

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

RESPONDENT'S PROPOSED FINDINGS OF FACT

In accordance with the Scheduling Order dated October 4, 2014 and Order on Complainant's Motion to Extend Time to File Proposed Findings of Fact and Brief dated March 10, 2015, Respondent, Amoy International, LLC ("Amoy") hereby sets forth its proposed findings of fact pursuant to 46 C.F.R. 502.221:

1. On May 17, 2013, John Chen of Kumquat Tree, Inc. ("Kumquat") contacted Krystal Lee for quotation for a shipment of "auto parts" from Oakland, California to Xingang, China. (ECONO PFF App. 00040-00041); Declaration of Krystal Lee Laczano, ¶3, AMOY 0149.

2. At the time, Amoy had, in place, a practice whereby it required the shipper of cargo to provide to Amoy with a commercial invoice, a packing list, a photo of the cargo intended to be shipped, and a completed Shipper's Letter of Instruction prior to booking a shipment. Declaration of Krystal Lee Laczano, ¶4, AMOY 0149-0150; Declaration of Melissa Chen, ¶9, 0157.

3. Krystal Lee Laczano adhered to the Amoy's practice by requiring that Kumquat provide to Amoy with a commercial invoice, a packing list, a photo of the cargo, and completed Shipper's Letter of Instruction prior to booking. Declaration of Krystal Lee Laczano, ¶4, AMOY 0149-0150.
4. The commercial invoice, packing list, photo of the cargo and Shipper's Letter of Instruction provided by Kumquat reflected that the cargo consisted of 4 40' containers of auto parts. Declaration of Krystal Lee Laczano, ¶4, AMOY 0149-0150.
5. Kumquat listed the consignee as Tianjin Tenfei Trading Co., Hao Xiongang Trade Center, 9024 Dongli District, Tianjin China. AMOY 0040, Shippers Letter of Instruction, referring to the commercial invoice for the consignee; AMOY 0038, Commercial Invoice.
6. On May 29, 2013, Maersk issued its waybill no. 560323561 ("the Maersk Waybill") reflecting transportation of the 4 containers from Oakland, California, to Xingang, China, and Amoy was not a party to that waybill. ECONO PFF App. 00058-00059.
7. Kumquat provided the seal numbers for each of the containers prior to shipment and those numbers were set forth on the Maersk Waybill. ECONO PFF App. 00052; 00058-00059.
8. Econocaribe was listed as the shipper on the Maersk Waybill and Victory Maritime was listed as the consignee. ECONO PFF App. 00058-00059.

9. The shipper arranged to have the 4 containers, which were sealed, drayed from their point of loading in Oakland, California to the Maersk terminal in Oakland, California. Amoy was not billed for drayage, nor did Amoy receive any documents relating to the drayage. Declaration of Melissa Chen, ¶7, AMOY 0156.

10. At the time that the 4 containers were to land in China, June 17, 2013, Melissa Chen attempted to reach the consignee, but could not do so. On that day, she warned Econocaribe that she could not reach the consignee on its bill of lading and asked for assistance on the issue. ECONO PFF App. 00068.

11. Later on June 17, 2013, Ms. Chen informed John Kamada, of Econocaribe, that Amoy was trying to find out the details of the exact commodity and would let him know ASAP. ECONO PFF App. 00078.

12. On June 18, 2013, Ms. Chen reached Daniel Akhromstev, whom she understood was a middleman for the shipment, and discovered that the cargo was “rubber speed bump” and “large rubber blocks,” and so informed Econocaribe. ECONO PFF App. 00080-00081.

13. On June 18, 2013, Ms. Chen asked Krystal Lee Laczano to look for buyers for the cargo in smaller countries around China “via a trading site, agents, and US sellers.” (ECONO PFF App. 00116). Declaration of Melissa Chen, ¶5, AMOY 0143.

14. On June 20, 2013, Melissa Chen asked Krystal to find alternative buyers and to find out the costs pertaining to the shipment. ECONO PFF App. 00115; Declaration of Melissa Chen, ¶5, AMOY 0143.

15. Krystal did as Ms. Chen instructed and advertised on a website for the sale of the contents of the four containers. Declaration of Krystal Lee Laczano, ¶8, AMOY 0151-0152; Declaration of Melissa Chen, ¶¶4, 5, 6, 7; AMOY 0142-0146.

16. This was the first and only time that Amoy advertised the sale of used tires. It is not a used tire or rubber dealer. Declaration of Melissa Chen, ¶¶4-7, AMOY 0143-0144; Declaration of Melissa Chen, ¶19, AMOY 0161.

17. Beginning on June 17, 2013, Amoy informed Econocaribe that re-exporting the cargo was an option that Amoy was looking to pursue. Its goal was to re-export the cargo. Declaration of Krystal Lee Laczano, ¶8, AMOY 0152; ECONO PFF. App. 00067, 00083.

18. Beginning on June 18, 2013, Amoy began requesting the return cost of the cargo from Econocaribe. ECONO PFF App. 00119-00122; 00095; 00083.

19. Econocaribe passed along to Maersk, Amoy's request for the re-export cost. ECONO PFF App. 00100.

20. Since Econocaribe prohibited all contact between Amoy and Maersk, any request that Amoy would have made to Maersk, such as the re-export cost, had to be made through Econocaribe.

Declaration of Melissa Chen, ¶13, AMOY 0158; Declaration of Krystal Lee Lazcano, ¶8, AMOY 0152.

21. Since Maersk was not responding to Amoy's request for the return cost, which was made by Econocaribe, Econocaribe suggested that Amoy prepare an abandonment letter. ECONO PFF App. 00093.

22. On June 25, 2013, Krystal Lee Laczano sent John Kamada the abandonment letter that was suggested by him. (ECONO PFF App. 00118).

23. On July 9, 2013, Melissa Chen emailed John Kamada stating "all my intention is to have this problem solved soonest possible. Please help me to check with MSK if you can talk to someone and ask them what will be cheapest way to solve this matter." ECONO PFF App. 00131.

24. In response to Melissa Chen's July 9, 2013 email and apparently without consulting with Maersk, on July 10, 2013, John Kamada replied advising that returning the shipment to the U.S. was usually a more expensive alternative than abandonment, but as for abandonment, "we will begin the process immediately." ECONO PFF App. 00129-00130.

25. In view of Mr. Kamada's advice of July 10, 2013, Melissa Chen asked him to immediately proceed with abandonment. ECONO PFF App. 00129.

26. Maersk informed Econocaribe that there were three options available to deal with the cargo: re-export, destruction or auction. The latter option couldn't be pursued because it had to have to

be admitted in China for auction. The cargo couldn't be admitted. On July 17, 2013, Econocaribe passed this information on to Amoy. ECONO PFF. App. 00127-00128.

27. When that information was conveyed to Amoy, it understood that the cargo was going to be destroyed. ECONO PFF App. 00127. No efforts had been made to that time, either by Maersk or Econocaribe, to provide a re-export cost to Amoy.

28. On September 6, 2013, Barbara Suarez of Maersk Line advised John Kamada that the best option was to re-export the shipment before it was seized Chinese Customs. She asked for a "formal letter" of abandonment on Econocaribe letterhead and that MSK China would "try and find a local agency or CHB (Customs House Broker) to ask about this issue." (ECONO PFF App. 00148).

29. On September 8, 2013, John Kamada sent two emails to Amoy. Neither referred to or incorporated the warning in Maersk's September 6, 2013 email that the best option was to re-export the cargo before it was seized by Chinese Customs. However, it requested that Amoy prepare a revised letter of abandonment. AMOY 0170 and 0172.

30. Amoy prepared a revised letter of abandonment and sent it to Econocaribe. Declaration of Melissa Chen, ¶25, AMOY 0164-0164; AMOY 0087-0089.

31. If Econocaribe had conveyed Maersk's warning to Amoy, it would have begun to re-export the cargo. Declaration of Melissa Chen, ¶22, 24, 27, AMOY 0016-0019, 0021-0022; Declaration of Melissa Chen, ¶5, AMOY 0155.

32. Econocaribe failed to communicate with Amoy regarding the status of the cargo from November 1, 2013 to April 14, 2014, a period of 5 ½ months. Declaration of Melissa Chen, ¶6, AMOY 0155, 0156.

33. On April 15, 2014, Ariel Martinez of Econocaribe sent Amoy an email in which Econocaribe notified Amoy, for the first time, that Maersk China recommended that the shipment be re-exported and also notified Amoy, for the first time, that costs were being claimed by Maersk, but those costs did not the cost of re-export or Maersk's detention/demurrage costs. ECONO PFF App. 00208-00210. Declaration of Melissa Chen, ¶24, AMOY 0017-0019.

34. Ms. Chen of Amoy replied to Econocaribe stating that it had been a long time since she heard about the freight, but wanted to solve the problem as soon as possible. She said the total cost was really expensive and couldn't afford to pay it. ECONO PFF App. 00213

35. Amoy believed that the letter of abandonment that was requested in September, 2013 had been effective in addressing the problem, since Amoy had not heard from Econocaribe since November 1, 2013. Amoy also relied on the September 26, 2013 from John Kamada that the cargo had been abandoned. ECONO PFF App. 00234-00235; Declaration of Melissa Chen, ¶¶25, 27; AMOY 0164-0165.

36. On May 6, 2014, John Kamada emailed to Melissa Chen stating that Maersk's "final offer" was USD 67203. 70% of that "final offer" or \$50,000 was detention cost, or the cost incurred as a result of re-exporting the cargo to the US. and that return shipment could be arranged after payment from Amoy. ECONO PFF App. 00230-00232.

37. On May 9, 2014, Melissa Chen wrote to John Kamada that Amoy had lost contact with the shipper due to the time that had elapsed and that she thought that the matter was resolved when Amoy provided the abandonment letter. ECONO PFF App. 00234-00235.

38. In a May 12, 2014 email to Econocaribe, Barbara Suarez of Maersk reminded John Kamada that Maersk had warned Econocaribe that at that time we made it known that best option was to find a new consignee or to start re-export, which is what we're doing now. ECONO PFF App. 00237.

39. In a May 14, 2014 email, Barbara Suarez of Maersk reiterated to John Kamada that “when this situation first arose, the options provided to Econocaribe were to find a new buyer or re-export but Econocaribe was not able to provide required commercial docs to initiate this process, prior to Customs seizure of the cargo.” ECONO PFF App. 00242-00243, 00248.

40. Econocaribe knew, before seizure of the shipment by China Customs, that the shipment had to be re-exported. ECONO PFF App. 00248.

41. Econocaribe did not advise Amoy “when this situation first arose” that it should find a new buyer or re-export. Amoy first became aware of the fact that re-export was the only option in a April 22, 2014 email that John Kamada set to Amoy. Declaration of Melissa Chen, ¶24, AMOY 0018-0019; 0101-0102.

42. On June 11, 2014, Barbara Suarez emailed Econocaribe that "Maersk petitioned disposal from China Customs back in March, 2014, and so far no feedback.... This is reason Maersk took the lead to arrange re-export and minimize customs fines and storage, which continues to accrue daily. ..." ECONO PFF App. 00259. Maersk's petition was filed 9 months after the cargo landed in China and 6 months after Amoy sent its revised letter of abandonment.

43. As a result of Econocaribe's failure to notify Amoy, timely, of the need to re-export the cargo and its failure to provide Amoy with the cost of re-export, all cost of detention/demurrage which occurred as a result of these failures, are Econocaribe's responsibility. Econocaribe is also responsible for all costs resulting from the seizure of the cargo by Chinese Customs.

Respectfully submitted,

Dated: May 4, 2015

RUSSELL, MIRKOVICH & MORROW

/s/ Joseph N. Mirkovich
Joseph N. Mirkovich, Esq.
RUSSELL MIRKOVICH & MORROW
One World Trade Center, Suite 1660
Long Beach, California, 90831-1660
Telephone: (562) 436-9911
Fax: (562) 436-1897
Email: jmirkovich@rumlaw.com

Attorneys for Respondent
AMOY INTERNATIONAL LLC

CERTIFICATE OF SERVICE

I hereby certify that the original and appropriate number of copies of the foregoing Respondent's Proposed Findings of Fact were sent by overnight mail to the Commission on May 4, 2015 and that a copy was also emailed to the Commission on that date.

I certify that a true and correct copy of the foregoing Respondent's Proposed Findings of Fact was served on the below-mentioned counsel via Email on May 4, 2015.

Neil B. Mooney, Esq.
THE MOONEY LAW FIRM, LLC
1911 Capital Circle, N.E.
Tallahassee, FL 32308
Telephone: (850) 893-0670
Fax: (850) 391-4228
Email: nmooney@customscourt.com

Attorneys for Complainant
ECONOCARIBE
CONSOLIDATORS, INC.

/s/ Joseph N. Mirkovich
Joseph N. Mirkovich, Esq.