkswagenwerk* or *Ceres*. Complainant has not identified any party in similar circumstances that received better treatment to Complainant's detriment.¹⁵ Preference, like negligence, does not exist in the air¹⁶ – it requires a concrete set of facts involving identified entities that the Parties and the Commission

¹³ See, e.g., *Puerto Rico Ports Authority v. FMC*, 642 F.2d 471, 483 (D.C. Cir. 1980) ("a violation of [the predecessor to § 10(b)(8)] normally involves a 'triangular relationship' between the violator, the preferred party, and the party suffering discrimination"). This holding was followed by the Commission in *All Marine Moorings, Inc. v. ITO Corp.*, 27 SRR 539, 548, n.15 & accompanying text (FMC 1996).

¹⁴ Respondents also suggest that Respondents gave themselves preferred treatment. Even apart from the fact that Complainant and Respondents were in no way similarly situated, "self-preference" does not violate the Shipping Act. *Puerto Rico Ports Authority*, 642 F.2d at 483 (citing *Anglo Canadian Shipping Co. v. Mitsui Steamship Co.*, 4 F.M.B. 535 (1955)).

¹⁵ Indeed, compliant and non-compliant shippers are on their face not similarly situated – one may enter the United States and the other may not, absent corrective action. So in order to make out even a conceivable claim of preference, Complainant would have to allege and establish that Respondents gave better treatment to another shipper of non-compliant cargo.

¹⁶ *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928).

can analyze in a meaningful manner. Complainant's claim has nothing to do with how other shippers were treated – Complainant would not be any better position if other shippers were treated as Complainant was, and is not in any worse position if some were treated better.

The real gravamen of Complainant's claim is not that it was treated differently, but that it was treated unreasonably. That, however, is a claim that may be made only under Section 10(d)(1), not Section 10(b)(8). Thus, Complainant has failed to adequately plead either of the first two *Ceres* standards.

The Complaint also fails to allege that such disparity of treatment was unjustified by transportation factors.¹⁷ To the extent that Complainant is asserting that compliant shippers were treated differently from noncompliant shippers, this would seem to be the inevitable effect of U.S. Customs laws. See n. 15, above. Thus, the Complaint fails to meet *Ceres* standard three.

Finally, the Complainant fails to allege a viable theory under which its purported injury was caused by any difference in treatment, as opposed to the allegedly unreasonable treatment of Complainant itself. Complainant has asserted that it is in fact the *preferred* shipper, which by any stretch of the imagination cannot result in injury. Even assuming Complainant meant to aver that it was the *disadvantaged* shipper, no causal connection is pleaded between the alleged difference in treatment and any purported injury. As noted above, Complainant's purported injury would be exactly the same if all similarly situated parties had been given precisely the same treatment. Thus, the Complaint does not even allege "but for" causation, much less proximate cause.

¹⁷ Although it is ultimately a respondent's burden of proof to establish that any differential treatment was justified by transportation factors, this does not relieve a complainant of pleading obligations.

D. Conclusion

For the foregoing reasons, CCL respectfully requests that the Complaint be dismissed with prejudice. As shown above, Complainant's claims for violation of the 1984 Act fail for lack of subject matter jurisdiction over CCL. CCL did not serve as a common carrier, a marine terminal operator, or an ocean transportation intermediary for the transaction at issue here; thus, Sections 10(d)(1), 10(b)(8) and 10(b)(3) do not apply to CCL in this circumstance. Complainant's 10(b)(3) and 10(b)(8) claims must also be dismissed because the Complaint fails to plead required elements of such claims.

Dated: September 10, 2014

Respectfully submitted,


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