

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-10**

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**ECONOCARIBE CONSOLIDATORS, INC.**

**COMPLAINANT**

**v.**

**AMOY INTERNATIONAL, LLC.**

**RESPONDENT**

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**RESPONDENT AMOY INTERNATIONAL, LLC'S RESPONSE AND OPPOSITION  
TO COMPLAINANT ECONOCARIBE CONSOLIDATORS, INC.'S  
PROPOSED FINDINGS OF FACT**

AMOY INTERNATIONAL, LLC ("Amoy") hereby files its Response and Opposition to ECONOCARIBE CONSOLIDATORS, INC. ("Econocaribe") Proposed Findings of Fact.

1. Econocaribe is a licensed ocean freight forwarder and non-vessel operating common carrier ("NVOCC"), with its principal place of business at 2401 NW 69 Street, Miami, FL 33147. It maintains a branch office at 637 E. Albertoni St., Suite 104, Carson, CA 90746, United States. (Complaint (ECONO PFF App. 00001)).

**Response: Admit.**

2. Amoy International, LLC ("Amoy") does business as an Ocean Transportation Intermediary under Federal Maritime Commission license number 019113N, bond number

8941895, with its place of business at 14145 Proctor Avenue Suite 14, City of Industry, CA 91746, United States. (Complaint (ECONO PFF App. 00001)).

**Response: Admit.**

3. Mr. John Kamada is the Manager of the Los Angeles Office of Econocaribe. He is in charge of the business in the area of California. (John Kamada Declaration (ECONO PFF App. 00439)).

**Response: Admit.**

4. Mr. Ariel Martinez is an employee of Econocaribe. (John Kamada Declaration (ECONO PFF App. 00439)).

**Response: Admit.**

5. Ms. Melissa Chen is the owner of Amoy. (Melissa Chen Declaration - Opposition to Motion for Partial Summary Judgment (hereinafter “Melissa Chen Declaration 1”)(ECONO PFF App. 00006)).

**Response: Admit.**

6. Ms. Krystal Lee was an employee of Amoy who made the booking that gave rise to this proceeding. (Amoy’s Admission Responses (ECONO PFF App. 00033)).

**Response: Admit.**

7. Krystal Lee's scope of employment included booking vessels with NVOCCs. (Amoy's Interrogatories Responses (ECONO PFF App. 00036)).

**Response: Admit.**

8. At 3:31 PM<sup>1</sup>, May 17, 2013, John Chen of Kumquat Tree, Inc. contacted Krystal Lee for quotation for a shipment of "auto parts" from Oakland, California to Xingang, China. (ECONO PFF App. 00040-00041).

**Response: Objection. Misleading. The proposed "finding" misstates the email. John Chen contacted "sales@amoyline.com" and Krystal Lee responded. See ECONO PFF App. 00040-00041. sales@amoyline.com is a different address than Krystal Lee's. See, for example, header on ECONO PFF App. 00045. See also Declaration of Melissa Chen, ¶2, AMOY 0153-0154. Please note that Krystal Lee's full name is Krystal Lee Laczano.**

9. At 1:55 PM, May 17, 2013, Krystal Lee gave John Chen a quotation of Maersk from Oakland to Xingang. (ECONO PFF App. 00039).

**Response: Admit.**

10. At 2:14 PM, May 17, 2013, Krystal Lee wrote to John, stating in part "it was nice speaking with you." A conversation took place between Krystal Lee and John Chen prior to this

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<sup>1</sup> Because John Chen's area code was 215 (Philadelphia, PA), the inconsistency with the apparently later emails can be explained by the fact that all other emails were time-stamped with Pacific Standard Time where both Econocaribe's L.A. office and Amoy are located, while this email was time-stamped with Eastern Standard Time where John Chen was likely to be located.

time in which Mr. Chen stated that he wanted a quote for 40' and 40' HQ of auto parts. (ECONO PFF App. 00038).

**Response: Objection. Speculation. The proposed "finding" speculates as to what took place.**

11. At 3:26 PM, May 17, 2013, Krystal Lee contacted Econocaribe for a shipment of cargo from Oakland to Xingang. (ECONO PFF App. 00047).

**Response: Admit.**

12. At 4:01 PM, May 17, 2013, Ariel Martinez of Econocaribe replied to Krystal Lee's inquiry, advising her the schedule of the next Maersk sailing. (ECONO PFF App. 00046).

**Response: Admit.**

13. At 11:36 AM, May 20, 2013, Krystal Lee wrote to John Chen that "I will place booking for 4x40'GP containers for this weeks[sic] cut off." (ECONO PFF App. 00049).

**Response: Admit.**

14. At 11:46 AM, May 20, 2013, Krystal Lee made a booking with Econocaribe for four containers of "Auto Parts (New)" from Oakland to Xingang. (ECONO PFF App. 00045-00046).

**Response: Admit.**

15. At 11:53 AM, May 20, 2013, Krystal Lee confirmed with John Chen that a booking had been made. (ECONO PFF App. 00050).

**Response: Admit.**

16. At 11:58 AM, May 20, 2013, Econocaribe confirmed the booking with Krystal Lee. (ECONO PFF App. 00045).

**Response: Objection. Misleading. The proposed “finding” misstates the email. The email states that “I will send over the confirmation asap.” This shows that a confirmation was not included in that email.**

17. At 12:13 PM, May 20, 2013, Krystal Lee confirmed with John Chen the Maersk booking. (ECONO PFF App. 00052-00053).

**Response: Objection. Misleading. The proposed “finding” misstates the email. There was no confirmation in the email. The email states “Please see the booking details below.”**

18. At 2:35 PM, May 24, 2013, Gaby Reynolds, another Amoy employee, emailed Econocaribe the shipper's instruction and instruct (sic) Econocaribe to designate Victory Maritime Services (China) Ltd. as the ultimate consignee on the Master Bill of Lading. (ECONO PFF App. 00055 and 00065).

**Response: Objection. Misleading. The proposed “finding” misstates the email. The shipper instruction, referred to in ECONO PFF App. 00065, was not attached to that email. See header of ECONO PFF App. 00055-no attachment is noted, and the Declaration of Melissa Chen, ¶3, AMOY 0154 .**

19. Maersk issued Master Bill of Lading # 560323561 for this shipment. Four containers used for this shipment were PONU1750766, PONU1877617, MRKU0232720, and MSKU6129259. (ECONO PFF App. 00058-00059).

**Response: Objection, misleading. The proposed “finding” misstates the Master Bill of Lading. The Master Bill of Lading did not list PONU17550766 as a container. It listed PONU1750766 as a container.**

20. Econocaribe issued its Bill of Lading # ECCI LAX-CNXGG-04-439024. Pursuant to Amoy's instructions, The shipper on this Bill of Lading was Amoy and the consignee was Victory Maritime Services (China) Ltd. (ECONO PFF App. 00061).

**Response: Objection. Irrelevant. Econocaribe’s claim in this action is not based on a breach of contract.**

21. Amoy issued its Bill of Lading for this shipment. The shipper on this Bill of Lading was Kumquat Tree Inc. and the consignee was Tianjin Tenfei Trading Co. (ECONO PFF App. 00063).

**Response: Objection. Irrelevant. Amoy’s Bill of Lading is not an issue in this matter. This proceeding is not based on Amoy’s Bill of Lading.**

22. At 11:15 AM, June 17, 2013, the cargo's arrival date in China, Melissa Chen wrote to Ariel Martinez. Her email reads:

“We are having difficulty locating shipper who placed order with us. and I believe that we have problem with this shipment as we are also unable to locate the consignee on the BL. can you please forward us to your manager as we need assistances to this issue. container are arriving in Tanjin today.”

(ECONO PFF App. 00068).

**Response: Admit.**

23. At 11:20 AM, July 17, 2013, Ariel Martinez wrote to Melissa Chen. John Kamada was copied with this email. His email reads:

“Noted Melissa.  
What do you need us to do?  
I’ve copied in John Kamada to assist with the issue.”  
(ECONO PFF App. 00068).

**Response: Admit.**

24. At 11:22 AM, June 17, 2013, John Kamada wrote to Melissa Chen. His email reads:

“Please let me know what you need from me. I am happy to assist.”  
(ECONO PFF App. 00067).

**Response: Admit.**

25. At 11:54 AM, June 17, 2013, Melissa Chen wrote to John Kamada. Her email reads:

“... We have completely lost contact with the supplier/buyer for these 4 containers, and we also just found out the commodities were auto parts, but they *are recycle items*. I’m still trying to get more information from vendor about these items.

In this case, **can we request MSK to allow us some extra time at port of destination or abandon the cargo or return to US seller or resell to other parts in China?...**”

(ECONO PFF App. 00067).

**Response: Objection. Misleading. The proposed “finding” misrepresents the cited email. The email did not have any words that were either in bold, italicized or underlined.**

26. At 1:47 PM, June 17, 2013, John Kamada wrote to Melissa Chen. His email reads:

"Normally, we cannot request free time after the vessel sails. In this case, we might be able to get some free time applied to the booking. I will check on that. In my experience, if these are recycled auto parts, they are usually scrap metal. Can you confirm? If so, might be fairly easily to resell at destination."  
(ECONO PFF App. 00076).

**Response: Admit.**

27. At 1:55 PM, June 17, 2013, Ariel Martinez wrote to George Amador of Maersk. His email reads:

"The consignee is requesting additional free time at the destination. Please confirm if you can grant them an extension..."  
(ECONO PFF App. 00112).

**Response: Objection. Hearsay. Lack of Foundation. Ariel Martinez's statements are hearsay. Neither Maersk nor the purported author/sender of the email has authenticated it nor affirmed that it was sent.**

28. At 2:36 PM, June 17, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"We are trying to get the details of exact commodity and will let you know ASAP. meanwhile, if you can help us to get extra time at the port for us to figure out how to fix problem would be very helpful."  
(ECONO PFF App. 00078).

**Response: Admit.**

29. At 11:22 AM June 18, 2013, George Amador replied Ariel Martinez by saying "how many days are they looking for?" (ECONO PFF App. 00111).

**Response: Objection. Hearsay, lack of foundation. The statements of George Amador of Maersk, a non-party, are inadmissible hearsay and lack foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent.**

30. At 3:10 PM, June 18, 2013, Ariel Martinez replied George Amador by saying "the max amount you can offer." (ECONO PFF App. 00111).

**Response: Objection. Hearsay, lack of foundation. Ariel Martinez's statements are hearsay and lack foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent.**

31. Apparently, George Amador and Ariel Martinez had a telephone conversation thereafter. Then at 10:28 AM, June 19, 2013, Ariel Martinez wrote to George Amador requesting additional 5 days extension. His email also inquired about the return options and costs. His email reads:

"Per our telephone conversation, please request an additional 5 day extension. Also, the shipper believes the consignee may refuse the cargo at the destination. What are our options to return the container back to the US? Can you please advise the costs? (ECONO PFF App. 00110).

**Response: Objection. Hearsay, lack of foundation. Ariel Martinez's statements are hearsay and lack foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent.**

32. Ariel Martinez followed with Maersk on the return options and charges several times at least four times until 8:34 AM, June 25, 2013. (ECONO PFF App. 00108-00110).

**Response: Objection. Hearsay, misleading, irrelevant, lack of foundation, vague and ambiguous. The statements in the email are hearsay and lack of foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent. In addition, the proposed "finding", as stated, is misleading because it misstates the content of the 4 cited emails. They do not support a "finding" that Ariel Martinez followed with**

“return options and charges several times at least 4 times.” The emails marked as ECONO PFF App. 00108-00110 show that on June 20, 2013, at 3:48 pm, and on June 21, 2013, at 12:41, Ariel Martinez contacted Maersk about returning the containers back to the U.S., but requested total charges for doing so in only one email. Emails dated June 24, 2013, at 8:16 am, and on June 25, 2013, at 8:34 am, request whether there was any feedback from the sales team and also asked, in the later email, if the containers passed free time. The email is irrelevant.

33. At 10:15 AM, June 18, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"we are unable to get the detail cargo information at moment, the product what seems like is:

-rubber speed bump

-large rubber blocks.

the middle man for the shipment is: South San Francisco Global Waste Management

we are afraid these might be the waste materials, or the rubbers bumps and blocks made out of waste tires.

please let me know what we can do about these. We certainly do not have buyer in China."

(ECONO PFF App. 00080-00081).

**Response: Admit.**

34. At 8:18 PM, June 18, 2013, Melissa Chen wrote to Krystal Lee. Her email reads:

**"Tianjin port is strictly not allowing any scrap materials to go in. These containers will have to be moved to other smaller countries in Asia.** Start immediately looking for buyers around smaller third world countries around China. Via trading site, agents and US sellers."  
(ECONO PFF App. 00116).

**Response: Objection. Misleading. The proposed “finding” misrepresents the cited email because that email did not have any words that were either in bold or underlined.**

35. At 9:54 AM, June 19, 2013, Melissa Chen wrote to Ariel Martinez. Her email reads:

“please also advise the return option to US. **I was told by China office such commodity is prohibited in importing.** please let me know our options.”  
(ECONO PFF App. 00083).

**Response: Objection. Misleading. The proposed “finding” misrepresents the cited email because that email did not have any words that were in bold.**

36. At 10:28 AM, June 19, 2013, Ariel Martinez wrote to George Amador. Beside requesting additional 5 days extension, he inquired about the return options and costs. His email reads:

"Per our telephone conversation, please request an additional 5 day extension.  
Also, the shipper believes the consignee may refuse the cargo at the destination. What are our options to return the container back to the US? Can you please advise the costs?  
(ECONO PFF App. 00110).

**Response: Objection. Hearsay. Ariel Martinez’s statements are hearsay.  
Furthermore, the proposed “finding” is repetitive as it is the same as proposed Finding No.**

**31.**

37. At 2:32 PM, June 20, 2013, Melissa Chen wrote to Krystal Lee. Her email reads:

"I need these information:  
- buyers alternative  
-carrier confirmation from Econo  
- all costs  
- information from Daniel"  
(ECONO PFF App. 00115).

**Response: Admit.**

38. Daniel referred to in the above email is Daniel Akhromtsev of Global Waste Management, Inc., from whose facility the four containers of used truck tires were loaded with trucker. (ECONO PFF App. 00167).

**Response: Admitted that the “Daniel” referred to its Daniel Alchromtser of Global Waste. However, Amoy lacks personal knowledge as to whether the 4 containers “were loaded with trucker” at Global Waste’s facility.**

39. At 3:46 PM, June 20, 2013, Krystal Lee emailed Econocaribe, asking Econocaribe to confirm "all charges for this shipment and carrier confirmation for this shipment." (ECONO PFF App. 00122-00123).

**Response: Admit.**

40. At 3:47 PM, June 20, 2013, Econocaribe responded to Krystal Lee's email by asking whether the "all charges" meant "all charges for the OFR to Xingang" or "the return back to the U.S." (ECONO PFF App. 00122).

**Response: Admit.**

41. At 3:52 PM, June 20, 2013, Krystal Lee answered the email by saying "please include all fees including return to U.S." (ECONO PFF App. 00121).

**Response: Admit.**

42. At 3:55 PM, June 20, 2013, Econocaribe answered the email by saying "Noted, I've been working on this with carrier. We are waiting for them to confirm all the charges. I will let you know once they revert the details." (ECONO PFF App. 00120).

**Response: Admit.**

43. At 9:42 AM, June 21, 2013, Ariel Martinez wrote to Krystal Lee. His email reads:

“Maersk is still waiting on their overseas office to confirm. They say they will have a response by Monday.

**Just to confirm, all 4 containers need to be returned back to the US correct? Also, there has not been any customs formalities done in China, correct?”**

(ECONO PFF App. 00092).

**Response: Objection. Misleading. The proposed “finding” misrepresents the cited email because it did not have any words in bold.**

44. Amoy never answered this email. (John Kamada Declaration (ECONO PFF App. 00440)).

The fact that Amoy produced this Ariel Martinez 9:42 AM, June 21, 2013 email yet no responses to it confirms that Amoy never responded to this email.

**Response: Disputed. Objection. Misleading, irrelevant, speculation. The proposed “finding” is misleading, uncertain, vague, ambiguous and not supported by the Declaration of John Kamada. It is uncertain, vague and ambiguous as to what “this email” refers to. If it refers to the email identified in proposed Finding No. 43, that is an email between Ariel Martinez and Krystal Lee, not Melissa Chen. In his Declaration (ECPNP PFF App 00400), John Kamada testified that “on June 21, 2013 Econocaribe asked Melissa Chen of Amoy if the cargo was to be returned to the U.S. She never answered.” The email June 21, 2013 referred to in proposed Finding No. 43 was not an email to Melissa Chen. Econocaribe has failed to produce any June 21, 2013 email that was purportedly sent to Melissa Chen and Amoy believes that none exists. Mr. Kamada’s testimony is incorrect and disputed. Moreover, the representation that Amoy never informed Econocaribe after June 21, 2013, to return of the 4 containers back to the U.S., is disputed and belied by the emails that Econocaribe cites in support of its proposed “Findings” Nos. 51, 53 and 59, among other**

emails. Those emails are directed to returning the cargo. Furthermore, Econocaribe knew that Amoy wanted to return the 4 containers and was making efforts to do so after the June 21, 2013 email. Econocaribe's proposed Finding of Fact No. 47 states that as of June 24, 2013, it was still trying to get a quote from Maersk on the return cost of those containers. See also Declaration of Melissa Chen, ¶¶ 10, 11 and 12, AMOY 0005-0009; 0053-0062, where she sets forth her continuing requests for assistance in returning the cargo, since this would be the fastest way to solve the problem. She noted that she had been making these requests since June 19, 2013 and, as she stated in her July 9, 2013, she still hadn't received an answer. ECONO PPF App. 0018. See also, Declaration of Krystal Lee Laczano, ¶¶ 5, 6 and 7, AMOY 0150-0151, reflecting her efforts to get re-export rates from Econocaribe.

45. At 9:44 AM, June 21, 2013, Melissa Chen wrote to John Kamada. Her email states as follows:

"... the vessel arrived to port for few days now, and I understand you are still waiting to hear from MSK but we are running out of time. This is abandoned shipment by shipper / consignee. We can as well abandon it, but we want to keep everything in the good term and to solve this matter instead of dropping it. **If you need me to issue abandon letter to MSK to push them for faster response please let me know.** We sincerely just want to solve this matter the **quickest** possible..."  
(ECONO PPF App. 00119).

**Response: Objection. Misleading. The proposed "finding" misrepresents the cited email because the email did not have any words that were either in bold or underlined.**

46. At 10:44 PM, June 23, 2013, John Kamada responded to Melissa Chen's email. His email states:

"We are still waiting on Maersk but I would suggest you prepare the abandon letter and have it ready to go."

(ECONO PFF App. 00118).

**Response: Admit.**

47. At 3:01 PM, June 24, 2013, Ariel Martinez wrote to Melissa Chen. His email reads:

“Maersk stated their sales team is still working on the pricing for the 4 containers to be returned back to the US.

I’m pushing them on a daily basis and expect further details tmw morning.”

(ECONO PFF App. 00094-00095).

**Response: Admit.**

48. At 5:53 PM, June 25, 2013, Krystal Lee sent John Kamada an abandonment letter.

(ECONO PFF App. 00118). The abandonment letter is attached as ECONO PFF App. 00106.

**Response: Admit.**

49. At 9:35 AM, June 26, 2013, Ariel Martinez wrote to George Amador. His email reads:

"Further to my emails below, we’ve just received an abandonment letter from the customer. Please review the attachment.

Please advise all costs for returning the containers back to the US."

(ECONO PFF App. 00107).

**Response: Objection. Hearsay. Ariel Martinez’s statements are hearsay and lack of foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent. Furthermore, Barbara Suarez of Maersk denies that the abandonment letter was received. ECONO PFF App. 00149.**

50. At 9:37 AM, June 26, 2013, Ariel Martinez wrote to Krystal Lee. His email reads:

“We received your abandonment letter and forwarded it to the carrier. I’ve brought this issue up to Maersks management in efforts to expedite the process.

I will revert the outcome asap.”  
(ECONO PFF App. 00107).

**Response: Objection. Lack of foundation. There is no email at ECONO PFF App. 00107 to support this “finding.”**

51. At 10:57 PM, July 1, 2013, Melissa Chen wrote to John Kamada. Her email states:

"...the process here is taking really long time and we all don't know what is happening and what MSK is going to do with the containers. there is no word from anyone on how they want to resolve this issue.  
meanwhile, please let me know if you can still amend original consignee on the BL with MSK?"  
(ECONO PFF App. 00136).

**Response: Admit.**

52. At 11:01 AM, July 1, 2013, John Kamada wrote to Melissa Chen. His email states:

Given the circumstances, we can probably still revise the Maersk B/L. Do you think you might find another buyer?  
(ECONO PFF App. 00136).

**Response: Admit.**

53. At 11:12 AM, July 1, 2013, Melissa Chen wrote to John Kamada. Her email states:

"no, we did not find buyer because of **the commodity is not permitted to go into China.**  
I wanted to list the buyer on BL of what shipper gave us originally. please let me know."  
(ECONO PFF App. 00135).

**Response: Objection. Misleading. The proposed “finding” misrepresents the cited email because that email did not have any words that were either in bold or underlined.**

54. At 7:29 PM, July 1, 2013, John Kamada wrote to Melissa Chen. His email states:

"We will call Maersk tomorrow and push them for a response. These types of things usually take awhile but I will make sure we expedite it.

Hope to have some answers to you shortly."  
(ECONO PFF App. 00135).

**Response: Admit.**

55. At 8:58 AM, July 9, 2013, Ariel Martinez wrote to Melissa Chen. He copied a message from Maersk China to Econocaribe. The Maersk email provides:

"On 4th July we have contacted with cnee: VICTORY MARITIME SERVICES(022-23336331 ms liu). Customer said that it was not there[sic] shipment and would help to check first and inform us.

On 8th July we contacted with VICTORY MARITIME SERVICES(022-23336331 ms liu) again, she said that it was actually not their booking and their overseas company also no respond about the shipment. They have no idea about it.

**Pls urgently inform shipper accordingly and advise if they need to find new cnee to help them return issue.** Any update pls inform us urgently.

Detention by today is 18360 RMB and will daily increase as below tariff.

Pls make sure shipper as cargo owner be informed the longstanding. They need to push CNEE arrange cargo delivery ASAP.

..."

(ECONO PFF App. 00133-00134).

**Response: Objection. Hearsay, lack of foundation and misleading. The statements in the email are inadmissible hearsay because they are statements from an email between Maersk China and Econocaribe, which are inadmissible hearsay. The email and statements therein also lack foundation. Furthermore, the proposed "finding" is misleading. It misrepresents the cited email because that email did not have any words that were either in bold or underlined.**

56. This Maersk email was sent by George Amador of Maersk to Ariel Martinez on 8:48 AM, July 9, 2013. (ECONO PFF App. 00141-00144).

**Response: Objection. Hearsay and lack of foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent. Uncertain as to what**

**“this Maersk email” refers to. If it refers to the email cited in proposed Finding No. 55, the statements in that email were from Maersk China to Maersk Line, non-parties, are inadmissible hearsay. The statements also lack foundation.**

57. At 9:27 AM, July 9, 2013, Melissa Chen wrote to Ariel Martinez. Her email states:

"why is MSK took so long to take this step. We will not be responsible for the storages for these containers. I have started requesting the assistance since June 17th. please advise."  
(ECONO PFF App. 00132-00133).

**Response: Admit.**

58. At 9:37 AM, July 9, 2013, John Kamada wrote to Melissa Chen. His email states:

"Maersk will probably be able to absorb some of these changes. Unfortunately, abandoning the cargo does not relieve the shipper of the potential charges. At this point, the storage charges are not the biggest issue. Since no other consignee can be located, you have the option to return the cargo back to the US or have it sold towards the costs involved (Ocean freight/storage/etc).

Please let me know what you would like to do."  
(ECONO PFF App. 00132).

**Response: Objection. Lack of foundation, misleading. There is no foundation for Mr. Kamada’s statement that “abandoning the cargo does not relieve the shipper of potential charges” or for the options he proposes in the email. The proposed “finding” misrepresents the cited email because that email did not have any words that were either in bold or underlined.**

59. At 10:27 PM, July 9, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"I was requesting the return of the shipment soonest we found out there this was abandoned cargo. I don’t understand why this same topic is coming back now to us. my emails since Jun 19th was already requesting for these options and waited for carrier’s advise since. This shipment has no choice to either be returned or abandoned. please urgently advise. "

(ECONO PFF App. 00132).

**Response: Admit.**

60. Amoy in its recent supplemental production states that the June 19th email referred to June 17, 2013 email and the similar requests could be found in June 19, 20, 21, 2013 emails. (ECONO PFF App. 432)

**Response: Objection. The proposed “finding” is vague, ambiguous, speculative, nonsensical, and uncertain and is not based on admissible evidence. Rather it relies on a letter from counsel.**

61. At 10:53 AM, July 9, 2013, John Kamada wrote to Melissa Chen. His email reads:

**“I need you to tell me if it is to be auctioned or returned.”** In cases like this, the responsibility of the cargo falls on the shipper on the b/l. **We have asked Maersk for this information from the first day that you requested it.** From the additional free time request to the abandonment letter to today's response from them. I will do all I can to keep the charges at a minimum." (ECONO PFF App. 00131).

**Response: Objection. Lack of foundation, misleading. There is no foundation for John Kamada's statement that “in cases like this, the responsibility of the cargo falls on the shipper of the b/l”, specifically that he was previously involved with detention of cargo by Chinese Customs. Moreover, up to this point, Econocaribe had been advising Amoy on its options without knowing whether they were the proper options. See, for example, the email cited in support of proposed Finding No. 63, where Econocaribe asked Maersk “So what are our options here?” The proposed “finding” also misrepresents the cited email because that email did not have any words that were either in bold or underlined.**

62. At 11:29 AM, July 9, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"I am not familiar with MSK about abandonment procedure and costs will be involved. **Because even returning to the origin, we also can't find either of the seller or the middle man at moment.**

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. I still think returning will be the fastest way, please let me know."  
(ECONO PFF App. 00131).

**Response: Objection. Misleading. The proposed "finding" misrepresents the cited email because that email did not have any words that were either in bold or underlined.**

63. On 1:33 PM, July 9, 2013, Ariel Martinez wrote to George Amador. His email reads:

"So what are our options here? Since Victory is not helping out, is our only option abandonment? Can we return the containers back to the US without docs at an additional fee?

**We need a breakdown of procedures and charges for the following options:**

**-Return back to the US**

Please revert the details asap."

(ECONO PFF App. 00155).

**Response: Objection. Hearsay, misleading, incomplete citation. Ariel Martinez's statements in the email are hearsay. In addition, the proposed "finding" misrepresents the cited email because that email did not have any words that were either in bold or underlined. The proposed "finding" is also misleading because it represents that the entirety of the email is set forth in the "finding." However, a sentence from the email was deleted. The sentence "-Abandon the cargo" was deleted from its spot between "-Return back to the US (if possible)" and "Please revert the details asap."**

64. Two more email exchanges occurred after the above email. After knowing that the cargo was not insured (ECONO PFF App. 00130), on 9:59 AM, July 10, John Kamada wrote an email to Melissa Chen. His email reads:

"Ok.

**The final decision is yours.**

*You can abandon the cargo for sale at destination with the understanding that all charges (ocean freight, de-vanning, storage etc...) not covered by the sale of goods will be to your account. We do have your abandonment letter but we needed to get Maersk's stance on the cargo before we could proceed.*

**Or**

**You can return the shipment to US for an attempt to re-sell here but this is usually a more expensive alternative.**

Should you choose to abandon the cargo, we will begin the process immediately. Please understand that the steamship lines move very slow on these things so we will need to continue to push them.

Please let me know and thanks."

(ECONO PFF App. 00129-00130).

**Response: Objection. Lack of foundation, speculation, vague, uncertain, ambiguous and misleading. Lack of foundation that there is any basis for John Kamada's advice of what options are available. Mr. Kamada is advising Amoy as to the available options it has to address the cargo problem. Yet, the previous day, Econocaribe is asking Maersk "what are our options here." See email cited in support of proposed Finding No. 63. There has been no showing that Maersk replied to that email and supplied information for Mr. Kamada to credibly offer the options alleged in this proposed finding. Mr. Kamada had no clue or basis for knowing that either or any option was workable. Lack of foundation and speculation that Amoy's informing John Kamada that it had no insurance led to the July 10, 2013 9:59 AM email. Lack of foundation, vague, ambiguous and uncertain as to what "two more email exchanges" are being referred to. Furthermore, the proposed "finding" is misleading because it misrepresents the cited email. That email did not have any words that were either in bold, underlined or italicized.**

65. At 10:36 AM, July 10, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"Please proceed with abandonment of the containers immediately."  
(ECONO PFF App. 00129).

**Response: Admit.**

66. Without getting any response from Maersk, and after Melissa Chen confirmed her choice of abandonment, on 4:47 PM, July 10, 2013, Ariel Martinez wrote to George Amador. His email reads:

"The customer just confirmed they would like to abandon the containers. Please confirm the procedures and costs to do so."  
(ECONO PFF App. 00154).

**Response: Objection. Hearsay, uncertain, ambiguous, lack of foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent. Ariel Martinez's statements are hearsay. Uncertain and ambiguous as to what "without getting any response from Maersk" means and to what inquiry that statement is referring to. Furthermore, the foregoing conclusion lacks foundation and is made without supporting evidence.**

67. At 12:26 PM, July 12, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"following up on the status with MSK, please advise if any response?"  
(ECONO PFF App. 00128-00129).

**Response: Admit.**

68. Ariel Martinez had a phone conversation with George Amador after receiving email from Melissa Chen. He followed up with George Amador by an email dated 1:16 PM, July 12, 2013.

His email reads:

"Per our telephone conversation just now, please abandon the containers. Please confirm all the charges that will be related to the abandonment."  
(ECONO PFF App. 00153).

**Response: Objection. Hearsay and lack of foundation in that neither Martinez nor Amador have confirmed whether they had such a telephone conversation or when they had such a telephone conversation; nor have they authenticated the sending or receiving the proffered email. Ariel Martinez's statements in the email are hearsay. The phrases "after receiving email from Melissa Chen" and the sentence "He followed up with George Amador by an email dated 1:16PM, July 12, 2013," lack foundation and are based on speculation.**

69. At 9:21 AM, July 15, 2013, Ariel Martinez wrote to George Amador. His email reads:

"Have you heard back from your overseas office? Please confirm the procedure/charges for the abandonment."  
(ECONO PFF App. 00153).

**Response: Objection. Hearsay. Lack of foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent. Ariel Martinez's statements in the email are hearsay, vague and ambiguous. It is unclear and unknowns what "email from Melissa Chen" is being referred to and there is not foundation for the assertion that Ariel Martinez had "followed up" or what he had "followed up."**

70. At 6:59 AM, July 17, 2013, George Amador wrote to Ariel Martinez. His email reads:

"As the cargo owner **they absolutely can't abandon the containers, now they must find new buyer at destination or arrange re-export.** The detention charge till today is 39480 RMB. Please update below information to shipper. We suggest to them to take quick action to arrange their cargos, even if cargo will be returned to origin, auctioned or destroyed in the future due to no one pick up containers. All the fee will be charged to the shipper. If you need any help please contact us.

According to China Law, **When shipment discharge goes past 90days without pick up by CNEE, it will be considered as abandon cargo and can be disposed by China Customs.**

- Due to the cargo nature, China customs will need assistance from the China Inspection and Quarantine Authority to check the cargo first. Only with the result of the inspection, can customs decide what to do with the cargo. We heard usually there are 3 possible ways of finally handling the cargo:

1. Order return to origin (if cargo is found as prohibited or restricted to import to China).
2. Auction (if cargo is found allowed to import to China).
3. Destroy (if cargo is found not in good condition for return and auction)."

(ECONO PFF App. 00152).

**Response: Objection. Hearsay, lack of foundation because neither Amador, anyone at Maersk nor Martinez have authenticated this proffered email, and misleading. The statements in the email of George Amador of Maersk Line, a non-party, are inadmissible hearsay and lack foundation. In addition, the language of the email of George Amador reflects that he is relying on hearsay, i.e., "We heard usually there are 3 possible ways . . ." Furthermore, the proposed "finding" is misleading. It misrepresents and distorts the cited email because that email did not have any words that were either in bold or underlined.**

71. At 10:03 AM<sup>2</sup>, July 17, 2013, John Kamada wrote to George Amador. His email reads:

"If I read the below correctly, we only have to re-import if the cargo is found as prohibited. It should not be. We should be able to abandon, auction and or destroy cargo. Is there more to the e-mail that they sent from overseas? I have been involved in a few cases of this nature and we have always been able to abandon at destination.

Please let me know and thanks."

(ECONO PFF App. 00151-00152).

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<sup>2</sup> Though the email does not show "AM," because the email responding to this email was dated as 13:36 of the same date, this email must have been sent on 10:03 AM.

**Response: Objection. Hearsay, lack of foundation, irrelevant. John Kamada's statements in the email are hearsay and lack foundation. His email begins with "If I read the below correctly" showing that his email is based on an email from George Amador of Maersk Line, a non-party, which is inadmissible hearsay and lacks foundation. None of John Kamada's declarations show that he had any prior experience with or personal knowledge regarding cargo of used tires that had been detained or was going to be detained by Chinese Customs. Thus, his statements that he has been involved in a few cases of this nature lack foundation.**

72. At 1:36 PM, July 17, 2013, George Amador replied John Kamada's email. His email reads:

"Hi John, Correct after 90 days it is considered abandoned but then of course come the additional charges as mentioned in correspondence which will be for the account of the shipper. There was no additional information from overseas."  
(ECONO PFF App. 00151).

**Response: Objection. Hearsay, lack of foundation. The statements of George Amador of Maersk Line, a non-party, are inadmissible hearsay and lack foundation.**

73. At 3:54 PM, July 17, 2013, Ariel Martinez wrote to Melissa Chen. In his email, he relayed Maersk's message related to the disposition of cargo to Melissa Chen. His email reads:

"Per Maersk, the containers cannot be abandoned until after 90 days of arrival. Please see the details below:

'As the cargo owner they absolutely can't abandon the containers, now they must find new buyer at destination or arrange re-export. The detention charge till today is 39480 RMB. Please update below information to shipper. We suggest to them to take quick action to arrange their cargos, even if cargo will be returned to origin, auctioned or destroyed in the future due to no one pick up containers. All the fee will be charged to the shipper. If you need any help please contact us. According to China Law, When shipment discharge goes past 90days without pick up by CNEE, it will be considered as abandon cargo and can be disposed by China Customs.

- Due to the cargo nature, China customs will need assistance from the China Inspection and Quarantine Authority to check the cargo first. Only with the result of the inspection, can customs decide what to do with the cargo. We heard usually there are 3 possible ways of finally handling the cargo:

1. Order return to origin (if cargo is found as prohibited or restricted to import to China).
2. Auction (if cargo is found allowed to import to China).
3. Destroy ( if cargo is found not in good condition for return and auction).'

Please let me know if you have any questions. "

(ECONO PFF App. 00127-00128).

**Response: Objection. Hearsay, lack of foundation. The statements in the email are inadmissible hearsay because the email incorporates hearsay statements from a prior email from Maersk Line, a non-party, which is inadmissible hearsay. The Maersk Line email incorporated into ECONO PFF App. 00127-00128 relies itself on hearsay, as noted in the phrase “We heard usually . . .” Consequently, this purported “finding” consists of hearsay upon hearsay. The statements also lack foundation.**

74. At 4:01PM, July 17, 2013, Melissa Chen wrote to Ariel Martinez. Her email reads:

"this is the exact information we needed to hear from MSK since early June when I first contacted your office.

**It seems the shipment will need to be destroyed at port of destination.** please advise the procedure ASAP."

(ECONO PFF App. 00127).

**Response: Objection, misleading. The proposed “finding” misrepresents the cited email because that email did not have any words that were either in bold or underlined.**

75. At 4:10 PM, July 17, 2013, Ariel Martinez wrote to Melissa Chen. His email reads:

“Noted, after the 90 days China customs will determine how they will proceed either of the three options below.

I will follow up and keep you posted on any new development.”

(ECONO PFF App. 00126).

**Response: Objection. Hearsay, lack of foundation, vague and ambiguous. Ariel Martinez's statements to how long Chinese Customs will determine how to proceed is hearsay and lacks foundation. Vague and ambiguous as to what "90 days" and which "three options below" Ariel Martinez is referring to.**

76. At 4:19 PM, July 17, 2013, Melissa Chen wrote to Ariel Martinez. Her email reads:

"I don't think we can wait for 90 days, can you check again please?  
If waited longer, the cost will go up sky high."  
(ECONO PFF App. 00126).

**Response: Admit.**

77. At 4:29 PM, July 17, 2013, Ariel Martinez wrote to Melissa Chen. His email reads:

"Noted Melissa. I will check and see but just note this looks like a China Customs regulation. It might be difficult to alter their rules/procedures."  
(ECONO PFF App. 00125).

**Response: Objection. Speculation, lack of foundation.**

78. At 5:15 PM, July 17, 2013, Melissa Chen wrote to Ariel Martinez. Her email reads:

"if all waited for 90 days, there will be no possible way for anyone to pay these fees, please let me know and I hope MSK can respond faster?"  
(ECONO PFF App. 00125).

**Response: Admit.**

79. At 12:53 PM, July 18, 2013, George Amador wrote to John Kamada. His email reads:

"John, Just a heads up right now we are looking at 6,400 usd and we still have 2 more months to go. I have sent an email to our overseas office to see if we can jumpstart the abandonment process or if we have to wait for customs. This is in the effort of reducing the charges that are increasing day by day."

(ECONO PFF App. 00151).

**Response: Objection. Hearsay, lack of foundation. The email statements of George Amador of Maersk Line, a non-party, are inadmissible hearsay and lack foundation.**

80. At 10:03 AM, July 18, 2013, John Kamada wrote to George Amador. His email reads:

"Thank you for the update Sir.  
Hopefully, we can put this file to rest as quickly as possible. Please keep us posted."  
(ECONO PFF App. 00150-00151).

**Response: Objection. Hearsay. John Kamada's statements are hearsay. In addition, the email was sent at 12:54 PM, not 10:03 AM.**

81. At 6:18 PM, July 23, 2013, John Kamada resent Amoy's June 24, 2013 abandonment letter to Maersk. His email reads:

"Please see attached letter from the shipper. This was sent to all in copy below on 6/26. I don't believe this particular string was responded to. Im not going after Maersk on this. Just need to know what to tell my customer. If there is indeed a 90 day waiting period, is there any way that Maersk can help us work with customs to reduce it?..."  
(ECONO PFF App. 00107).

**Response: Objection. Hearsay. John Kamada's statements are hearsay. Lack of foundation that Mr. Kamada "resent" Amoy's June 24, 2013 abandonment letter because there is no evidence that Mr. Kamada or anyone else had previously sent that letter to Maersk.**

82. At 2:33 PM and 2:41 PM, August 14, 2013, Krystal Lee wrote to Daniel Akhromtsev of Global Waste Management, Inc., asking him actual commodity description, photos, packing list and commercial invoice, among other things. (ECONO PFF App. 00163-00164).

**Response: Admit.**

83. At 1:35 PM, August 15, 2013, Melissa Chen wrote to Daniel Akhromtsev again for pictures of the cargo, packing list and invoice and value of the goods. Her email reads:

"We are sorry for pushing you on this one, the attorneys are on coming after the case because of John vanished after he shipped out these containers, *is causing over \$100,000 on losses...*" (ECONO PFF App. 00161-00162).

**Response: Objection. Lack of foundation, misleading, incomplete citation. There is no foundation that Melissa Chen had previously communicated with Daniel Akhromtsev requesting the information. Furthermore, the proposed "finding" is misleading. It misrepresents the cited email because that email did not have any words that were italicized. It is also misleading because it represents that the entirety of the email was stated in the "finding." However, the email was edited by deleting the following: "If we can't get the information from you immediately for attorney to start working on the fraud case, they will have to get you involved as well. The longer we wait for the information from you, the higher the costs will be. We need for now: 1.pictures of the products (rubber blocks) 2. packing list and invoice 3. value of the goods. thank you." See also Declaration of Melissa Chen, ¶4, AMOY 0154-0155.**

84. At 3:40 PM, August 16, 2013, Melissa Chen wrote to Daniel Akhromtsev, asking for pictures of the product, description and value of the product. (ECONO PFF App. 00160-00161).

**Response: Admit.**

85. At 3:47 PM, August 16, 2013, Daniel Akhromtsev wrote to Melissa Chen. His email reads:

"we don't take pictures when we load containers  
I will try to match the container numbers and see what we shipped."  
(ECONO PFF App. 00160).

**Response: Admit.**

86. At 4:02 PM, August 16, 2013, Melissa Chen wrote back to Daniel Akhromtsev. Her email reads:

"that would really help. How soon can you help to get those information?  
we are waiting for this information to overseas new buyer/customs and *shipping company*."  
(ECONO PFF App. 00160).

**Response: Objection. Misleading. The proposed "finding" misrepresents the cited email because that email did not have any words that were italicized.**

87. At 3:55 PM, August 19, 2013, Melissa Chen pushed Daniel Akhromtsev for information related to the four containers. (ECONO PFF App. 00172-00173).

**Response: Objection as to the use of the word "pushed" as lacking foundation, speculation, unfounded conclusion. The email stated, in part: "We urgently need the information below. Please provide ASAP." "Information below" was a description of the shipment booked by the shipper, John Chen.**

88. At 4:51 PM, August 19, 2013, Daniel Akhromtsev informed Melissa Chen that "looks like it was bales." (ECONO PFF App. 00172).

**Response: Admit.**

89. At 4:57 PM, August 19, 2013, Melissa Chen asked Daniel Akhromtsev for "photos / detailed description / value / packing slip for 4 container orders ASAP." (ECONO PFF App. 00172).

**Response: Admit.**

90. At 11:55 PM, August 19, 2013, Daniel Akhromtsev wrote to Melissa Chen. His email reads:

"... It look like it was just tire bales. That's all the information I have. I don't take pictures of every container I ship. I ship out over 30 containers per week sometimes. I don't charge for bales at the moment. They are free...The only other thing that might help is if you give me phone number, maybe I try to match that to customers that I have and give you the name that he uses when he does business with me..."  
(ECONO PFF App. 00180-00181).

**Response: Objection. Misleading. The proposed "finding" is misleading because it represents that the entirety of the email was stated in the "finding." However, significant deletions were made to the email.**

91. At 10:26 AM, August 20, 2013, Melissa Chen wrote to Daniel Akhromtsev. She again stated that "such thing is causing over \$100,000 losses to us and a big lawsuit." (ECONO PFF App. 00180).

**Response: Objection. Misleading, irrelevant, improper and unsupported assertion of "again stated." See Declaration of Melissa Chen, ¶4, AMOY 0154, 0155.**

92. At 3:04 PM, August 14, 2013, Ariel Martinez wrote to George Amador. His email reads:

"Can you please confirm the status of this order? As of today how much is the storage and how many more days do we have until the 90 days are up?"  
(ECONO PFF App. 00150).

**Response: Objection. Hearsay. Ariel Martinez's statements in the email are hearsay and lack of foundation because neither Maersk nor Ariel Martinez have authenticated the email and/or that it was sent.**

93. There was no response from Maersk, although Econocaribe periodically sent reminders to Maersk through the setting of an automatic reminder to do so. (ECONO PFF App. 00150).

**Response: Objection. Lack of foundation in that no proof of "reminders" sent is provided, vague, uncertain and ambiguous. No foundation that "Econocaribe periodically sent reminders to Maersk through the setting of an automatic reminder to do so." Vague, uncertain and ambiguous as to what "there was no response from Maersk" or what "the setting of an automatic reminder" refers to.**

94. Maersk's next correspondence came on September 4, 2013. At 9:47 AM, September 4, 2013, Barbara Suarez of Maersk wrote to John Kamada. Her email reads:

"Hi John,

Per our last communication on this 7/30/13, you were going to put together a formal letter of abandonment so we can ask our colleagues in China present this to Customs and see if they're willing to speed up the 90 day timeline. I never received the letter.

You also noted at that time that your agent had confirmed the 90 day waiting period. This cargo discharged 6/17/13 so the waiting period should be coming up within next couple of weeks. We'll go out to MSK China and have them give us all costs to date associated w/this abandoned load."

(ECONO PFF App. 00149).

**Response: Objection. Hearsay and lack of foundation. The statements of Barbara Suarez of Maersk Line, a non-party, in the email are inadmissible hearsay and lack**

**foundation. The statement that this email was “Maersk’s next correspondence” also lacks foundation.**

95. Although Barbara Suarez stated that she never receive an abandonment letter, Econocaribe did at least had sent the abandonment letter at least twice to Maersk. (ECONO PFF App. 00107).

**Response: Objection. Hearsay and lack of foundation. The statements of Barbara Suarez of Maersk Line, a non-party, are inadmissible hearsay. Lack of foundation that Econocaribe sent an abandonment letter at least twice to Maersk. No verification in the record from Ariel Martinez that he sent the email dated June 26, 2013.**

96. At 12:55 PM, September 4, 2013, John Kamada emailed Barbara Suarez that he would have the letter sent to her shortly. (ECONO PFF App. 00149).

**Response: Objection. Hearsay.**

97. At 1:09 PM, September 6, 2013, Barbara Suarez wrote to John Kamada. Her email reads:

"Regret that this situation with abandoned shipment in China does not look very promising. From everything we're being told, if this cargo is seized by Customs once the 90 days after discharge timeline hits, then it could take China Customs an undetermined amount of time to decide on cargo disposition. MSK China is not able to give us a clear timeline of how long it may take.

They continue to tell us **best option is for your agent in country to see about re-export options before this is seized. We've already advised that you don't have commercial documents to present to China Customs.**

Latest communication from MSK China is telling us that if we go ahead and send them your formal letter of abandonment, they can "try and find a local agency or CHB in the market to ask about this issue."

The detention at destination thru 9/5/13 quoted is already at 171480.00 RMB and increases 1980 RMB per day.

Please get us a letter on Econocaribe letterhead and let's see if MSK China is able to make any progress."  
(ECONO PFF App. 00148).

**Response: Objection. Hearsay, lack of foundation, misleading. The statements of Barbara Suarez on Maersk, a non-party, in the email are inadmissible hearsay and lack foundation. Furthermore, the proposed "finding" is misleading. It misrepresents the cited email because that email did not have any words that were in bold or underlined.**

98. John Kamada called Melissa Chen, informing her about the substance of this email. (John Kamada Declaration (ECONO PFF App. 00440)).

**Response: Objection. Vague, uncertain and ambiguous as to the substance of the telephone conversation with Melissa Chen, the substance of this email and which email is being referred to. For example, Ms. Chen states that she would have recalled if John Kamada told her that the best option is for your agent in country to see about re-export options before the cargo was seized, because she was looking to re-export the cargo from the very beginning. She would not have agreed that the cargo would be destroyed, which was an option to Amoy per Ariel Martinez's July 17, 2013 email. ECONO PFF App. 00127-00128. Nor would she have agreed that Econocaribe pursue the abandonment option if she was told that the best option was to re-export the cargo. Furthermore, this proposed finding must be viewed with skepticism since it describes a purported telephone conversation between parties whose practice was to communicate by email and contains no date. See Declaration of Melissa Chen, ¶5, AMOY 0155.**

99. At 12:38 AM, September 10, 2013, John Kamada sent Barbara Suarez the abandonment letter. (ECONO PFF App. 00148).

**Response: Objection. Hearsay, lack of foundation. The statements in the email are hearsay. There is no evidence of an attachment to John Kamada's September 10, 2013 email, although there is an email from Ariel Martinez below that appears to have an attachment to it. But there is no evidence that the attachment from Ariel Martinez's email was accessible through John Kamada's email.**

100. The abandonment letter was subsequently sent to Maersk China. (ECONO PFF App. 00147).

**Response: Objection. Hearsay. The proposed "finding" is based on an email that is inadmissible hearsay. Lack of foundation since no proof has been submitted by the purported sender of the email, Ariel Martinez, that the email was in fact sent as represented in the proposed "finding" nor is there any proof whatsoever that the abandonment letter was sent to Maersk China. Barbara Suarez works at Maersk Line, not Maersk China.**

101. At 2:14 PM, September 12, 2013, Barbara Suarez asked John Kamada photos of "what was loaded at the supplier." (ECONO PFF App. 00146).

**Response: Objection. Hearsay. The statements of Barbara Suarez of Maersk, a non-party, in the email are inadmissible hearsay and have not been authenticated by Suarez or Maersk Line.**

102. At 5:59 PM, September 12, 2013, Ariel Martinez sent photo to Barbara Suarez. (ECONO PFF App. 00146).

**Response: Objection. Hearsay, ambiguous, misleading, irrelevant, lack of foundation. Ariel Martinez's statements are hearsay. Furthermore, the proposed "finding" is ambiguous, misleading and irrelevant in that the referenced email does not reflect an attachment. Emails from Ariel Martinez with attachments clearly indicate the attachment under his email address and above the email's disclaimer. But ECONO PFF App. 001436 has no such indication of an attachment. Lack of foundation since no proof has been submitted by the purported sender of the email, Ariel Martinez, that the photos were in fact sent as represented in the proposed "finding" nor has Suarez confirmed that it was received.**

103. At 1:59 PM, September 13, 2013, Ariel Martinez asked Melissa Chen the name and information of the actual shipper that booked the shipment with Amoy. (ECONO PFF App. 00186).

**Response: Admit.**

104. At 10:46 PM, September 16, 2013, Melissa Chen replied to Ariel Martinez's September 13, 2013 email. (ECONO PFF App. 00186).

**Response: Objection. Misleading, lack of foundation. The proposed "finding", as stated, is misleading and unsupported by ECONO PFF App. 00186. Melissa Chen's reply in the email was "Sorry missed your email last Friday. Please see attached provided by**

shipper.” There is no foundation that what Melissa Chen sent was in response to the September 13, 2013 email. As a result, the proposed “finding” is misleading.

105. On September 25 and 26, 2013, Econocaribe requested Amoy to pay the outbound freight. Amoy paid according. (ECONO PFF App. 00188-00191).

**Response: Admit that Amoy paid the outbound freight.**

106. At 12:10 PM, September 26, 20113, Melissa Chen notified Econocaribe that future communications related to this shipment should only be sent to her. Her email reads:

“Krystal was the person made this unauthorized booking is no longer with the company. No one else is involved in this booking so for all related communications, please only come to me.” (ECONO PFF App. 00188).

**Response: Objection. The proposed “finding” is misleading. It misrepresents the cited email because that email did not have any words that were in bold or underlined.**

107. At 8:05 PM, October 18, 2013, Ariel Martinez wrote to Barbara Suarez, inquiring about the status of the shipment. (ECONO PFF App. 00194-00195).

**Response: Objection. Hearsay. The statements in the email are hearsay. Lack of foundation since no proof has been submitted by the purported sender of the email, Ariel Martinez, that the email was in facts sent as represented in the proposed “finding.”**

108. At 3:46 PM, October 21, 2013, Barbara Suarez wrote to Ariel Martinez. Her email reads:

“Regret the situation does not look good. Cargo was manifested as auto parts and in fact they are cut-baled tires. As you know, cargo is in China Customs control and we have notified our office in China as to cargo contents and await their feedback on what is next course of action.

Suggest you also engage your agent in China as this will have to be handled over there on basis you do not have commercial documentation to request return of cargo to origin...” (ECONO PFF App. 00194).

**Response: Objection. Hearsay, lack of foundation, incomplete citation. The statements of Barbara Suarez of Maersk, a non-party, are inadmissible hearsay and lack foundation because neither she nor Martinez has authenticated the proffered email. A portion of the cited email has been deleted.**

109. At 9:05 AM, November 1, 2013, Barbara Suarez wrote to John Kamada and Ariel Martinez. Her email reads:

“Just following up ref our lastest discussion with MSK China on this abandoned shipment. **Our office tells us that option of cargo owner re-exporting is a risk as Customs is very sensitive about this “restricted” commodity** (used cut-baled tires). Cargo manifested as auto parts.

Only option now is for Customs to proceed with their process of inspection and disposition:

- Still a chance they may order cargo back to origin as ‘returned goods’ (cargo prohibited/restricted import to China)
- Auction
- Destruction

While we wait to hear back from China Customs, just wanted to drop you a note as this is where we stand.”

(ECONO PFF App. 00193).

**Response: Objection. Hearsay, lack of foundation, misleading. The statements in the email are from Barbara Suarez, of Maersk, a non-party and are inadmissible hearsay and lack foundation. Moreover, the proposed “finding” is misleading. It misrepresents the cited email because that email did not have any words that were in bold or underlined.**

110. At 9:50 AM, November 1, 2013, Ariel Martinez forwarded the Barbara Suarez email to Melissa Chen. (ECONO PFF App. 00199).

**Response: Objection. Hearsay, lack of foundation, irrelevant. The statements in the forwarded email are hearsay and lack foundation. Lack of foundation since no proof has been submitted by the purported sender of the email, Ariel Martinez, that the email was in fact sent as represented in the proposed “finding.”**

111. Amoy never responded to this email (John Kamada Declaration (ECONO PFF App.00440)).

**Response: Deny. See Declaration of Melissa Chen, ¶6, AMOY 0155-0156. Objections: Lack of foundation, vague and ambiguous as to “this email,” incomplete “finding.” The purported evidence relied on for this finding, John Kamada’s Declaration, refers to an email about “China Customs concerns” and it is unclear which email he is referring to.**

112. At 9:12 AM, April 2, 2014, Barbara Suarez wrote to Ariel Martinez and John Kamada.

Her email reads:

“Just wanted to bring you up to date on the longstanding abandoned containers in China. We have been constantly following up with our office overseas waiting to hear back on Customs disposition. Just heard this morning that Customs is ordering these containers to return to origin, the cargo is ‘cut baled tires’, which is a restricted commodity. If you will recall, this cargo was originally manifested as auto parts not tires and cargo subject to fines by China Customs. I have asked our office to petition Customs to allow destruction at destination but waiting to hear back. Have asked them to provide all costs associated with the storage, fines and other fees which may apply so we can provide those to you as shipper of record...”  
(ECONO PFF App. 202).

**Response: Objection. Hearsay, lack of foundation, incomplete citation. The statements in the email are from Barbara Suarez, of Maersk, a non-party, and therefore,**

**inadmissible hearsay. In addition, her statements lack foundation. A portion of the email has been deleted.**

113. At 10:55 AM, April 15, 2014, Econocaribe sent Krystal Lee (apparently not realizing that she had left Amoy) an email about the status of the cargo. The Econocaribe email reads:

“I am sending you this email on behalf of John Kamada, he is currently traveling and wanted to make sure you received an update on you bkg. The below message was sent from Maersk to John directly.

Below is complete cost picture from agent in China who can help with return shipment, or you can nominate your own agent in China to coordinate the re-export. The costs quoted below are good thru 5/10/14 only. Storage charges beyond that day will have to be re-calculated.

China Customs has not imposed a fine yet; however, Maersk China recommends that return cargo process is initiated right away to avoid possible fines down the road.

As FYI, we asked whether China Customs requires return to original load port Oakland but were told they don't care if it returns to Oakland or any other port...”

(ECONO PFF App. 00208-00210).

**Response: Objection. Hearsay, lack of foundation, misleading, speculation. The email shows that the information in the email was received from unknown persons at an unknown Maersk entity, a non-party and is inadmissible hearsay. It is not established who at Econocaribe purportedly received the “message” from a Maersk entity or how that message was received. The email vaguely states that a “message” was sent from Maersk to “John.” However, the email also states that John is “traveling.” Furthermore, those statements lack foundation. Moreover, the proposed “finding” is misleading. It represents that the entire email was set forth in the proposed “finding.” However, deletions were made to the email. Lack of foundation since no proof has been submitted by the purported sender of the email, Ariel Martinez, that the email was in facts sent as represented in the proposed “finding” nor was there confirmation that the email was received by Amoy since Krystal had left employment at Amoy by that time.**

114. At 11:24 AM, April 15, 2014, Melissa Chen replied to Econocaribe's email. Her email reads:

"Krystal is no longer with the company.

For below case, please help us to negotiate the costs, the shipper vanished and we had hard time getting original suppliers to accept the loads back. I have hired collection agency, attorney and all, but none of these people could be found.

It has been long time we waited to hear from MSK about this freight. If any suggestions you can help to come up and take care of this problem, please let me know. I want to solve this problem soonest possible.

The total cost below is really expensive and I can't afford to pay them. I know is not related to you and to the case, **but Krystal has caused by problems with other shipments too and we have lost way too much money in past 2 years, law suits, penalties and etc.**

Please help me to negotiate and I will again look for people in US can accept the container back."

(ECONO PFF App. 00212).

**Response: Objection. Misleading, lack of foundation. The proposed "finding" misrepresents the cited email because that email did not have any words that were in bold or underlined. Furthermore, it lacks foundation as to the assertion that Melissa Chen "replied" to the Econocaribe email and is vague and ambiguous as to which email is being referred to.**

115. At 9:55 AM, April 16, 2014, John Kamada wrote to Melissa Chen. His email reads:

"We have asked Maersk numerous times to push Customs in China but unfortunately, they move at their own slow pace. They would like us to return the cargo to any US port. The sooner we can get it moving, the better. I will ask them again to try and mitigate the costs.

Please let me know how to proceed as this is ultimately your decision on where we go from here."

(ECONO PFF App. 00216-00217).

**Response: Objection. Hearsay, lack of foundation. The statements in the email relating to what John Kamada told Maersk and what Maersk told him are inadmissible hearsay and lack foundation.**

116. At 2:12 PM, April 17, 2014, Melissa Chen wrote to John Kamada. Her email reads:

“once abandonment letter was sign to carrier, they usually don’t come back to ask to take the container back. can you please check again?

I am checking with Customs about importing, because we don’t have anyone would claim the cargo, so even returns could be another problem too.”

(ECONO PFF App. 00218-00219).

**Response: Admit.**

117. At 7:44 AM, April 22, 2014, John Kamada wrote to Melissa Chen. His email reads:

“Maersk advises that because the cargo was mis-declared, this is their only opinion.

I received an email from them this morning as follow:

We are being pressed for a response as to how you and your customer want to proceed. We have told them you are presenting options to your customer but afraid if we don’t move on their offer/storage, costs will escalate.

Will your agent handle re-export or will you be asking China Ocean Shipping (recommended by Maersk) to handle on your behalf.

...

May I suggest you proceed ASAP and accept the charges. We can still try to mitigate the overall charges but unfortunately, China Customs is now pushing Maersk.

Please let me know.”

(ECONO PFF App. 00221-00222).

**Response: Objection. Hearsay and lack of foundation. The statements in the email relating to what John Kamada told Maersk and what Maersk told him are inadmissible hearsay and lack foundation. Vague and ambiguous as to whom John Kamada received a purported email from.**

118. At 3:21 PM, April 22, 2014, Melissa Chen wrote to John Kamada. Her email reads:

“the problem is bringing it back to US, we don’t have importer for this container. They took too long to get back to us.

We have this company as original seller to the people who shipped with us, if MSK is to return, can they list them as importer on MBL...”

(ECONO PFF App. 00224).

**Response: Objection. Misleading. The proposed “finding” is misleading because it represents that the entirety of the email was set forth in the proposed “finding.” However, deletions were made to the email and changes were made to the punctuation.**

119. At 3:36 PM, April 22, 2014, John Kamada wrote to Melissa Chen. His email reads:

“Maersk is ok with showing this customer as the importer on the b/l. just note that the charges need to be paid up front PRIOR to the cargo retuning to Los Angeles. Will this customer be responsible for clearing the freight?

Please let me know if you would like to proceed. Maersk is trying one more time to negotiate the charges.”

(ECONO PFF App. 00227).

**Response: Objection. Hearsay. The statements in the email relating to what Maersk told John Kamada and his reply, are inadmissible hearsay.**

120. At 7:23 PM, May 6, 2014, John Kamada wrote to Melissa Chen. His email reads:

“Here is Maersk’s final offer. They started at a total of 141,000.00 for storage, return etc... We were able to negotiate down to the following:

...

Re-export cost: USD14,504

Depot charge: USD2699

Detention:USD 50,000

Total: USD67203

....

After receive payment, we will arrange return shipment immediately.

Please let me know.”

(ECONO PFF App. 00230-00232).

**Response: Objection. Hearsay and lack of foundation. The statements in the email are inadmissible hearsay and lack foundation.**

121. At 1:22 PM, May 9, 2014, Melissa Chen wrote to John Kamada. Her email reads:

“Being victim of the case, I fully understand this shipment has also caused Maersk lots of problems. We’ve tried everything we could in the very beginning when we suspected something wasn’t going right, from tracing back to trucker to vendor and hiring attorney after the shipper, but we weren’t able to get any help and we have completely lost contact with shipper.

**I have just took care of lawsuits with MSC and Zim due to previous huge losses with similar problem caused by the same sales.** We are struggling to getting thru recoveries at moment. When the abandonment letter was signed to Maersk last year, I was no longer expecting to receive emails instructing to taking back these containers. Maersk has these containers since last year, they were aware of the situation before even containers arrive to port, and it is up to them for letting the containers sitting at port or solving this problem sooner.

Unfortunately, I’m unable to come up with the money to cover these storages, **nor taking the containers back** after all these time. Please kindly advise, if any other way we can work this through.”

(ECONO PFF App. 00234-00235).

**Response: Objection. Misleading. The proposed “finding” misrepresents and distorts the cited email because that email did not have any words that were in bold or underlined.**

122. At 1:22 PM, May 9, 2014, John Kamada forwarded Melissa Chen's email to Barbara Suarez, attempting to convince Maersk to reduce the charges. He prefaced Melissa Chen's email with "This loss will put my customer out of business. Here is her response..." (ECONO PFF App. 00237-00238).

**Response: Objection. Misleading, incomplete citation. The proposed “finding” is a mischaracterization and distortion of the cited email and inconsistent with a part of that email that was deleted from the finding. The email began with the statement “This loss will put my customer out of business. Here is her response.” However, the next sentence, which was deleted, went on to state: “If we have to proceed legally against her, we will do so.” There is no foundation for the statement “attempting to convince Maersk to reduce the charges.”**

123. At 6:59 AM, May 12, 2014, Barbara Suarez wrote to John Kamada. Her email reads:

“Abandonment letter does not release shipper of liability. **We requested the formal abandonment letter to see if we could put pressure on China Customs to order disposition.** This cargo was mis-declared as ‘auto parts’ when in fact it was ‘used tires’ which is a restricted commodity into China and one which is heavily fined. Maersk did not sit on this. We kept communication flow going asking Maersk China to intervene but it is not uncommon for China Customs to hold onto cargo, sometimes, over a year, to render a decision. At that time we made it known that best option was to find a new consignee or start re-export, which is what we’re doing now...”  
(ECONO PFF App. 00237).

**Response: Objection. Hearsay, lack of foundation, misleading, incomplete citation.**

**The statements in the email were made by Barbara Suarez of Maersk, a non-party and therefore are inadmissible hearsay and lack foundation. Moreover, the proposed “finding” is misleading. It misrepresents the cited email because the email did not have any words that were in bold or underlined. The proposed “finding” is also misleading because it represents that the entirety of the email was stated in the proposed “finding.” However, significant deletions were made to the email, including Barbara Suarez’s statement to John Kamada that, “[A]t that time we made it known that best option was to find a new consignee or start re-export, which is what we’re doing now.” At no time did Econocaribe ever advise Amoy that its best option was to see about re-export options. If it did, Amoy would have re-exported the cargo. See Declaration of Melissa Chen, ¶22, Amoy 0016-0015; Declaration of Melissa Chen, ¶5, Amoy 0155. Here, it appears that the cargo was re-exported without having to find a new consignee. The shipper of the cargo for re-export was the same entity as the consignee of the cargo, when it was exported to China. Compare ECONO PFF App. 00058 with ECONO PFF App. 00268.**

124. At 7:35 PM, May 12, 2014, John Kamada wrote to Melissa Chen. His email reads:

“Please see below response from Maersk.

‘Abandonment letter does not release shipper of liability. We requested the formal abandonment letter to see if we could put pressure on China Customs to order disposition. This cargo was mis-declared as ‘auto parts’ when in fact it was ‘used tires’ which is a restricted commodity into China and one which is heavily fined. Maersk did not sit on this. We kept communication flow going asking Maersk China to intervene but it is not uncommon for China Customs to hold onto cargo, sometimes, over a year, to render a decision. At that time we made it known that best option was to find a new consignee or start re-export, which is what we’re doing now.

...

Please let me know if you would like to proceed and pay the charges or if I should tell Maersk you cannot pay?...”

(ECONO PFF App. 00242-00243).

**Response: Objection. Hearsay, lack of foundation, misleading, incomplete citation.**

**The proposed “finding” is based on statements from a 6:59AM, May 12, 2014 email that was sent by Barbara Suarez of Maersk, a non-party, to John Kamada, which are inadmissible hearsay. In addition, those statements lack foundation. The proposed “finding” is misleading and a distortion because it represents that the entirety of the email was stated in the proposed “finding.” However, deletions were made to the email.**

125. At 12:24 PM, May 13, 2014, Melissa Chen wrote back to John Kamada. Her email reads:

“... I don’t know how you have communicated with carrier. By my guess you talked to them about reducing costs and to talking the containers back?

I wouldn’t say you are not helping, however I am afraid we are in a very weak position if continuing the negotiation like the way is going. First of all, I want you to understand that, Amoy is victim in this case, and I have all the proof to show that we did follow the procedure by gathering cargo information prior to shipping and we did try finding the shipper to solving this problem soonest we found out the problem. We have already lost a lot on all transportation costs for these containers. Maersk is the world largest company, Econocaribe is also a large corporation, But Amoy is not. You can represent Econo to mitigate costs from \$171K + return to \$70K + return, it might seem good, but. This is actually a poor negotiation. And to be honest, a small forwarder like us cannot afford the loss and we just simply cannot pay.

**I will not take the containers back.** carriers have their solutions for this kind of situation and I suggest you not to agree again for taking them back.

...”

(ECONO PFF App. 00245-00246).

**Response: Objection. Misleading.** The proposed “finding” misrepresents the cited email because that email did not have any words that were either in bold or underlined. The proposed “finding” is also misleading because it represents that the entirety of the email was stated in the proposed “finding.” However, deletions were made to the email.

126. Melissa Chen’s email was sent forwarded by John Kamada to Barbara Suarez at 6:20 PM, May 13, 2014. (ECONO PFF App. 00248-00249).

**Response: Objection. Misleading.** The proposed “finding” mischaracterizes the email because it failed to state that it was forwarded to Barbara Suarez with comment from John Kamada. His comment mischaracterized Amoy’s position on resolving the issue. Specifically, he stated that “Here is my customer’s final response,” which was inconsistent with Melissa Chen’s statement in that email “And we just have to find out best negotiation key to play forward.”

127. Barbara Suarez responded to John Kamada at 7:59 AM, May 14, 2014. Her email reads:

“Maersk is not the bad guy here. In fact, your customer declared auto parts and shipped a restricted commodity to China. Of course, they choose to ignore that this is root cause of cargo sitting and facing re-export. Actually 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. As per North China local customs regulations, Customs retains the authority to order disposition of non-claimed cargo. Even when we have both consignee and shipper’s abandonment letter, the cargo remains under control of Customs. We were told and communicated that there is no clear timeline of how long Customs will take to render an approval for next move (disposal, return or auction)...”  
(ECONO PFF App. 00248).

**Response: Objection. Hearsay, lack of foundation, misleading.** The statements in the email were made by Barbara Suarez of Maersk, a non-party and therefore are

**inadmissible hearsay and lack foundation. The proposed “finding” is also misleading because it represents that the entirety of the email was stated in the proposed “finding.” However, deletions were made to the email.**

128. At 3:10 PM, May 13, 2014, John Kamada wrote to Melissa Chen. His email reads:

“...I tried as best I could to negotiate with Maersk on your behalf. If you feel that \$171k to \$67k (over a 60% reduction) is poor negotiating, I am sorry. The bottom line here is that Amoy mis-declared cargo and shipped it under an Econocaribe and Maersk b/l. As the end shipper, Amoy is responsible regardless of any other internal issues you may have had. It makes no difference how big or small any of the parties involved are. I will advise Maersk of your decision and this will then be out of my hands. I am sure you will be contacted for pending legal matters soon.”  
(ECONO PFF App. 00245).

**Response: Objection. Misleading. The proposed “finding” represents that the entirety of the email was stated in the “finding.” However, deletions were made to the email.**

129. At 10:53 AM, June 9, 2014, Barbara Suarez wrote to Bob Goldenberg of Econocaribe.

Her email reads:

"...China Customs controls and decides when disposal can be arranged and for that reason, we don't have a final invoice from Customs. On that basis, Maersk China chose to petition Customs to allow re-export process to mitigate our exposure and costs, rather than let cargo continue to sit while Customs decides when to order disposition. If we let cargo continue to sit, until such a time that Customs actions, then 'yes', we'll be able to provide documentation, but we have no idea when that will be and cargo is on the clock for storage and Maersk D&D.

...

We have been at this for a while now and unless re-export charges are guaranteed, Maersk China will not initiate re-export of these containers. We were able to mitigate the D&D down significantly but afraid these costs will continue to rise while we wait for approval and guarantee to proceed."

(ECONO PFF App. 00253).

**Response: Objection. Hearsay, lack of foundation, misleading. The statements in the email were made by Barbara Suarez of Maersk, a non-party and therefore are inadmissible hearsay. They also lack foundation in that neither Suarez nor Goldenberg have authenticated the proffered email. The proposed “finding” is also misleading and distorts the cited email because it represents that the entirety of the email was stated in the proposed “finding.” However, deletions were made to the email.**

130. At 1:39 PM, June 9, 2014, John Kamada wrote to Melissa Chen, informing her that Econocaribe was able to further reduce the total charges from \$171K + return to \$50K + return, with \$67,203 in total. (ECONO PFF App. 00255-00257).

**Response: Objection. Hearsay, lack of foundation, vague, ambiguous and uncertain. This proposed “finding” is based on statements from Maersk, a non-party and therefore, inadmissible hearsay. The statements also lack foundation. For example, the total charges of \$171K, “+ return to \$50k+ return” and “\$67, 203” lack foundation and are based on inadmissible hearsay. The statement “total charges from \$171K + return to \$50K + return, with \$67, 203 is vague, ambiguous and uncertain. The representation in the proposed “finding” that “Econocaribe was able to further reduce the total charges” lacks foundation and is an unsupported conclusion.**

131. At 10:43 AM, June 11, 2014, John Kamada wrote to Melissa Chen, asking if she would agree to pay Maersk the demurrage charges. (ECONO PFF App. 00255).

**Response: Objection. Uncertain, vague and ambiguous. ECONO PFF App. 00255 does not appear to support this proposed “finding” as there is no such question in the referenced email.**

132. At 3:37 PM, June 11, 2014, Barbara Suarez wrote to Econocaribe. Her email reads:

"Maersk petitioned disposal from China Customs back in March, 2014, and so far no feedback. Containers remain at customs warehouse on terminal. Disposal is controlled by China Customs and not the carrier. Maersk China reports that Customs will not issue any type of invoice to the carrier, until they release a return order and decide to dispose or re-export. 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).

**Response: Objection. Hearsay, lack of foundation, misleading. The statements in the email were made by Barbara Suarez of Maersk, a non-party and therefore are inadmissible hearsay. They also lack foundation because Suarez has not authenticated the proffered email. The proposed “finding” is also misleading because it represents that the entirety of the email was stated in the proposed “finding.” However, deletions were made to the email.**

133. On July 24, 2014 Maersk made a demand for \$216,363.00 in settlement of all charges from Econocaribe. (ECONO PFF App. 00261).

**Response: Objection. Hearsay, lack of foundation in that no proof from Maersk is offered. This proposed “finding” is based on a letter from an attorney for Maersk, a non-party. The statements in the letter are inadmissible hearsay and lack foundation.**

134. On August 29, 2014 Econocaribe settled with Maersk for \$70,000. (ECONO PFF App. 00263, 00265-00266).

**Response: Objection. Hearsay, lack of foundation. ECONO PFF App. 00263, 00265-00266 are inadmissible hearsay and lack foundation. The cited documents do not support this proposed “finding.” ECONO PFF App. 00263 appears to be a signature page with no identifying information, or language referencing that it is part of a settlement agreement, or authentication by the alleged Econocaribe signatory. ECONO PFF App. 00265-00266 appears to be an unauthenticated “Wire Detail Report” that lists the Beneficiary as “CHINA OCEAN SHIPING AGENCY TIANJIN”, not Maersk.**

135. Cargo was released by China Customs some time before November 15, 2014. It was re-exported on Nov. 25, 2014. (ECONO PFF App. 00268).

**Response: Objection. Hearsay, lack of foundation in that there is no proof whatsoever as to a “release” by Customs or what such release entailed, misleading. ECONO PFF App. 00268 is inadmissible hearsay and there is no foundation for that document. Moreover, there is no reference in ECONO PFF App. 00268 whatsoever to a release by China Customs.**

136. Cargo arrived in Miami on or about January 12, 2015. (ECONO PFF App. 00271).

**Response: Objection. Hearsay, lack of foundation. ECONO PFF App. 00271 is inadmissible hearsay and there is no foundation for that document. Furthermore, ECONO PFF App. 00271 is inexplicably dated 1/27/2015 with a projected arrival date of 1/12/2015, thus lacking indicia of reliability.**

137. Destruction has not yet been authorized by U.S. Customs, but should occur during April, 2015 at a cost exceeding \$20,000. (ECONO PFF App. 00274).

**Response: Objection. Hearsay, lack of foundation, speculation, vague, ambiguous, misleading. ECONO PFF App. 00274 is inadmissible hearsay, there is no foundation for that document and that document does not support the proposed “finding.” The document states “AUTHORIZATION FROM CONSIGNEE-ONLY BILL ECONO CALIFORNIA DRAYAGE \$642” and thus is vague and ambiguous. In addition, ECONO PFF App. 00274 stated “SEE LETTER ATTACHED,” yet there is no letter attached to the documents submitted by Econocaribe. Moreover, this is not a finding of fact. It is speculation. Lack of foundation as to whether or if U.S. Customs must authorize destruction.**

138. Currently the cargo is stored in Customs General Order in Miami, Florida. A substantial storage fee has accrued. (ECONO PFF App. 00274).

**Response: Objection. Hearsay, lack of foundation, vague and ambiguous, speculation. ECONO PFF App. 00274 is inadmissible hearsay and there is no foundation for that document. The proposed “Finding” and the referenced document are vague and ambiguous. Moreover, this is not a finding of fact. It is uncertain and speculation as to what a “substantial fee” means.**

139. China bans the import of solid waste. Solid waste will be ordered by the Customs port authority to return to the original country within a prescribed period of time. Importer or carrier

cannot abandon the solid waste (Article 29 of Import of Solid Waste Management Practices. (ECONO PFF App. 00280)).

**Response: Objection. Hearsay, lack of foundation, vague, ambiguous, uncertain, irrelevant. The proposed “finding” is premised on inadmissible hearsay and a lack of foundation. ECONO PFF App. 00280 is inadmissible hearsay. It is also vague, ambiguous and uncertain in that it appears that the cited document is related to “practices” and is not a citation to Chinese law or regulation as the purported “finding” implies. ECONO PFF App. 00276 refers to the “People’s Republic of China Solid Waste Pollution Prevention Law,” relevant laws and regulations. However, Econocaribe has failed to provide the “Solid Waste Pollution Prevention Law” or relevant laws or administrative regulations. Moreover, Econocaribe has failed to provide any showing that the preferred “practices” were in place in June, 2013. Because there is no authentication that the preferred practices are enforceable as law, and that they were in place in June, 2013, and apply to used tires, the document is vague, ambiguous, uncertain and irrelevant. In addition, there is no foundation for that document nor is there a foundation that used tires are considered to be “solid waste.”**

140. Carrier can petition to China Customs for re-export if the consignee disclaims interest. (Article 29 of Import of Solid Waste Management Practices (ECONO PFF App. 00280)).

**Response: Objection. Hearsay, lack of foundation, vague, ambiguous, uncertain, irrelevant. The proposed “finding” is premised on inadmissible hearsay and a lack of foundation. ECONO PFF App. 00280 is inadmissible hearsay. It is also vague, ambiguous and uncertain in that it appears that the cited document is related to “practices” and is not**

a citation to Chinese law or regulation as the purported “finding” implies. ECONO PFF App. 00276 refers to the “People’s Republic of China Solid Waste Pollution Prevention Law,” relevant laws and regulations. However, Econocaribe has failed to provide the “Solid Waste Pollution Prevention Law” or relevant laws or administrative regulations. Moreover, Econocaribe has failed to provide any showing that the preferred “practices” were in place in June, 2013. Because there is no authentication that the preferred practices are enforceable as law, and that they were in place in June, 2013, and apply to used tires, the document is vague, ambiguous, uncertain and irrelevant. In addition, there is no foundation for that document nor is there a foundation that used tires are considered to be “solid waste.”

141. If the solid waste is not re-exported within three months from date of arrival, Customs will order re-export unless the solid waste cannot be returned or Customs determines that the solid waste does not need to be returned. In the later case, Customs will order auction or forfeit the cargo to other governmental agencies. (Article 31 of Import of Solid Waste Management Practices (ECONO PFF App. 00281)).

**Response: Objection. Hearsay, lack of foundation, vague, ambiguous, uncertain, irrelevant. The proposed “finding” is premised on inadmissible hearsay and a lack of foundation. ECONO PFF App. 00280 is inadmissible hearsay. It is also vague, ambiguous and uncertain in that it appears that the cited document is related to “practices” and is not a citation to Chinese law or regulation as the purported “finding” implies. ECONO PFF App. 00276 refers to the “People’s Republic of China Solid Waste Pollution Prevention Law,” relevant laws and regulations. However, Econocaribe has failed to provide the**

**“Solid Waste Pollution Prevention Law” or relevant laws or administrative regulations. Moreover, Econocaribe has failed to provide any showing that the preferred “practices” were in place in June, 2013. Because there is no authentication that the preferred practices are enforceable as law, and that they were in place in June, 2013, and apply to used tires, the document is vague, ambiguous, uncertain and irrelevant. In addition, there is no foundation for that document nor is there a foundation that used tires are considered to be “solid waste.”**

142. Used tires is considered prohibited goods from import by Chinese Government. (Catalogue of Goods Prohibited from Import (ECONO PFF App. 00294)).

**Response: Objection. Hearsay, lack of foundation, uncertain, vague and ambiguous, irrelevant. This proposed “finding” is premised on inadmissible hearsay and lacks foundation. ECONO PFF App. 00294 is inadmissible hearsay. There is no foundation for that document. The document appears to be dated 2002, 11 years before the shipments at issue and thus it is vague, ambiguous and uncertain as to whether it was in place in June, 2013. If it wasn’t, it would be irrelevant.**

143. The Chinese Regulations on Solid Waste became known to Econocaribe only after this litigation. (John Kamada Declaration (ECONO PFF App. 00440)).

**Response: Objection. Lack of foundation, irrelevant. There is no foundation that “solid waste” is relevant to this action. Vague and uncertain as to what “Chinese Regulations on Solid Waste” are being referred to. Lack of foundation because Econocaribe has produced no “Chinese Regulations.”**

144. 46 C.F.R. § 520.3(a) requires each non-vessel-operating common carrier (NVOCC) to publish its tariff showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established.

**Response: Objection. This is not a finding of fact. Irrelevant. Amoy's Tariff is not an issue in this action.**

145. 46 C.F.R. §520.4 requires that a Tariff must contain places between which cargo will be carried, classifications, sample copies of any bill of lading, commodity descriptions, etc.

**Response: Objection. This is not a finding of fact nor is it a complete statement of what is required by 46 C.F.R. §520.4. Irrelevant. Amoy's Tariff is not an issue in this action.**

146. The Commission will publish on its website, *www.fmc.gov*, a list of the locations of all carrier and conference tariffs. The Commission will update this list on a periodic basis. 46 C.F.R. §520.3(e).

**Response: Objection. This is not a finding of fact. Irrelevant.**

147. Amoy is on FMC' OTI/NVOCC list. Amoy's Tariff is published and available from <http://rates.descartes.com>. (ECONO PFF App. 00302)).

**Response: Objection. Irrelevant. Amoy's Tariff is not an issue in this action.**

148. Amoy's Tariff obtained from <http://rates.descartes.com> is attached as Econo PFF App. 00305 - 00369.

**Response: Objection. Lack of foundation, irrelevant. The proposed “finding” lacks foundation. Irrelevant. Amoy’s Tariff is not an issue in this action.**

149. Amoy's Bill of Lading states that "the terms and conditions of the order bill of lading under which this shipment is accepted are printed on the back hereof." (Econo PFF App. 00063).

**Response: Objection. Irrelevant. Amoy’s Bill of Lading is not an issue in this action.**

150. Amoy's terms and conditions is attached as Econo PFF App. 00371.

**Response: Objection. Irrelevant. The terms and conditions of Amoy’s Bill of Lading are not an issue in this action.**

151. Amoy's Tariff contains sample bill of lading. (Econo PFF App. 00327-00339).

**Response: Objection. Lack of foundation, irrelevant. The proposed “finding” lacks foundation and is also irrelevant. Amoy’s Tariff is not an issue in this action.**

152. Paragraph 7(5) of Amoy's Tariff Bill of Lading makes merchants liable for "the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property ... caused by the Merchant or any person acting on his behalf or for which the Merchant is otherwise liable." (Econo PFF App. 00326).

**Response: Objection. Lack of foundation, irrelevant. The proposed “finding” lacks foundation and is also irrelevant. Amoy’s Tariff is not an issue in this action. Furthermore, Econo PFF App. 00326 does not support this “finding.”**

153. On May 20, 2013 Amoy contracted with Econocaribe for the shipment of 4 containers allegedly containing 100 packages of "Auto Parts (New)" from Oakland, CA to Xingang, China. (Econo PFF App. 00045-00046).

**Response: Objection. Misstates the citation. The citation does not support a proposed “finding” that there were 100 packages.**

154. Econocaribe issued House Bill of Lading to Amoy. (Econo PFF App. 00061).

**Response: Objection. Irrelevant, misleading. Econocaribe’s claim in this action is not based on a breach of contract. This proposed “finding” is the same as proposed “Finding No. 20.” The proposed “finding” misdescribes the referenced document. It does not include the term “House.”**

155. Econocaribe's Terms and Conditions were an integral part of the Bill of Lading. (Econo PFF App. 00373).

**Response: Objection. Argument; calls for a legal conclusion, irrelevant. Econocaribe’s claim in this action is not based on a breach of contract. Vague, uncertain, ambiguous as to the use of the term “integral part.”**

156. Econocaribe's Tariff was also incorporated into the Bill of Lading. The Bill of Lading states "transportation pursuant to this Bill of Lading is subject to conditions set forth in Econocaribe published tariff." (Econo PFF App. 00061).

**Response: Objection. Argument; calls for a legal conclusion; lack of foundation, irrelevant. There is no language in Econo PFF APP. 00061 incorporating Econocaribe's Tariff into its Bill of Lading. "Subject to conditions" is not incorporating the Tariff. The finding is irrelevant because Econocaribe's claim in this action is not based on a breach of contract.**

157. Econocaribe's Tariff is filed with the Commission and available on Econocaribe's website. (Econo PFF App. 00303).

**Response: Objection. Irrelevant. Econocaribe's claim in this action is not based on a breach of contract.**

158. Econocaribe's Tariff's Rule 4 is identical or at least substantially similar to the entire Bill of Lading Terms and Conditions. (Econo PFF App. 00377-00388).

**Response: Objection. Lack of foundation, misleading, irrelevant. The proposed "finding" has no foundation and is incorrect. A comparison of Econo PFF App. 00377-00388, the Tariff, with the terms and conditions of Econocaribe's Bill of Lading will confirm that this proposed "finding" is a misstatement of the cited documents. For example, Rule 4 has 35 numbered paragraphs and the Bill of Lading has 25 numbered paragraphs. A comparison of the language of Rule 4 and Econocaribe's bill of lading**

**shows significant differences. The proposed “finding” is also irrelevant. Econocaribe’s claim in this action is not based on a breach of contract.**

159. Econocaribe's Tariff Rule 2.4 states:

"Description of commodities shall be uniform on all copies of Bill of Lading. Trade Names are not acceptable commodity descriptions and Shippers are required to declare their commodity by its generally accepted generic or common name. Articles that are not provided for in this tariff will be freighted at the rates named in the commodity classification of 'Cargo, N.O.S'."  
(Econo PFF App. 00376).

**Response: Objection. Irrelevant. Econocaribe’s claim in this action is not based on a breach of contract.**

160. Paragraph 15 of Econocaribe’s Terms and Conditions of Service provides:

15.2 Merchant shall be liable for and shall indemnify the Carrier against all loss, damage, delay, fines, attorney fees and/or expenses arising from any breach of any of the warranties in clause 14.3 or from any other cause whatsoever in connection with the Goods for which the Carrier is not responsible.

15.3 The merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses including, without prejudice to the generality of the foregoing Freight for any additional Carriage undertaken, incurred or suffered by reason thereof, or by reason of any illegal, incorrect or insufficient declaration, or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof.  
(Econo PFF App. 00373).

**Response: Objection. Irrelevant, misleading. Econocaribe’s claim in this action is not based on a breach of contract. The referenced document is not “Terms and Conditions of Service.”**

161. Paragraph 14 of Econocaribe's Bill of Lading and Conditions of Service provides:

14.3 The Shipper warrants to the Carrier that the particulars relating to the Goods as set out on the reverse hereof have been checked by the Shipper on receipt of this bill of lading and that such particulars, and any other particulars furnished by or on behalf of the Shipper, are adequate and correct. The Shipper also warrants that the Goods are lawful goods, and contain no contraband, drugs, other illegal substances or stowaways, and that the goods will not cause loss, damage or expense to the Carrier, or to any other cargo during the Carriage.  
(Econo PFF App. 00373).

**Response: Objection. Irrelevant, misleading. Econocaribe’s claim in this action is not based on a breach of contract. The referenced document is not “Bill of Lading and Conditions of Service.”**

162. Krystal Lee, Amoy's employee, made the booking with Econocaribe and described the cargo as "auto parts (new)." (Econo PFF App. 00045-00046).

**Response: Admit. This proposed “finding” is the same as proposed “Finding No. 14.”**

163. However, the cargo was baled used truck tires. (Econo PFF App. 00002, 00390-00391).

**Response: Admit.**

164. Econocaribe did not know that the cargo was baled used tires until the cargo arrived in China and was detained by Chinese Customs. (John Kamada Declaration (Econo PFF App. 00440).

**Response: Disputed. Objection. Hearsay, lack of foundation, vague and ambiguous “detained by Chinese Customs.” Paragraph 7 of Mr. Kamada’s Declaration, Econo PFF App. 00400, states that Econocaribe discovered this information “after the cargo arrived in China and was inspected by Chinese Customs.” That paragraph confirms**

**that Mr. Kamada lacked independent knowledge of the statements made in the proposed “finding” and that paragraph 7 of his Declaration is based on hearsay and lack foundation. Econocaribe was notified before the cargo landed in China that Amoy had lost contact with the shipper and, shortly thereafter, was further informed that the cargo was used tires. Econocaribe knew this information long before Chinese Customs seized the cargo. (Econo PFF App. 00068).**

165. Krystal Lee knew that the cargo was in fact baled used truck tires when she booked cargo space with Econocaribe and made the misdeclaration. (John Kamada Affidavit (Econo PFF App. 00435)).

**Response: Objection. Denied. See Declaration of Krystal Lee Laczano, ¶4, AMOY 0149-0150. Econocaribe’s proffered support for this proposed “finding” is the Affidavit of John Kamada, who has no personal knowledge of the alleged facts, but bases his assertion on an alleged telephone conversation with Melissa Chen of Amoy. Ms. Chen of Amoy disputes that she told him that Krystal Lee knew that the cargo was in fact baled used truck tires when she booked space with Econocaribe and declared the cargo to be auto parts. Ms. Chen also disputes that she told John Kamada, as he sets forth in paragraph 9 of his Declaration, that “this was not the first time that Amoy had shipped used tires by providing false information to other NVOCC; that the previous misdeclaration was also done by the same employee, Krystal Lee; that as a result of Krystal Lee’s misconduct, Amoy had paid other NVOCC damages Amoy caused; that Krystal Lee did this and the previous misdeclaration willfully, in fact, that Krystal Lee colluded with the shipper of the cargo, that Krystal Lee was terminated because of this misconduct.” See Econo PFF App.**

**00435 and the Declaration of Melissa Chen, ¶29, 30, AMOY 0022-0024. Moreover, the containers were loaded in Oakland and transported to the Maersk terminal under seal by truckers that were hired by the shipper. See Declaration of Melissa Chen, ¶7, AMOY 0156.**

**The Affidavit is John Kamada is not credible. The other shipments did not involve used tires, but waste paper; they did not involve NVOCCs, but ocean carriers, ZIM and MSC; there was no collusion by Ms. Lee with the shipper of that cargo, the shipper was prosecuted in federal court and no charges were brought against Krystal Lee; Ms. Lee was not terminated because of this misconduct. See Declaration of Melissa Chen, ¶30, AMOY 0024. She continued to work for Amoy after the ZIM and MSC incidents. Moreover, the record reflects that the practice of Mr. Kamada and Ms. Chen was to communicate by email. See Declaration of Melissa Chen, ¶5, AMOY 0155. Further unreliability of Mr. Kamada’s declaration on this issue is reflected in the fact that his declaration was made more than 6 months after the date of the alleged telephone conversation.**

166. Melissa Chen now disputes that she had ever told John Kamada that Krystal Lee colluded with the shipper of this cargo. (Melissa Chen Declaration 1, Econo PFF App. 00027-00028). Nevertheless, she admitted in her email that Krystal made the “unauthorized booking.” (ECONO PFF App. 00188).

**Response: Objection. Argument, misleading. Econocaribe has taken Melissa Chen’s term “unauthorized booking” out of context. “Unauthorized booking” meant that the cargo was unauthorized by Chinese regulations. Amoy did become aware of this prohibition when Ms. Chen was informed of it by her agent in China after the cargo was**

**delivered to Tianjin, China. See Declaration of Melissa Chen, ¶7, AMOY 0156. Furthermore, this purported “finding” is irrelevant since Krystal Lee disputes that she in any way colluded with the shipper (Declaration of Krystal Lee Laczano, ¶8, AMOY 0151) and Econocaribe has no evidence to contradict Krystal’s statement.**

167. If Krystal Lee had been acting truthfully and diligently in ascertaining the nature of the cargo, as claimed by Amoy in its Opposition to Motion for Partial Summary Judgment, such booking would not be characterized as "unauthorized."

**Response: Disputed. Objection. Argument, speculation, lack of foundation, misleading. This “finding” is not a finding of fact, but argument. There is no foundation as to what Melissa Chen meant by “unauthorized.” The proposed “finding” is based on speculation. Melissa Chen’s use of the word “unauthorized” refers to the fact that the cargo was unauthorized by Chinese regulations and not that Krystal Lee was unauthorized to book cargo. See Declaration of Melissa Chen, ¶7, AMOY 0156. Moreover, Krystal Lee acted truthfully and diligently in booking the cargo. She followed Amoy’s procedures in asking for and receiving a packing list, a commercial invoice, a photo of the cargo and had ensured that the shipper completed Amoy’s Shipper Letter of Instructions. See Declaration of Melissa Chen, ¶¶30, 31, AMOY 0024, 0025; Declaration of Krystal Lee Laczano, ¶4, AMOY 0149-0150. In addition, the containers were loaded in Oakland and transported to the Maersk terminal under seal by truckers that were hired by the shipper. See Declaration of Melissa Chen, ¶7, AMOY 0156.**

168. Melissa Chen found out that the cargo was “recycle items” at least as early as 11:53 AM, June 17, 2013. (ECONO PFF App. 00067).

**Response: Admit.**

169. Krystal Lee also misdeclared cargo in other shipments, causing lawsuits, penalties, etc. to accrue for Amoy's account. (ECONO PFF App. 00213, 00234-00235).

**Response: Disputed. Objection. Misleading. The word “misdeclared” was not used in either cited email and Krystal disputes that she ever acted improperly. Melissa Chen explains she described the claims of ZIM and MSC as lawsuits, when in fact only one claim was a lawsuit, and Amoy’s settlements with ZIM and MSC as penalties. There was only one lawsuit resulting from shipments of 16 containers, where the cargo was declared as wood pulp, when in fact it was wet waste paper and reusable paper. That was a lawsuit brought by ZIM for 11 of those containers. The other carrier, MSC, was involved in shipments of the remaining 5 containers and did not file a lawsuit against Amoy. No penalties were assessed against Amoy. The only payments that Amoy made were settlement payments to ZIM and MSC. See Declaration of Melissa Chen ¶29, AMOY 0023-0024; Declaration of Melissa Chen, ¶9, AMOY 0157; Declaration of Krystal Lee Laczano, ¶7, AMOY 0151. Econocaribe is aware of these facts through discovery, but it appears to have ignored these facts to assert a “finding” that is misleading and without factual support.**

170. Besides Krystal Lee’s direct and actual knowledge of cargo, it is reasonable to assume Amoy knew that the cargo was used tires because Amoy’s business was related to used rubber

and plastic industry, (ECONO PFF App. 00393-00397), and it specifically dealt in tire scrap. (ECONO PFF App. 00397).

**Response: Disputed. Krystal had no knowledge that the cargo was anything other than new auto parts (Declaration of Krystal Lee Laczano, ¶¶2 and 3) and Econocaribe offers no credible evidence to support this purported “finding.” Objection. Lack of foundation, argumentative, a mischaracterization of the facts, vague and ambiguous. This is not a “finding of fact,” but an unsupported assertion. It is vague, ambiguous and uncertain what Econocaribe means by “Krystal Lee’s direct and actual knowledge of cargo.” She followed Amoy’s practice when asked for and the shipper provided her with a packing slip, commercial invoice, a photo and a Shipper’s Letter of Instruction, showing the cargo to be auto parts. See Declaration of Krytal Lee Laczano, ¶¶3 and 4, AMOY 014-0150; Declaration of Melissa Chen, ¶¶ 30 and 31, AMOY 0024-0025; packing list AMOY 0035-0036; commercial invoice, AMOY 0038; Shipper’s Letter of Instruction, AMOY 0040; photo, AMOY 0140; See also Declaration of Melissa Chen, ¶8, AMOY 0156-0157, and email from shipper describing seal numbers and ITN. Econo PFF App. 00052. Amoy has never dealt in used rubber tires or plastics. Ads were placed on the internet to sell the 4 containers of used tires that were landed in China after Amoy discovered that it could not locate the shipper and in a good faith effort to find a buyer for the tires. See Declaration of Melissa Chen, ¶¶4, 5, 6 and 7, AMOY 0142-0146.**

171. Amoy advertised to sell four containers of used rubber in China. The fact that Amoy claimed that “Our business is related to Rubber & Plastics Industry and we specifically deal in

tires scrap.” and "we have scrap rubber and used tires in bale available" shows that Amoy had title to the cargo. (ECONO PFF App. 00400).

**Response: Disputed. Objection. Hearsay, lack of foundation, misleading, speculation, irrelevant, argument, vague and ambiguous. The asserted web print out, ECONO PFF App. 00400, is hearsay. The document shows that Amoy became a “member” of TradeKey.com in June, 2013, a fact omitted from the proposed “finding.” The only reason why Amoy joined this website was to attempt, in good faith, to sell the 4 containers of used tires that are the subject of this action. Declaration of Krystal Lee Laczano, ¶8, AMOY 0151-0152. This was the only time that Amoy made this posting and reflects Amoy’s position that it wanted to re-export the cargo from the outset. Amoy has never dealt in scrap tires, rubber or plastics. Furthermore, Amoy did not claim that “Our business is related to Rubber & Plastics Industry and we specifically deal in tire scrap.” See Declaration of Melissa Chen, ¶¶4, 5, 6, and 7, AMOY 0142-0146. The purported “finding” that Amoy advertised to sell the tires in China is a mischaracterization of the evidence. Econocaribe’s own evidence shows that Amoy’s website posting noted that the tires were from USA and currently located in China, ECONO PFF App. 00116, and that this was an attempt by Amoy to sell the tires in “other smaller countries in Asia.” ECONO PFF App. 00116. The proposed “finding” is also vague, ambiguous and uncertain as to what is meant by “Amoy had titled to the cargo.” There is no foundation for this assertion. Moreover, title to the cargo is not an issue in this case and thus this statement is also irrelevant. See also responses to proposed “Finding” Nos. 174, 177, 179.**

172. Amoy now disputes that the Internet advertisement in fact reflects Amoy's true business. (Melissa Chen Declaration 2 (ECONO PFF App. 00407-00408). Amoy states that it subscribed to those Internet websites in an attempt to sell the cargo in China. (ECONO PFF App. 00408).

**Response: Admit as to the first sentence, except as to the superfluous and unfounded phrase "in fact." Disputed as to the second sentence. Amoy advertised on internet trade websites in an effort to find a potential buyer outside of China. Declaration of Krystal Lee Laczano, ¶8, AMOY 0151-0152.**

173. This statement contradicts by Amoy's earlier response to Econocaribe's requests for production. Amoy stated then that it did not have any documentation showing Amoy's efforts at finding a buyer for the cargo in China. (ECONO PFF App. 00413).

**Response: Objection. Misleading, lack of foundation, argumentative, unsupported by the referenced document. There is no contradiction. The proposed "finding" mischaracterizes the requests for production. The requests for production asked for documentation showing Amoy's efforts in finding a buyer for the cargo in China. Amoy responded: "None. Cargo is prohibited in China." That request did not ask for documents showing Amoy's efforts in finding a buyer for the Cargo in locations other than China. The posting on TradeKey was one of those efforts. Declaration of Krysal Lee Laczano, ¶8, AMOY 0151-0152.**

174. Furthermore, Amoy on one hand admits that it had been a member of the Chinese merchandise advertising website Tradekey.com since 2013, and that it offered to sell four containers of tires scraps in China on Tradekey.com. (Melissa Chen Declaration 2 (ECONO PFF

App. 00408)). At the same time, Amoy denies that it knows who posted the statements such as “Our business is related to Rubber & Plastics Industry and we specifically deal in tires scrap.” (Melissa Chen Declaration 2 (ECONO PFF App. 00408)). All of these statements were posted under Amoy’s Tradekey.com profile. Only persons having access to the Amoy’s account can post under Amoy’s account.

**Response: Objection. Misleading in that Amoy has ever admitted that it offered “to sell containers of tires scrap in China.” Argumentative, lack of foundation, hearsay, speculation, irrelevant, mischaracterization. The proposed “finding” is argument. Amoy admits posting the product specifications on TradeKey in a good faith effort to sell the tires. (ECONO PFF 00410; ECONO PFF App 00403; Declaration of Krystal Lee Laczano, ¶8, AMOY 0151-0152). Ms. Chen states that she would not have represented that “Our business is related to Rubber & Plastics Industry and we specifically deal in tire scrap.” See Declaration of Melissa Chen, ¶6, AMOY 0143-0144. Econocaribe’s proposed “finding” challenges Ms. Chen’s statement by claiming that “Only persons having access to the Amoy’s account can post under Amoy’s account.” That statement is hearsay and lacks foundation. Notwithstanding, the wording of “Our business” statement, which appears on the Amoy TradeKey website (ECONO PFF App. 00400), is striking similar to other the “Our business” statements found on same website. For example, see Succinite Resources: “Our business is related to Automobiles industry and we specifically deal in Tyres &”; ATR Inc.: “Our business is related to Automobiles industry and we specifically deal in used tires”; Fayed Import: “Our business is related to Rubber & Plastics Industry and we specifically deal in used tires.”; Mid America Tire Exporters: “Our business is related to Rubber & Plastics industry and we specifically de. . .” These are statements found on**

**ECONO PFF App. 00397. What these four TradeKey sellers have in common is that they sell tires and they have almost identical wording in statements relating to their description. In addition, all of these websites begin with “We are \_\_\_\_\_, based in \_\_\_\_\_.” We are member of TradeKey since \_\_\_\_.” It is virtually improbable that all of these companies and Amoy could have created the nearly identical website language. The only rational explanation for these descriptions is that they were created by TradeKey. The proposed “finding” also lacks foundation in that there is no evidence whatsoever to support Econocaribe’s assertion that “Only persons having access to the Amoy’s account can post under Amoy’s account.” See also Response to proposed Finding No. 171, regarding the mischaracterization that Amoy was offering to sell tires in China.**

175. The cargo was declared by Amoy to Econocaribe as new auto parts. (ECONO PFF App. 00045-00046). The cargo was in fact baled used truck tires. (ECONO PFF App. 00002, 00390-00391). Therefore, cargo was misdeclared.

**Response: Objection. Misleading. Misdeclared suggests an intentionally wrongful act with an intent to deceive, rather than an erroneous declaration arising from a third party’s representations. Here, the scrap was declared as auto parts because that was the description that was furnished by the seller. This description was supported by a commercial invoice, packing slip, photo and a Shipper’s Letter of Instruction. See Declaration of Melissa Chen, ¶¶ 30 and 31, AMOY 0024-0025; packing list AMOY 0035-0036; commercial invoice, AMOY 0038; Shipper’s Letter of Instruction, AMOY 0040; photo, AMOY 0140; See also Declaration of Melissa Chen, ¶8, AMOY 0156-0157, and**

**email from shipper describing seal numbers and the ITN, Econo PFF App. 00052; Declaration of Krystal Lee Laczano, ¶4, AMOY 0149-0150.**

176. Krystal Lee knew that the cargo was used tires prior to booking. (John Kamada Affidavit (ECONO PFF App. 00435)). She knowingly and willfully misdeclared the cargo.

**Response: Disputed. See Declaration of Krystal Lee Laczano, ¶4, AMOY 0149-0150. Objection. Misleading, lack of foundation, denied. There are no facts to support the proposed “finding.” Specifically, there are no facts to show that “Krystal Lee knew the cargo was used tires prior to booking” or that “she knowingly and willfully misdeclared the cargo.” Krystal denies this purported “finding” and Econocaribe proffers no evidence to contradict Krystal’s denial. The proposed finding is based on paragraph 9 of the Declaration of John Kamada, dated November 20, 2014, in which Mr. Kamada describes a purported telephone conversation from Melissa Chen more than eight months earlier. Melissa Chen disputes that she told John Kamada that Krystal Lee knew that the cargo was in fact baled used truck tires when she booked space with Econocaribe. Ms. Chen disputes that she told John Kamada, as set forth in paragraph 9 of his Declaration, that “this was not the first time that Amoy had shipped used tires by providing false information to other NVOCC; or that the previous misdeclaration was also done by the same employee, Krystal Lee; or that as a result of Krystal Lee’s misconduct, Amoy had paid other NVOCC damages Amoy caused; or that Krystal Lee did this and the previous misdeclaration willfully, in fact, that Krystal Lee colluded with the shipper of the cargo; or that Krystal Lee was terminated because of this misconduct.” See Declaration of Melissa Chen, ¶¶29, 30, AMOY 0022-0024.**

Moreover, the containers were loaded in Oakland and transported to the Maersk terminal under seal by truckers that were hired by the shipper. See Declaration of Melissa Chen, ¶7, AMOY 0156. The proposed “finding” is similar to proposed Finding No. 165, the response to which is incorporated by reference.

177. Amoy claims that its business is in the used rubber and used tires industry. (Econo PFF App. 00393-00397).

**Response: Disputed. Objection. Hearsay, lack of foundation, mischaracterization. Amoy did not claim that it was in the used rubber and used tires industry. See responses to proposed Finding Nos. 171, 174. Support for the proposed “finding” is a website page identified as ECONO PFF App. 00397. That website page has identical business claims that are attributed to at least 4 other companies selling tires. See response to proposed Finding No. 174. See also Declaration of Melissa Chen, ¶¶4, 5, 6, and 7, AMOY 0142-0146. Declaration of Krystal Lee Laczano, ¶8, AMOY 0151-0152. This proposed “finding” is the same as proposed Finding No. 171.**

178. Amoy offered to sell four containers of used tires in China for \$100 - 300 per ton. (ECONO PFF App. 00403).

**Response: Disputed that Amoy was attempting to sell the tires “in China.” Objection. Irrelevant, lack of foundation, mischaracterization of the referenced document. ECONO PFF App. 00403 reflects Amoy’s attempts to find a buyer for the used tires and notes that the tires originated in the USA and were currently located in China.**

179. As a used rubber and used tire dealer, Amoy should have known the substantial likelihood that the cargo was used rubber and/or used tires.

**Response: Disputed. Objection. Lack of foundation, misleading, irrelevant, mischaracterization, speculation. There is no foundation that Amoy was a used rubber and tire dealer and such assertion has been repeatedly and pointedly disputed by Amoy. See responses to proposed Findings Nos. 171, 174, 177. Amoy was told that the cargo was auto parts. Krystal Lee asked the shipper to provide confirmation of the cargo and he sent her a packing slip, commercial invoice, a picture and a Shipper Letter of Instructions. See Declaration of Melissa Chen, ¶¶ 30 and 31, AMOY 0024-0025; Declaration of Krystal Lee Laczano ¶4, AMOY 0149-0150, packing list AMOY 0035-0036; commercial invoice, AMOY 0038; Shipper’s Letter of Instruction, AMOY 0040; photo, AMOY 0140; See also Declaration of Melissa Chen, ¶8, AMOY 0156-0157, and email from shipper describing seal numbers and ITN, Econo PFF App. 00052. Moreover, the containers were loaded in Oakland and transported to the Maersk terminal under seal by truckers that were hired by the shipper. See Declaration of Melissa Chen, ¶7, AMOY 00157.**

180. Econocaribe would not ship used tires to China. (John Kamada Declaration (ECONO PFF App. 00440)).

**Response: Objection. Misleading. The Declaration of John Kamada, relied on for this proposed “finding” is internally inconsistent. Paragraph 8 of his Declaration states that “If Econocaribe had known that the cargo was used truck tires, we would not have shipped the cargo to China no matter how much Amoy would pay.” Yet, in paragraph 21,**

**he testified that “Econocaribe was not familiar with Chinese Regulations on Solid Waste. These Regulations became known to Econocaribe after this litigation.”**

181. Amoy is contractually liable for all demurrage and resulting costs from its breach of Econocaribe's terms and conditions. (Econocaribe Bill of Lading Terms and Conditions (Econo PFF. App.00373)).

**Response: Disputed. Objection. Irrelevant, misleading, incomplete hypothetical rather than a “finding.” Econocaribe’s claim in this action is not based on a breach of contract. The FMC is not a collection agency or a forum to adjudicate carrier collection cases. See China Ocean Shipping Company v. DMV Ridgeview, Inc., 1991 WL 383093 at \*14 (FMC 1991) “neither the legislative history nor case law developed over the years shows that Congress intended the Commission to adjudicate what are essentially merely freight-collection cases. Something more is required involved falsification, fraud, concealment, deception etc., as the cases discussed above hold.” This is not a “finding’ but a legal conclusion. Furthermore, the proposed “finding” failed to address Econocaribe’s failure to mitigate its conduct by failing to timely re-export the containers or to inform Amoy in September, 2013 that its best option was to re-export the cargo or to provide Amoy with the costs of re-export, notwithstanding Amoy’s continuing requests from the day the containers landed in China. See Declaration of Melissa Chen, ¶¶24, 26, 27, AMOY 0017-0019; 0020-0022. Lastly, the referenced document is not “Econocaribe Bill of Lading and Conditions.”**

182. Amoy has steadfastly refused to provide payment for any resulting costs or mitigation. (John Kamada Declaration (Econo PFF App. 00441)).

**Response: Disputed. Amoy attempted to obtain re-export and related costs from the outset but to no avail. Declaration of Krystal Lee Laczano, ¶¶5, 6 and 8, AMOY 0150-0152. Objection. Misleading. The proposed “finding” failed to address Amoy’s continuing requests, from the time the containers were landed in China, for the cost of returning the cargo to the U.S. From June 20, 2013 to May 12, 2014, a period of almost one year, Econocaribe failed to provide Amoy with the return cost. See Declaration of Melissa Chen, ¶¶8, 26, AMOY 0004, 0020-0024. Beginning on the day the cargo landed in China, June 17, 2013, Amoy made Econocaribe aware of the cargo problem and asked for assistance. ECONO PFF App. 00068. That day, Amoy asked Econocaribe whether to abandon cargo, return to US seller or resell to other ports in China. ECONO PFF App. 00077. Amoy was seeking guidance from Econocaribe. ECONO PFF App. 00080-00081. On June 19, 20123, Amoy again asked Econocaribe for the return option to the US. ECONO PFF App. 00083. The next day, June 20, 2013, Krystal Lee asked for the return charges to the US. ECONO PFF App. 00085-00086. On June 21, 2013, she followed up her request. Declaration of Krystal Lee Laczano; ¶6, AMOY 0150-0151. ECONO PFF App. 00089. That day, Melissa Chen emailed Econocaribe saying “we are running out of time.” Although she mentioned abandonment, she qualified that by stating “we want to keep everything in good term and to resolve the matter instead of dropping it.” “We sincerely just want to solve this mater the quickest possible.” ECONO PFF App. 00094. On July 1, 2013, Ms. Chen again emailed Econocaribe stating that “the process is taking really long time . . . what MSK going to do with the containers, there is no word from anyone on how they want to resolve**

the issue . . . let me know if you can still amend original consignee on the BL with MSK”

Later that day she emailed Econocaribe “I wanted to list the buyer on BL of what ship gave us originally, please let me know.” On July 9, 2013 she told Econocaribe that “I still think returning will be the fastest way, please let me now. ECONO PFF App. 00132. The above emails are examples of the many attempts that Amoy tried to solve the problem before it got out of hand. On July 17, 2013, Melissa Chen warned Econocaribe that “I don’t think we can wait for 90 days, can you check again please? If we waited longer, the cost will go up sky high.” ECONO PFF App. 00126. Later that day, she sent another email to Econocaribe “If all waited for 90 days, there will be no possible way for anyone to pay these fees, please let me now and I hope MSK can respond faster.” ECONO PFF App. 00125. Melissa Chen’s Declaration provides further detail on her numerous attempts to seek timely resolution of the problem before it got out of hand, AMOY 0003-0013. It wasn’t until May 12, 2014 before Econocaribe finally gave a response to the question she asked a year earlier, the cost of returning the cargo. See Declaration of Melissa Chen, ¶26, AMOY 0020-0021. By that time, the cost had gone sky high as she predicted and included Maersk’s significant cost of demurrage. Amoy believes that it should not be responsible for paying costs that arose or were exacerbated by Econocaribe’s conduct and omissions and/or could have been avoided had Econocaribe communicated more fully and expeditiously between Maersk and Amoy, especially Maersk’s warning its September 6, 2013 email that the best option was to re-export the cargo before it was seized by Chinese Customs and had Econocaribe taken action to re-export the containers. ECONO PFF App. 00148. See Declaration of Melissa Chen, ¶24, 25, 28, AMOY 0017-0020, 0022, for further explanation of why Amoy has not paid Econocaribe’s demand for payment. For example, Maersk

**waited until March, 2014 to petition the Chinese authorities to dispose of the cargo. Moreover, Econocaribe failed in its duty to mitigate.**

183. Amoy holds a Chinese maritime license having China MOC License No. MOC-NVO03586. This shows up in every Amoy signature block. (for example, Econo PFF App. 00038).

**Response: Objection. Irrelevant.**

184. Amoy is more familiar than Econocaribe with Chinese Customs. This is indicated by the facts that a) Amoy holds a Chinese maritime license, b) immediately after publicly admitting that the commodities were recycled items, Amoy pointed out that they were likely prohibited from entry into China, (Econo PFF App. 00067) and (c) in Amoy's internal communication, Melissa Chen stated that "Tianjin port is strictly not allowing any scrap materials to go in" (Econo PFF App. 00116).

**Response: Objection. Lack of foundation, irrelevant, misleading, speculation, vague and ambiguous. There is no foundation as to the level of knowledge of either Econocaribe or Amoy with regard to Chinese Customs. However, there are Econocaribe emails suggesting that it is very familiar with Chinese Customs. For example: John Kamada suggesting to Melissa Chen that Amoy prepare an abandonment letter and have it ready to go, ECONO PFF App. 00093; informing Amoy of its options to address the cargo problem, ECONO PFF App. 00101, 00132, 00129-00130; advising Amoy of the 90 day waiting period for abandonment, 00126; John Kamada disputing Maersk's advice of Chinese Law, saying "It should not be . . . I have been involved in a few cases of this**

nature” ECONO PFF App. 00151, 00152. There is no foundation as to what additional knowledge, if any, is gained by or needed for the issuance of a Chinese maritime license and what that license pertains to. The proposed “finding” misstates the cited email-Amoy did not point out that the recycled items were likely prohibited in China. In fact, the email asked whether the cargo could be sold in other ports in China. Moreover, the proposed “finding” is vague and ambiguous as it is devoid of any time parameter and in regards to the unfounded conclusion “after publically admitting.”

185. Amoy claims to have branch offices in major cities all over China. (Employment Handbook (Econo PFF App. 00416)).

**Response: Objection. Irrelevant. See Declaration of Melissa Chen, ¶12, AMOY 0158 .**

186. Amoy was ranked No. 85 on American Shipper’s Top 100 Asia to U.S. Freight Forwarding Companies list for the year 2008-2009. (Employment Handbook (Econo PFF App. 00416)).

**Response: Objection. Irrelevant.**

187. Amoy was sued by ZIM American Integrated Shipping Services Company, LLC (“ZIM”) (Econo PFF 00418-00424).

**Response: Objection. Irrelevant, vague and ambiguous as to time and circumstance. The ZIM litigation has no relevance on the present action. The cargo described in the ZIM litigation was forest product, waste paper and paper waste, which is**

**exempt cargo. See 46 C.F.R. §520.13(c)(1). Nor does Econocaribe provide any basis on which to conclude that the ZIM litigation is relevant.**

188. According to ZIM's complaint, Amoy failed to make arrangements for the delivery of goods shipped to Europe in that case, and caused the accrual of charges for storage and demurrage in the amount of \$137,891.00. (Econo PFF App.422).

**Response: Objection. Irrelevant. The ZIM litigation has no relevance on the present action. The cargo described in the ZIM litigation was forest product, waste paper and paper waste, which is exempt cargo. See 46 C.F.R. §520.13(c)(1). Furthermore, the destination was Europe. Declaration of Krystal Lee Laczano, ¶7, AMOY 0151.**

189. This large amount of demurrage suggested that Amoy had failed to rearrange delivery or re-export in a timely manner, similar to the case at bar. Melissa Chen alluded to a similar problem with MSC, Mediterranean Shipping Corp.

**Response: Objection. Speculation, lack of foundation, argument, irrelevant. None of the allegations has support or any reference whatsoever to evidence. Neither the ZIM litigation nor the MSC issue has any relevance to this action. No foundation and speculation as to what “large amount of demurrage” means. No foundation and speculation as to what Melissa Chen alluded to or what a “similar problem” means. The cargo described in the ZIM litigation and MSC claim was forest product, waste paper and paper waste, which is exempt cargo. See 46 C.F.R. §520.13(c)(1); Declaration of Krystal Lee Laczano, ¶7, AMOY 0151.**

190. It also shows Amoy's knowledge of its liability for costs arising from freight shipped by it when not collected at destination, as in the case at bar. Melissa Chen alluded to a similar problem with MSC, Mediterranean Shipping Corp.

**Response: Objection. Speculation, lack of foundation, argument, irrelevant, vague and ambiguous. None of the allegations has support or any reference whatsoever to evidence. Neither the ZIM litigation nor the MSC issue has relevance to this action. This action is not a case of breach of contract. Furthermore, the “finding” is uncertain, vague and ambiguous as to what the first “it” and “similar problem” refers to. The cargo described in the MSC claim was forest product, waste paper and paper waste, which is exempt cargo. See 46 C.F.R. §520.13(c)(1); Declaration of Krystal Lee Lazcano, ¶7, AMOY 0151.**

191. Melissa Chen admitted that the cargo in the Zim transaction shipment was misdeclared by Krystal Lee as wood pulp when in fact it was paper products. (Melissa Chen Declaration, (ECONO PFF App. 00028). Melissa Chen alluded to a similar problem with MSC, Mediterranean Shipping Corp. (Econo PFF App. 00234).

**Response: Objection. Misleading, irrelevant, mischaracterization of the purported evidence. The proposed “finding” misstates Melissa Chen’s Declaration and the conclusion is disputed by Krystal. Declaration of Krystal Lee Laczano, ¶7, AMOY 0151. Nowhere in Ms. Chen’s declaration does she admit that the cargo in the “the Zim transaction shipment was misdeclared by Krystal Lee.” The “finding” is also irrelevant. The term “similar problem” is vague and ambiguous and uncertain as to meaning. The proposed “finding” fails to show any relevance to the instant case. The cargo described in the ZIM litigation**

**and the MSC claim was forest product, waste paper and paper waste, which is exempt cargo. See 46 C.F.R. §520.13(c)(1).**

192. Although now disputed by Amoy, John Kamada swears to a conversation between him and Melissa Chen taking place on May 18, 2013 in which Melissa Chen stated that Krystal Lee had previously colluded with another shipper and misdeclared cargo. (John Kamada Affidavit (Econo PFF App. 00435)).

**Response: Disputed. Objection. Irrelevant, argument. See Declaration of Melissa Chen, ¶¶29, 30, AMOY 0022-0023. John Kamada also swore in the same declaration that Melissa Chen told him that the products in the previous shipments were used tires. Now Econocaribe appears to acknowledge that Mr. Kamada was wrong in his testimony, that the cargo was in fact declared as wood pulp, creating an issue of the credibility of its witness. There was no collusion by Krystal Lee with the shipper of the previous shipment. He was prosecuted and convicted by the federal government. No charges were brought against Krystal Lee. See Declaration of Krystal Lee Laczano, ¶7, AMOY 0151; Declaration of Melissa Chen, ¶29, AMOY 0022-0023. Moreover, the proposed “finding” is similar to proposed Finding No. 166.**

193. Amoy's familiarity with demurrage can also be shown by her email to Daniel Akhromtsev on August 15, 2013. At that time the detention had taken place for only two months, yet Melissa Chen pointed out the losses was over \$100,000. (ECONO PFF App. 00161-00162).

**Response: Objection. Misleading, Lack of foundation, speculative, irrelevant, vague and ambiguous as to the phrase “familiarity with demurrage.” The word**

**“demurrage” is not found in the email that Econocaribe relies on. Speculative that the email has any relevance to demurrage. Melissa Chen’s purpose in telling David Akhromtsev that Amoy had \$100,000 losses was to point out the seriousness of the problem and to have him cooperate with her. See Declaration of Melissa Chen, ¶4, AMOY 0154-0155. It is also misleading for Econocaribe to claim that Amoy believed that the detention cost was \$100,000, when it knew that Amoy’s knowledge about those costs would have come from Econocaribe. Econocaribe knew that the detention cost in July, 2013 was 18360 RMB or about \$3,000 [the exchange rate is about 6.19 RMB to 1 dollar] ECONO PFF App. 00133; it knew that the cost on July 18, 2013 was \$6,400 ECONO PFF App. 00151; and that the detention cost in September, 2013 was 171480 RMB or about \$27,700 ECONO PFF App. 00197. These emails confirm that Amoy was not quoting the actual detention cost because the cost it was quoting was more than 3 times the actual detention cost. This proposed “finding” appears to be intentionally misleading.**

194. During the same conversation, Melissa Chen also told John Kamada that Krystal Lee's misconduct caused lawsuits against Amoy by other carriers. (John Kamada Affidavit (Econo PFF App. 00435)).

**Response: Disputed. Objection. Misleading, irrelevant, vague and ambiguous as to “During the same conversation. While Amoy does not dispute that Melissa Chen told John Kamada that Krystal Lee was involved in previous shipments where the cargo turned out to be different than what was declared and that it caused claims from ZIM and MSC and a lawsuit from ZIM, she denies that she told him that it was misconduct by Ms. Lee or that she used the word “misconduct.” In fact, there was only one lawsuit against Amoy as a**

result of these shipments, the one brought by ZIM. See Declaration of Melissa Chen, ¶29, AMOY 0022-0023, and Declaration of Melissa Chen, ¶8, AMOY 0156. Krystal Lee was not found to have committed any misconduct in that proceeding. Declaration of Krystal Lee Laczano, ¶7, AMOY 0151. This proposed “finding” is the same as proposed Finding No. 169.

195. Amoy fully understood the usual processes relating to "abandoned" cargo. (ECONO PFF App. 00067).

**Response: Objection. Lack of foundation, misleading, call for speculation, argumentative, irrelevant. The email that Econocaribe relies on to support this “finding,” is simply a request by Amoy to be make of MSK “to allow us some extra time at port of destination or abandon the cargo or return to US seller or resell to other ports in China?” That hardly supports a “finding” that “Amoy fully understood the usual process relating to “abandoned” cargo. In fact, Amoy did not fully understand the process relating to abandonment. In her email of June 24, 2013 to John Kamada, Melissa Chen asks Mr. Kamada “What is the consequence once we submit the abandonment letter.” ECONO PFF App. 00096. Later, in a July 9, 2013 follow-up email, she tells Mr. Kamada “Hi John I am not familiar with MSK about abandonment procedures and costs will be involved.” ECONO PFF App. 00131. Clearly, this does not show that Amoy fully understood the “usual” processes relating to abandoned cargo. The proposed “finding” is also vague, uncertain and speculative as to what “fully understood” and “usual process” means. It is also irrelevant because it appears that Chinese requirements for abandonment are unique.**

196. Amoy claims that it wanted to return the cargo but Econocaribe recommended that Amoy issue a letter of abandonment. Amoy further claims that this resulted in the Chinese Customs seizing the cargo. (App. Respondent's Opposition to Motion for Partial Summary Judgment (ECONO PFF App. 00427)).

**Response: Objection. Lack of foundation. Misleading, mischaracterization. This proposed “finding” is based on a phrase taken out of context, not on evidence. The statement is “The facts show that even though Amoy wanted to return the cargo, which was the proper course of action, Econocaribe recommended that Amoy issue a letter of abandonment and that what Amoy did; that resulted in the Chinese Customs seizing the cargo.” The foregoing statement must be read in conjunction with the Opposition Brief.**

197. In fact, Amoy is the party who initiated the idea of abandonment, as early as June 17, 2013, the same day cargo arrived in China. It asked Econocaribe to enquire Maersk about (1) extra time at port of destination, (2) abandonment, (3) return to US seller, and (4) resell to other parts in China. (ECONO PFF App. 00067).

**Response: Dispute. Objection. Misleading, lack of foundation and unsupported by the referenced document. The use of the term “in fact” at the beginning of the proposed “finding” implies that the statement in proposed Finding No. 196, that “Econocaribe recommended that Amoy issue a letter of abandonment” is incorrect and misleading. Econocaribe overlooks the fact that on June 21, 2013, it was John Kamada who suggested that Amoy “prepare the abandon letter and have it ready to go.” See Declaration of Melissa Chen, ¶10, AMOY 0005-0006, ECONO PFF APP. 00010, 00093, 00118. It also overlooks Mr. Kamada’s email of July 10, 2013 where he offered Amoy two choices, either**

abandonment or returning the cargo to the US, “But this [returning the cargo] is usually a more expensive alternative.” If Amoy chose abandonment, the process could begin immediately. Faced with the two options offered by Mr. Kamada, Amoy chose the less expensive and quicker option, abandonment. From the beginning, it was Amoy’s intention to solve the problem as quickly as possible. See Declaration of Krystal Lee Laczano, ¶8, AMOY 0151-0152; Declaration of Melissa Chen, ¶¶13, 14, AMOY 0009-0010, ECONO PFF App. 00014-00015, ECONO PFF App. 00129, 00130.

198. Econocaribe turned around and Maersk for additional free time and return options. (ECONO PFF App. 00110).

**Response: Objection. This proposed “finding” is unintelligible, vague and ambiguous as to time or circumstance and phrase “turned around.”**

199. Amoy proposed abandonment again on June 21, 2013 as a ploy to push Maersk for a faster response. (ECONO PFF App. 00119). Only with this understanding, did Econocaribe suggest Amoy to prepare a letter of abandonment. (ECONO PFF App. 00118).

**Response: Objection. Misleading, argumentative, lack of foundation, irrelevant. The proposed “finding” has taken the content of the cited email out of context, distorts and mischaracterizes that content. The email does not use the word ploy nor does it provide any support for the use of that word, which means “devious maneuver.” Amoy’s request was “If you need me to issue abandon letter to MSK to push them for faster response please let me know.” There was also a caveat that Amoy stated in that email: “We can as well abandon it, but we want to keep everything in the good term and to solve this matter**

**insets of dropping it.” There is nothing devious about that request. It is consistent with Amoy’s overall objective, stated in the next sentence: “We sincerely just want to solve this matter the quickest possible.” There is no foundation that “Only with this understanding” that Econocaribe suggested Amoy prepare a letter of abandonment. There is nothing in the email to support that conclusion. As stated by Krystal, Amoy was attempting to resolve the problem by getting the cost to re-export but Econocaribe did not provide that information. Declaration of Krystal Lee Laczano, ¶¶5, 6, 8, AMOY 0150-0152. Moreover, the proposed “finding” is irrelevant.**

200. Amoy proposed abandonment even though it knew that "Tianjin port is strictly not allowing any scrap materials to go in" and "these containers will have to be moved to other smaller countries in Asia." (ECONO PFF App. 00116).

**Response: Objection. The proposed finding is misleading and irrelevant. Abandonment was recommended by Econocaribe and was one of several options that Amoy was considering. On June 17, 2013, Amoy requested additional time to either abandon the cargo, return it to the US or to resell in other parts in China. The email ended with “Please kindly advise.” ECONO PFF App. 00077. The next day, on June 18, 2013, in an effort to find buyers for the containers, Melissa Chen emailed Krystal Lee, after informing her that “Tianjin port is strictly no allowing any scrap materials to go in” and “these containers will have to be moved to other smaller countries in Asia,” directed her to “Start immediately looking for buyers around smaller third world countries around China. Via trading sites, agents and US sellers.” ECONO PFF App. 00116. This was when Krystal Lee began posting notices on websites seeking to sell the tires. See Declarations of**

Melissa Chen, ¶¶4, 5, 6 and 7, AMOY 0142-0146, and Krystal Lee Laczano, ¶8, AMOY 0151-0152. Following the June 18, 2013 email, on June 24, 2013, Ms. Chen followed up with an email to John Kamada about abandonment, asking him “What is the consequence once we submit the abandonment letter?” ECONO PFF App. 00096. Later, on July 9, 2013, Amoy sent a follow-up email to Econocaribe “Hi John I am not familiar with MSK about abandonment procedures and costs involved.” ECONO PFF App. 00131. Amoy was asking Mr. Kamada for advice, since it was uninformative about the consequences of an abandonment letter. However, it was Amoy’s objective from beginning to re-export the cargo back to the US. See Declaration of Melissa Chen, ¶¶11, 12, 19, 21, 22, AMOY 0006-0009; 0014-0017. After Econocaribe was told in July, 2013, that the containers couldn’t be abandoned, ECONO PFF App. 0128, it nevertheless asked Amoy to send a revised abandonment letter 60 days later, in September, 2013. See Declaration of Melissa Chen, ¶22, AMOY 0087.

201. Further, Amoy proposed abandonment immediately after, i.e. 2 minutes after, Econocaribe asked it to confirm if it wanted to return cargo back to US. (ECONO PFF App. 00092, 00119).

**Response: Disputed. Objection. Misleading, irrelevant, lack of foundation.** The proposed “finding” is inconsistent with proposed Finding No. 44, which states that Amoy never answered the email cited in ECONO PFF App. 00092. This “finding” is based on the testimony of John Kamada. Paragraph 12 of his Affidavit states that “On June 21, 2013, Econocaribe asked Melissa Chen of Amoy if the cargo was to be returned to the US. She never answered.” However, the email, identified as ECONO PFF App. 00092, was sent by

Ariel Martinez to Krystal Lee, asking her, not Ms. Chen, for the confirmation. In this proposed “finding”, Econcaribe requests a finding that Amoy did respond to the email, citing an email that Melissa Chen sent to John Kamada, EONO PFF App. 00119. Clearly, these two proposed “findings” are inconsistent with each other. Although they are 2 minutes apart, there is no foundation that they are related and/or were received at the same time as they were sent. The reason why Amoy sent the second email is stated therein and is obvious. The shipper and consignee have abandoned the cargo and Amoy wants to solve the problem, instead of “dropping it.” Amoy suggests that an abandonment letter to MSK would push them faster to respond. Up to this point, the emails exchanges between Amoy and Econocaribe show that Amoy was asking for help to solve the problem but neither Econocaribe nor Maersk was offering any solutions. See ECONO PFF App. 00067, 00068, 00078, 00083, 00086, 00092. As Amoy stated in the cited email: “We sincerely just want to solve this matter the quickest possible.”

202. Amoy states that it preferred the return of cargo and was misled into abandoning the cargo by Econocaribe. (App. Respondent's Opposition to Motion for Partial Summary Judgment (ECONO PFF App. 00427)).

**Response: Objection. An argument, not a “finding.” Misleading, misstates Respondent’s Opposition, no foundation, argumentative relies on a pleading taken out of context. Respondent’s Opposition did not use the word “misled.” The statement was as follows: “The facts show that even though Amoy wanted to return the cargo, which was the proper course of action, Econocaribe recommended that Amoy issue a letter of**

**abandonment and that's what Amoy did; that resulted in the Chinese Customs seizing the cargo.”**

203. Amoy's claimed preference of return over abandonment was obviously at odds with the fact that Amoy chose not to answer Econocaribe's email asking it to confirm whether it wanted to return the cargo to the U.S. but proposed to issue an abandonment letter. (ECONO PFF App. 00092, 00119).

**Response: Objection. Misleading, no foundation, argumentative, irrelevant, basically a repeat of proposed Finding No. 201. As stated in the response to proposed Finding No. 201, the purpose of the June 21, 2013 email that Melissa Chen sent to John Kamada was to find a way to push MSK for a faster response to Amoy's questions on how to address the problem. She believed that abandonment was an option to do that, with the caveat stated in the email that “we want to keep everything in the good term.” Amoy still preferred that the cargo be returned, as shown in later emails. See Declaration of Melissa Chen, ¶¶10, 11, 12, AMOY 0005-0009.**

204. Further, Amoy knew that used tires were absolutely prohibited by Tianjin port and cargo need to be re-exported somewhere else from the beginning. (ECONO PFF App. 00116). With such knowledge, it is unreasonable and illogical for Amoy to choose abandoning the cargo. Amoy was apparently betting on the odds that Chinese Customs would allow the cargo.

**Response: Objection. Misleading, lack of foundation, irrelevant, argumentative. Econocaribe ignores and omits the many emails that were exchanged between Amoy and Econocaribe. First, Amoy fully informed Econocaribe about the nature of the cargo. It**

told Econocaribe, on June 17, 2013, that it believed that the cargo was recycled products. ECONO PFF App. 00067. Later, on June 18, 2013, it told Econocaribe that the cargo was rubber speed bumps, large rubber blocks made out of waste tires. Amoy asked Econocaribe “Please let me know what we can do about these.” ECONO PFF App. 00080-00081. On July 1, 2013, Amoy told Econocaribe that it couldn’t find a buyer because the commodity is not permitted in China. ECONO PFF App. 00103. Yet on July 10, 2013, Econocaribe, with full knowledge of the description of the cargo and knowing that it was not permitted in China, nevertheless offered abandonment as an option. ECONO PFF App. 00129-00130. It would have been illogical and unreasonable for Amoy not to follow Econocaribe’s advices on the available options, especially with Amoy’s understanding, from the emails that it received from Econocaribe, that it was working with Maersk on the cargo problem. To say that Amoy was betting on the odds that Chinese Customs would allow the cargo is silly and unfounded, when Amoy knew that the cargo was not allowed in China and so informed Econocaribe and cooperated thereafter in efforts rectify the situation.

205. The record does not show Amoy's preference for return. It only shows that Amoy intended to solve the problem “soonest” and “cheapest” possible. (ECONO PFF App. 00131, 00132)

**Response: Disputed. Objection. Misleading, lack of foundation, argument. The referenced documents do not constitute “the record.” Amoy first proposed returning the cargo on June 17, 2013. ECONO PFF App. 00067. Declaration of Krystal Lee Lazcano, ¶¶5, 6, 8, AMOY 0150-0152. Amoy followed up with an email on June 19, 2013 asking for**

**advice on the return option to the US because the commodity is prohibited from importing in China. ECONO PFF App. 00083. The next day, June 20, 2013, Amoy asked for fees back to the US. ECONO PFF App. 00084, 00086. On June 21, 2013, Amoy made another request of Econocaribe for fees. ECONO PFF App. 00089. On July 1, 2013, Amoy asked Econocaribe about amending the B/L. ECONO PFF App. 00103. On July 9, 2013, Amoy emails Econocaribe: "I was requesting the return of the shipment soonest we found out there was abandoned cargo. I don't understand why the same topic is coming back to me now." ECONO PFF App. 00132. Later that day, Ms. Chen emailed Econocaribe: "I still keep thinking returning will be the fastest way." ECONO PFF App. 00131. See also Declaration of Melissa Chen, ¶¶7, 8, 9 10, 11, 12, AMOY 0003-0009. Amoy believed that returning the cargo would have been the quickest way to solve the problem until it was persuaded by Econocaribe that abandonment of the cargo would begin immediately and would be cheaper than re-export. ECONO PFF App. 00129-00130. Amoy relayed to Econocaribe: "This is abandoned shipment by shipper/consignee. We can as will abandon it, but we want to keep everything in the good term and to solve this matter instead of dropping it." ECONO PFF App. 00158.**

206. In fact, inquiry about return freight do not show Amoy's preference for return. Such inquiry only shows that Amoy was gathering information to make an economic decision. This is supported by the email in which Melissa Chen asked which was the "cheapest way," and that "even returning to the origin, we also can't find either of the seller or the middle man at moment." (ECONO PFF App. 00131).

**Response: Disputed. Declaration of Krystal Lee Lazcano, ¶5, 6, 8, Amoy 0150-0152. Objection. Misleading, lack of foundation, argumentative, speculation. This proposed “finding” is the same as the previous propose Finding No. 205. Amoy incorporates its response to that proposed “finding” as its response to this proposed “finding.”**

207. Apparently, Amoy’s decision was made based on cost calculation. It wanted to compare the cost between the return freight plus the uncertain cost associated with finding a buyer in the U.S. and the cost of abandonment.

**Response: Disputed. Objection. Lack of foundation, misleading, argumentative, speculation. There are no facts to support the proposed “finding,” just speculation. Amoy could not have made its decision based upon a cost calculation because it never received any information on what the return cost would be until May 12, 2014, Declaration of Melissa Chen, ¶26, AMOY 0020-0021, nor did it know what the abandonment costs were. ECONO PFF App. 00131. By default, abandonment was the only option that Amoy could pursue. Econocaribe has not shown that Amoy was aware of any these costs. It was always Amoy’s intent, from the inception of the cargo problem, to address it and not walk away from it. “We want to keep everything in the good term and to solve this mater instead of dropping it . . . We sincerely just want to solve this matter the quickest possible.” ECONO PFF App. 00094.**

208. On July 9, 2013, Melissa Chen instructed John Kamada “please proceed with abandonment” after he told her that return was “usually” a more expensive alternative. (ECONO PFF App. 00129).

**Response: Objection. Misleading. Irrelevant.** The proposed “finding” failed to include other relevant parts of the cited email. For example, Mr. Kamada told Melissa Chen that the abandonment process could begin immediately. The following emails show Amoy’s desire to resolve the problem quickly: June 21, 2103 email: “We want to resolve this matter quickest possible.” ECONO PFF App. 00094; July 1, 2013 email: “The process is taking really long time.” ECONO PFF App. 00101; July 9, 2013 email: “Why is MSK taking so long to take this step.” ECONO PFF App. 00133. Based on Mr. Kamada’s opinion, abandonment was an option that appeared to provide the quickest solution.

209. Econocaribe did not mislead Amoy into abandoning the cargo. In fact, the idea of abandoning cargo was initiated by Amoy. (ECONO PFF App. 00067).

**Response: Disputed. Objection. Declaration of Krystal Lee Lazcano, ¶8, AMOY 0151-0152. Misleading.** Although the abandonment option was initially proposed by Amoy, it was one of several options that was proposed. The other options were to return the cargo to the US or resell in other port in China. ECONO PFF App. 00068. Econocaribe misled Amoy because it led Amoy to believe that it knew how to address the problem, when it really had no clue what the proper options were. It recommended abandonment. ECONO PFF App. 00129-00130. Yet when it became apparent that this was not a proper option, Econocaribe did nothing to correct it and even withheld information from Amoy as to what the proper option was. See Declaration of Melissa Chen, ¶22, AMOY 0016-0017. Econocaribe should have known, by the time it offered abandonment as an option on July 10, 2013, ECONO PFF App. 00129-00130, 3 weeks after the cargo landed in China, that the best option was to re-export the cargo. This conclusion

is based on the language of the September, 6, 2013 email that addressed the best option. That email states “They [meaning MSK China] continue to tell us best option is for your agent in country to see about re-export options before this is seized.” ECONO PFF App. 00148. It is clear that Econocaribe knew before September 6, 2013 that the best option was to re-export.

210. Econocaribe's suggestion that Amoy have an abandonment letter “ready to go” was a response to Amoy’s own proposal that an abandonment letter would provide leverage for it against Maersk. (ECONO PFF App. 00118, 00119).

**Response: Objection. Lack of foundation, speculation, irrelevant.**

211. On July 9, 2013, when Ariel Martinez relayed Maersk's message to Melissa Chen, he correctly included all information from Maersk. (ECONO PFF App. 00133-00134, 00141-00144). Amoy was fully aware that Maersk needed Econocaribe to advise Maersk if Amoy had found a new Chinese consignee, i.e. "to find new consignee to help return issue.” (ECONO PFF App. 00133-00134).

**Response: Objection. Hearsay. Irrelevant. Lack of foundation in that neither Marinez nor Maersk has confirmed this proposed “finding” which is premised on inadmissible hearsay. Without waiving those objections, the implication from this proposed “finding” is that Amoy had to find a new consignee to help return issue, meaning to return the cargo. This is a false issue. Econocaribe and Maersk returned the 4 containers to the US. See proposed Finding of Facts Nos. 135, 136. On the return B/L, they listed as the shipper, the consignee that was listed as the shipper on Amoy B/L. ECONO**

**PFF App. 00268, 00269; ECONO PFF App. 0061. There doesn't appear to have been a new consignee that was needed for the return trip. It appears that what was done for the return trip could and should have been done when Amoy asked to re-export the cargo back to the US in June 2013.**

212. When Melissa Chen asked for advice, John Kamada told her that because "no other consignee can be located" Amoy had the option of return the cargo back to the U.S. or have the cargo auctioned in China. (ECONO PFF App. 00132). This is a true statement with or without knowing that auction would not be permitted by China Customs regulation.

**Response: Objection. Lack of foundation, misleading, speculation. The fact is that the cargo could not be imported into China. If the cargo could not be imported into China, it couldn't be auctioned. This is what Maersk told Econocaribe. ECONO PFF App. 00152. The proposed "finding" is not a true statement because there is no foundation that there could have been an auction of that cargo in China. This proposed "finding" appears further support that Econocaribe had no clue on what was going on but led Amoy to believe otherwise.**

213. John Kamada did not suggest that Melissa Chen abandon the cargo. He simply presented the options and let her make her own decision. (ECONO PFF App. 00132).

**Response: Objection. Lack of foundation. The cited email does not support the proposed "finding." Notwithstanding, John Kamada did suggest that Melissa Chen prepare an abandonment letter: "We are still waiting on Maersk but I would suggest you prepare the abandon letter and have it ready to go." ECONO PFF App. 00093. Later, in**

September, 2013, he told Ms. Chen to prepare a revised letter of abandonment, see Declaration of Melissa Chen, ¶22, AMOY 0016-0017, 0087, after Econocaribe had been told that the cargo couldn't be abandoned. ECONO PFF App. 00127-00128. It appears that Econocaribe's request was a merely negotiating ploy and Econocaribe did not inform Amoy that it was. ECONO PFF App. 00240, Declaration of Melissa Chen, ¶14, AMOY 0010.

214. Melissa Chen again asked for advice between return and abandonment. (ECONO PFF App. 00132).

**Response: Admit that she stated: "This shipment has no choice to either be returned or abandoned. Please urgently advise."**

215. In response, John Kamada still did not make any decision for Amoy. He simply insisted "I need you to tell me if it is to be auctioned or returned." (ECONO PFF App. 00131).

**Response: Admit that as of July 9, 2013, John Kamada did not make a decision for Amoy.**

216. Then Melissa Chen expressed her concern about the costs involved and told John Kamada that even if she returned it to the U.S., Amoy could not find either the seller or middleman. She again asked what would be the cheapest way to solve this matter. (ECONO PFF App. 00131).

**Response: Objection. Misleading. Vague and ambiguous as to time. The proposed "finding" mischaracterizes the cited email. Melissa Chen did not express a**

**concern about the costs involved. What she said was “I am not familiar with . . . costs will be involved.” She also did not state that “even if she returned it to the U.S., Amoy could not find either seller or middleman.” What she stated in the email was “Because even returning to the origin, we also can’t find either of the seller or the middle man at moment,” meaning that this was an issue at that moment. She also stated “Please help me to check with MSK if you can talk to someone and ask him what will be cheapest way to solve this matter.” She was asking for Econocaribe’s assistance in communicating with Maersk because Econocaribe would not allow Amoy to deal directly with Maersk. See Declaration of Melissa Chen, ¶13, AMOY 0158.**

217. Knowing that Melissa Chen's concern was the costs associated with each option (return or abandonment), John Kamada asked if cargo was insured. (ECONO PFF App. 00130).

**Response: Objection. Lack of foundation, speculation, irrelevant. No foundation that Mr. Kamada had any idea what the return costs were. Amoy had repeatedly asked him for the cost of return and he never provided a response until May 12, 2014. See Declaration of Melissa Chen, ¶26, AMOY 0020-0021. There is no foundation for the assertion that costs were the reason why he asked Amoy if the cargo was insured and that Mr. Kamada was aware of those costs.**

218. Only after determining that the cargo was not insured, he came to a general conclusion that return was "usually" more expensive than abandonment. (ECONO PFF App. 00129-00130).

**Response: Objection. Lack of foundation, speculation, misleading, irrelevant. There is no foundation that Mr. Kamada had any idea what the cost of return or**

abandonment was. See for, for example, ECONO PFF App. 00094-00095. Amoy had repeatedly asked him for that cost and he never provided a response until May 12, 2014. See Declaration of Melissa Chen, ¶26, AMOY 0020-0021. There is no foundation that Mr. Kamada knew what the cost of return or abandonment was at any time nor had he responded to Melissa Chen's request for information on how to proceed with destruction. ECONO PFF App. 00127, Declaration of Melissa Chen, ¶14, AMOY 0158-0159. Moreover, the proposed "finding" is illogical and lacks foundation as there is no basis for a finding that a determination of whether or not this shipment was insured impacted the costs of the options proposed by Econocaribe.

219. This is a true statement without the benefit of hindsight that the cargo would be seized by China Customs for a long period of time. Further, John Kamada did not guarantee that for this case, abandonment would be cheapest way to solve this matter. (ECONO PFF App. 00129-00130).

**Response: Objection. Lack of foundation, speculation, ambiguous, unintelligible, argumentative, irrelevant. Ambiguous as to what "this is a true statement" means or what statement Econocaribe is referring to. Does it refer to the proposed "finding" of the prior proposed "finding"? What is the relevance or meaning of "without benefit of hindsight"? Ambiguous as to what "a long period of time" is. Notwithstanding, the facts are clear that Amoy relied on the advice that John Kamada gave with regard to abandonment. And he also led Amoy to believe that abandonment was a proper option to address the cargo problem, or else, why did he state it as an option?**

220. Melissa Chen then made up her mind to proceed with abandonment. (ECONO PFF App. 00129). This was a decision made of her own free will and with the knowledge that Chinese Customs would absolutely not allow scrap materials.

**Response: Objection. Lack of any foundation as to “Melissa Chen then made up her mind.” Misleading, lack of foundation, argumentative, speculation. Melissa Chen proceeded with abandonment after seeking advice from John Kamada and relying on that advice. See Mr. Kamada’s July 10, 2013 email ECONO PFF App. 00129. Mr. Kamada also was aware that Chinese Customs would not allow scrap material when he gave that advice to Ms. Chen. ECONO PFF App. 00103. Later, in September, 2013, he told Ms. Chen to prepare a revised letter of abandonment, see Declaration of Melissa Chen, ¶22, AMOY 0016-0017, 0087, after Econocaribe had been told that the cargo couldn’t be abandoned. ECONO PFF App. 00127-00128. Nevertheless, he offered abandonment as an option. ECONO PFF App. 000129-000130. The phrase “that Chinese Customs will absolutely not allow scrap materials” lacks foundation and is ambiguous since it’s unknown what Chinese Customs would allow and unknown whether Chinese Customs considers the tires to be “scrap materials.”**

221. On July 17, 2013, when Ariel Martinez relayed Maersk's message to Melissa Chen, he correctly included all information from Maersk to Melissa Chen. (ECONO PFF App. 00152, 00127-00128). Amoy was on notice that it must “find a new buyer at destination or arrange re-export” or the cargo would be treated as abandoned after 90 days. (ECONO PFF App. 00127-00128).

**Response: Objections. Lack of foundation in that neither Martinez nor Maersk has confirmed the content of “Maersk’s message.” Hearsay, misleading, lack of foundation and ambiguous as to what the phrase “correctly concluded” means. The proposed “finding” is based on Ariel Martinez’s email, ECONO PFF App. 00127-00128, which purportedly incorporates an email from Maersk, ECONO PFF App. 00152, which has not been authenticated by Maersk and is inadmissible hearsay. Without waiving its objection, the proposed “finding” is misleading. From the beginning, on June 19, 2013, Amoy asked Econocaribe to inform Amoy of its options. Amoy also told Econocaribe that its China office said that the commodity is prohibited in importing. ECONO PFF App. 00083. An hour later, Econocaribe responded: “Noted Melissa. We are currently working on this with Maersk. I will revert the outcome asap.” ECONO PFF App. 00082. On July 1, 2013 John Kamada asked Melissa Chen “Do you think you might find another buyer.” ECONO PFF App. 00101. She replied: “No, we did not find buyer because of the commodity is not permitted to go into China.” ECONO PFF 00103. Two weeks later, Econocaribe informs Amoy to either find a new buyer at destination or arrange re-export, when it knew that finding a new buyer at destination was impossible because the commodity was not permitted to go into China. Econocaribe knew or should have known when it sent the July 17, 2013 email, that there was only one option available to avoid seizure by Chinese Customs, to re-export the commodity. This was what Amoy was seeking from the beginning. However, Econocaribe didn’t appear to be serious about that option because it never informed Amoy of the cost of re-export until 10 months later, on May 12, 2014. See Declaration of Melissa Chen, ¶26, AMOY 0020-0021. Nor did it inform Amoy that re-**

**exporting was the best option. See Declaration of Melissa Chen, ¶26, 27, AMOY 0020-0022.**

222. Amoy was also on notice that if the cargo was treated as abandoned, China Customs would handle it in three different ways: “(1) Order return to origin (if cargo is found as prohibited or restricted to import to China); (2) Auction (if cargo is found allowed to import to China); (3) Destroy (if cargo is found not in good condition for return and auction).” (ECONO PFF App. 00127-00128).

**Response: Objection. Hearsay, misleading, cited documents does not support proposed “finding”, lack of foundation. The proposed “finding” is based on Ariel Martinez’s email, ECONO PFF App. 00127-00128, which incorporates an email from Maersk, ECONO PFF App. 00152, which is inadmissible hearsay, as seen in the email, i.e., “We heard . . .” It is not clear who heard what and from whom the information was heard. Without waiving its objection, the proposed “finding” is misleading. This proposed “fining” misstated the email. The email states that “only with the result of the inspection can customs decided what to do with the cargo.” As noted above, it is ambiguous from the referenced document, but it appears that Econocaribe is stating that it heard that there were 3 options, i.e., return to origin, auction or destroy. Econocaribe knew or should have known when it sent the July 17, 2013 email, that there was only one option available to avoid seizure by Chinese Customs, to re-export the cargo, which was what Amoy was seeking from the beginning. However, Econocaribe did not pursue that option and did inform Amoy of the cost of re-export until 10 months later, on May 12, 2014. See Declaration of Melissa Chen, ¶26, AMOY 0020-0021. Nor did it inform Amoy that re-**

**exporting was the best option. See Declaration of Melissa Chen, ¶26, 27, AMOY 0020-0022.**

223. Melissa Chen's response that "It seems the shipment will need to be destroyed at port of destination" indicates that *she did not even consider the returning the cargo or finding a new buyer in destination*. She went directly to the abandonment route and concluded that the cargo would be destroyed in China (if the cargo were found not in good condition for return and auction which, as prohibited goods, she knew it could not be). (ECONO PFF App. 00127).

**Response: Disputed. Objection. Hearsay, misleading, lack of foundation, speculation. The proposed "finding" is based on Ariel Martinez's email, ECONO PFF App. 00127-00128, which incorporates an email from Maersk, ECONO PFF App. 00152, which is inadmissible hearsay, and Amoy's response to that email. Without waiving its objection, the proposed "finding" is misleading and conflicts with the evidence in this case. From the beginning, on June 19, 2013, Amoy asked Econocaribe to inform Amoy of its options. Amoy inquired at the outset about re-exporting the cargo and also told Econocaribe that its China office said that the commodity is prohibited in importing. ECONO PFF App. 00083. An hour later, Econocaribe responded: "Noted Melissa. We are currently working on this with Maersk. I will revert the outcome asap. ECONO PFF App. 00082. On July 1, 2013 John Kamada asked Melissa Chen "Do you think you might find another buyer." ECONO PFF App. 00101. She replied: "No, we did not find buyer because of the commodity is not permitted to go into China." ECONO PFF App. 00103. Two weeks later, Econocaribe informs Amoy to either find a new buyer at destination or arrange re-export, when it knew that finding a new buyer at export was impossible because**

the commodity was not permitted to go into China. Econocaribe knew or should have known when it sent the July 17, 2013 email, that there was only one option available to avoid seizure by Chinese Customs, to re-export the commodity, which was what Amoy was seeking from the beginning. However, Econocaribe didn't appear to be serious about that option because it never informed Amoy of the cost of re-export until 10 months later, on May 12, 2014. See Declaration of Melissa Chen, ¶26, AMOY 0020-0021. In view of the foregoing, finding a new buyer at destination could not have been a consideration because that was prohibited by Chinese law and Econocaribe failed to provide her with any information as to the cost of returning the cargo cost. Moreover, there is no foundation for the conclusion that Ms. Chen went directly to the abandonment route and concluded that the cargo would be destroyed in China. In fact, the cited email shows that Ms. Chen had a question about destruction: "It seems the shipment will need to be destroyed at port of destination, please advise the procedure ASAP." Mr. Martinez replied: "Noted, after the 90 days China customs will determine how they will proceed either of the three options below. I will follow up and keep you posted on any new development." ECONO PFF App. 00126. Melissa Chen replied: "I don't think we can wait for 90 days, can you check against please? If waited longer, the cost will go up sky high." ECONO PFF App. 00126. These three emails, the cited email and the email exchange between Ms. Chen and Mr. Martinez, were sent within the span of 18 minutes and there is no foundation that a later received email was in response to a prior email. They hardly support the conclusion that Ms. Chen went directly to the abandonment route and concluded that the cargo would be destroyed, when Mr. Martinez told her that the Chinese Customs would determine how they would proceed with the three options, one of which was destruction. Moreover, Ms.

**Chen's stating that "It seems the shipments will need to be destroyed" is hardly a commitment by her to the destruction option.**

224. Ariel Martinez did not agree with Melissa Chen. He correctly told Melissa Chen that if the cargo was not discharged within 90 days, China Customs would determine how it would proceed with either of the three options - return, auction or destroy. He never told Melissa Chen that abandonment would definitely rule out the possibility of return. (ECONO PFF App. 00126).

**Response: Objection. Hearsay, lack of foundation, speculation, vague, ambiguous, uncertain. No foundation whatsoever that Martinez "correctly" reported China Customs' anticipated actions. Vague, uncertain and ambiguous as to what it was that Ariel Martinez did not agree with or even if he disagreed at all. Mr. Martinez did not state in the cited email that if the cargo was not discharged within 90 days, China Customs would determine how it would proceed with either of the three options-return, auction or destroyed. The word discharged is not found in the cited email. It would be unheard of that a ship would wait at a port in China or anywhere else for 90 days to discharge cargo. Neither are the words "return", "auction" or "destroy" found in the email asserted by Econocaribe for this proposed "finding." Moreover, the time limits within which Chinese Customs would act and how they would proceed, lack foundation and are based on emails from Maersk, which is inadmissible hearsay, have not been authenticated and do not indicate knowledge of Chinese Customs' procedures. ECONO PFF App. 00148 and 00193. In addition, the proposed "finding" lacks foundation. The relevant language of Ms. Chen's July 17, 2013 4:01PM email is "It seems the shipment will need to be destroyed at part of destination. Please advise the procedure asap." ECONO PFF App. 00127. Mr. Martinez's response**

**was: “Noted, after the 90 days China customs will determine how they will proceed either of the three options below. I will follow up and keep you posted on any new development. Regards.” When the two emails are compared, there is no basis to conclude that Mr. Martinez did not agree with Ms. Chen.**

225. Melissa Chen's mindset was apparently stuck with abandonment. Although she was aware of the option of immediate return, she nevertheless thought she could abandon the cargo and wait for the 90 days period to expire. She anticipated that "sky high" costs would incur if she had to wait for the 90 days period to expire. (ECONO PFF App. 00126). However, she could have avoided the sky high costs had she immediately initiated the return procedure.

**Response: Disputed. Objection. Misleading, lack of foundation, argumentative, speculation, proposed “finding” not supported by any evidence. This is not a “finding,” but argument. The proposed “finding” cites ECONO PFF App. 00126 out of context. Melissa Chen’s intent was to return the cargo. See Declaration of Melissa Chen, ¶¶7, 8, 11, 22, AMOY 0003, 0004, 0006-0008, 0016-0017. From the outset, she repeatedly requested the cost of return and none was provided to her until May 12, 2014, 10 months after the cargo landed in China. Declaration of Melissa Chen, ¶26, AMOY 0020-0021. There is no foundation that she thought that she could abandon the cargo and wait for 90 days. Abandonment was an option that was presented by John Kamada, after Ms. Chen told him that she wanted the cheapest and quickest way to solve the problem. Ms. Chen reasonably believed that returning the cargo would be the fastest way and so informed Mr. Kamada. See Declaration of Melissa Chen, ¶12, AMOY 0008-0009. However, Mr. Kamada told her that returning the cargo would be more expensive and that the abandonment process could**

**begin immediately. As a result, Ms. Chen informed Mr. Kamada to begin the abandonment process immediately. See Declaration of Melissa Chen, ¶12, 13, AMOY 0008-0009. Later, Mr. Kamada informed her that the containers could not be abandoned until 90 days after arrival. She replied “I don’t think that I can wait for 90 days.” She went on to respond in a later email: “If all waited for 90 days, here will be no possible way for anyone to pay these fees, please let me know and I hope MSK can respond faster.” See Declaration of Melissa Chen, ¶17, AMOY 0011-0013. The facts reflect that she was not of an abandonment mindset, but of a return the cargo mindset. If Ms. Chen had been informed of Maersk’s September 6, 2013 email that said the best option was to re-export the cargo, she would have done so. Declaration of Melissa Chen, ¶¶21, 22, AMOY 0016-0017. However, she continued to believe that the letter of abandonment was a proper option to address the issue based on Econocaribe’s advice. There is also no foundation to the conclusion that she could have avoided sky high costs. Econocaribe never provided those costs until ten months after the cited email. See Declaration of Melissa Chen, ¶26, AMOY 0020-0021.**

226. John Kamada's email to George Amador shows that his understanding of the Maersk message as being that if the cargo was found to be prohibited, it should be re-exported to the U.S.. (ECONO PFF App. 00151-00152). But John Kamada thought the cargo "should not be" prohibited, therefore, it could be abandoned, auctioned or destroyed. (ECONO PFF App. 00151-00152). (Unlike Amoy, John Kamada does not "specifically deal in tires scrap" so he did not have independent knowledge of that industry.) He further asked Maersk to confirm his reading of the Maersk message. (ECONO PFF App. 00151-00152).

**Response: Disputed. Objection. Hearsay, lack of foundation, misleading, argumentative, irrelevant. The proposed “finding” is hearsay because it incorporates and relies on communications with Maersk that were never authenticated by Maersk. No foundation for what was John Kamada’s “understanding of the Maersk Message.” Econocaribe and Mr. Kamada knew that the cargo was prohibited from the time it landed in China. ECONO PFF App. 00083; 00103. They also knew, at least based on communication from Maersk, that they cargo could not be voluntarily abandoned or auctioned because it was prohibited. Consequently, Mr. Kamada should have informed Amoy, from the beginning, that abandonment was not an option and not lead Amoy to believe that it was. Furthermore, the proposed “finding” misrepresents the context of the cited email. Mr. Kamada’s statement was “If I read the below correctly, we only have to re-import if the cargo is found as prohibited. It should not be. We should be able to abandon, auction and or destroy cargo.” His statement can only be read to mean that if the cargo is found to be prohibited, we should be able to abandon, auction and destroy the cargo, as well as to re-import it. But according to Maersk’s email, that was the wrong conclusion because the cargo could not be imported into China. Moreover, the language of the proposed “finding” mischaracterizes the email’s language. Mr. Kamada did not ask Maersk to confirm his understanding of the Maersk email and Maersk did not confirm it. Further, Econocaribe offers not a shred of credible evidence that Amoy “specifically deal in tires scrap” and Amoy disputes this misrepresentation. See Response to proposed Finding Nos. 171, 174, 177, 179; Declaration of Melissa Chen, ¶¶4, 5, 6, 7, AMOY 0142-0146.**

227. Maersk's reply confirmed Kamada's understanding that if the cargo was not discharged within 90 days it would be considered abandoned, and it could then be returned or auctioned or destroyed with additional charges. (ECONO PFF App. 00151).

**Response: Objection. Hearsay, lack of foundation, misleading. The email found at ECONO PFF App. 00151 is from George Amador of Maersk, a non-party and is inadmissible hearsay, lacks foundation and has not been authenticated by Amador or Maersk. There is no foundation as to what was Mr. Kamada's "understanding" and thus a purported "continuation" of his unknown understanding is a double leap of faith. The proposed "finding" misquotes the email. The email did not state that if the cargo was not discharged within 90 days, it would be considered abandoned and could then be returned or auctioned or destroyed with additional charges. Although it mentioned additional charges, it did not state what those additional charges were for.**

228. If Maersk had told Econocaribe that the cargo would never be auctioned or destroyed, Econocaribe would have told Amoy not to even consider abandonment. Econocaribe merely conveyed Maersk's information. (John Kamada Declaration (ECONO PFF App. 00440)).

**Response: Disputed. Objection. Lack of foundation, misleading, uncertain, vague ambiguous, unintelligible. Econocaribe relies on the Declaration of John Kamada to support the proposed "finding", but his declaration does not support this purported "finding" and the purported "finding" is contradicted by Maersk emails. However, the closest testimony of Mr. Kamada to supporting the proposed "finding" is found in paragraph 20 of his Declaration. It states that "Prior to Customs' seizure, Maersk never told Econocaribe that the cargo would absolutely have to be returned. Had Maersk so**

**informed Econocaribe, we would have told Amoy not to even consider abandonment.” That paragraph does not support the proposed “finding” and is hearsay and lacks foundation. The words “auctioned” and “destroyed” are not found in that paragraph 20 or in any other paragraph on ECONO PFF App. 00440. Moreover, the use of the word “absolutely” does not rule out the fact that in its email of September 6, 2013, Maersk informed Econocaribe that the “Best option is for your agent in country to see about re-export before this [meaning the cargo] is seized.” This should have raised a red flag to Econocaribe that abandonment was not an option and it should have conveyed that warning to Amoy. It did not. See Declaration of Melissa Chen, ¶24, AMOY 0017-0019.**

229. In her Declaration, Melissa Chen states that had the September 6, 2013 Maersk message been relayed to her, she would have insisted on returning the cargo. (Melissa Chen Declaration 1 (ECONO PFF App. 00021-00022)).

**Response: Admit.**

230. Econocaribe had communicated verbally the substance of this email to Amoy. (John Kamada Declaration (ECONO PFF App. 00440)).

**Response: Objection. Hearsay, misleading, vague, ambiguous, irrelevant. Vague, ambiguous and uncertain as to what the term “substance of this email” means and what “this email” refers to. Presumably, it refers to the email of September 6, 2013, identified in proposed “Finding” No. 229. That is an email from Maersk, which Melissa Chen did not receive, and is hearsay. Without waiving its objection, it states, in part, that the “best option is for your agent in country to see about re-export options before this [meaning the**

cargo] is seized.” ECONO PFF APP. 00148. This email was not forwarded to Ms. Chen. See Declaration of Melissa Chen, ¶22, 24. However, she was asked by John Kamada to send a formal letter of abandonment as requested in that email, which she did. See Declaration of Melissa Chen, ¶22, 24, AMOY 0016-0019. She states that she would have recalled if he told her that the best option recommended by Maersk was to re-export the cargo because that is what she wanted to do from the beginning. See Declaration of Melissa Chen, ¶5, AMOY 0155. This proposed “finding” is the same as proposed Finding of Fact No. 98 and the response to that proposed “finding” is incorporated herein by reference.

231. It is doubtful whether Amoy would insist the return of cargo with the knowledge that the best option would be re-export, because at that time, the accrued demurrage was far less than \$100,000, an amount of potential damages Amoy was well aware of when it undertook the risk of abandonment. (ECONO PFF App. 00161-00162).

**Response: Objection. Lack of foundation, misleading, irrelevant, unintelligible. This is not a “finding,” but speculation with unsupported, contradicted conclusions. Demurrage is not mentioned in the cited email. Moreover, John Kamada didn’t consider abandonment a risk. On June 24, 2013, Amoy asked John Kamada about the consequence of the abandonment letter. ECONO PFF App. 00096. On July 10, 2013, when he advised Amoy of the choices that it had with regard to the cargo, he never mentioned a risk. ECONO PFF App. 00131. Nor did he advise Amoy of a risk when he again recommended abandonment. See Declaration of Melissa Chen, ¶14, AMOY 0158-0159. \$100,000 was a figure that Melissa Chen used to quantify the seriousness of the problem. See Declaration**

of Melissa Chen, ¶4, AMOY 0154-0155. There's no evidence or foundation as to what Amoy "was well aware of" or that Amoy "undertook the risk of abandonment." In light of the many emails with Mr. Kamada involving that subject and his request in September, 2013 for a revised letter of abandonment, Amoy expected him to inform Amoy if there was risk to abandonment. See Declaration of Melissa Chen, ¶14, AMOY 0158-0159. The statement that "It is doubtful that Amoy would insist the return of cargo with the knowledge that the best option would be re-export" is confusing. Re-export and return of cargo means the same.

232. Even if Amoy had insisted the re-export of cargo, cargo could not be re-exported because: first; commercial documents for re-export was not available at least before September 6, 2013 (ECONO PFF App. 00148); and second; Chinese Customs would have slowly processed any re-export request because Chinese Customs is very sensitive to seized, prohibited commodities (ECONO PFF App. 00193).

**Response: Objection. Hearsay, lack of foundation, misleading. There is no evidence or foundation whatsoever to support Econocaribe's assertion that "Chinese Customs would have slowly processed any re-export request" or its assertion that "Chinese Customs is very sensitive to seized, prohibited commodities." The cited emails supporting the proposed "finding" are emails from Barbara Suarez of Maersk, a non-party. It is inadmissible hearsay and lacks foundation. The emails also contains hearsay, for example, ECONO PFF App. 00148 states "From everything we're being told . . ." and ECONO PFF App. 00193 states "Our office tells us . . ." Without waiving its objection, the ECONO PFF App. 00148 email states that "best option is for your agent in country to see about re-export**

options before this is seized.” That confirms that the containers hadn’t been seized yet and that there was still an opportunity to re-export the cargo. Moreover, Econocaribe has offered no explanation why the same means that it used to re-export the cargo to the U.S. in November 2014 would not have been available before the cargo was seized by the Chinese authorities i.e. in June through September 2013. See responses to proposed Findings of Fact Nos. 211 and 233.

233. Commercial documents for re-export include commodity description, genuine commercial invoices of the cargo, packing slips, value of goods, etc. Amoy had to get these genuine documents from Global Waste Management for the "shipping company". (ECONO PFF App. 00193).

**Response: Objection. Hearsay, lack of foundation, misleading incomplete hypothetical if the finding refers to shipping to China and/or re-export. The cited email supporting the proposed “finding” is an email from Barbara Suarez of Maersk, a non-party, which has not been authenticated. It is inadmissible hearsay, lacks foundation and provides no factual support for the proposed “finding.” The email does not state the name Global Waste Management nor does it refer to any of the commercial documents described in the proposed “finding.” Moreover, Econocaribe’s re-export of the cargo back to the U.S. confirms that it could have been done and should have been when Amoy was looking to re-export it on June 17, 2013, without these documents. See also responses to proposed Findings of Fact Nos. 211, 232 and 233.**

234. Because Amoy said that it had produced all communications with Daniel Akhromtsev and it said they were produced, (ECONO PFF App. 00429, 00431), Amoy did not have these commercial documents for re-export even if it wanted to re-export cargo in the period from September 6, 2013 to September 16, 2013, the purported day 90 days period ended.

**Response: Objection. The proposed “finding” is unintelligible, lacks foundation, misleading and is argument. Amoy was looking to re-export the cargo beginning on June 17, 2013. ECONO PFF App. 00076-00077. The communications with Daniel Akhromtsev are irrelevant and do not support Econocaribe’s proposed “finding” because he wasn’t the shipper. Furthermore, commercial documents from Daniel Akhromtsev were unnecessary because it appears the Econocaribe was able to re-export the cargo back to the U.S. without those documents. ECONO PFF App. 00268. Econocaribe’s re-export of the cargo back to the U.S. confirms that it could have been done when Amoy was seeking to re-export it on June 17, 2013. See also Responses to proposed Findings of Fact No. 211, 232, 233.**

235. At all relevant times, Econocaribe informed Amoy of all its possible options.

**Response: Objection. Lack of foundation, misleading, irrelevant. There is no foundation to this proposed “finding.” The proposed “finding” presumes that the options that Econocaribe presented to Amoy were correct options. They weren’t. For example, John Kamada told Amoy that abandonment was an option. ECONO PFF App. 00129-00130. He was wrong. As a result, the cargo was seized by Chinese Customs. On September 6, 2013, Econocaribe was told that the best option regarding the cargo was to see about re-export options it before it was seized by Chinese Customs. Econocaribe never communicated the best option information to Amoy. See Declaration of Melissa Chen, ¶21,**

**AMOY 0016. Instead, it continued to pursue the abandonment option by asking Ms. Chen to amend the letter of abandonment. If Econocaribe had told Amoy that its best option was to re-export, it would have done so. See Declaration of Melissa Chen, ¶22, AMOY 0016-0017, 0087; Declaration of Melissa Chen, ¶5, AMOY 0155.**

236. Econocaribe never assumed the duty to make any decisions for Amoy. It consistently told Amoy that the final decision was Amoy's (ECONO PFF App. 00129-00130); that it was liable for the accruing charges (ECONO PFF App. 00132), and that it needed Amoy to make a decision (ECONO PFF App. 00131).

**Response: Disputed. Objection. Lack of foundation, misleading. The cited emails do not support the proposed “finding” that Econocaribe “consistently” told Amoy that it needed to make a final decision, or that it was liable for accruing charges or that it needed to make a decision. Reliance on those emails does not support the use of the word “consistently.” Moreover, Econocaribe, not Amoy, was Maersk’s customer and thus Econocaribe was the only party who could and did communicate with Maersk. Notably, Econocaribe never even identified Amoy to Maersk, referring to them as “our customer.” It never allowed Amoy to communicate with Maersk, even though Amoy made several requests to do so. As a result, its instructions were that Amoy was to communicate through Econocaribe and not directly to Maersk. Econocaribe knew that Amoy was relying on Econocaribe for handling this matter. Declaration of Melissa Chen, ¶13, AMOY 0158.**

237. Econocaribe did inquire of Maersk as to the cost of return, from the beginning of detention (ECONO PFF App. 00110), to even after Amoy had instructed Econocaribe to proceed immediately with abandonment (ECONO PFF App. 00107).

**Response: Objection. Misleading, irrelevant. No foundation. While there are two emails showing that Econocaribe asked Maersk for the cost of return, there are no emails or other writings that Maersk responded or that Econocaribe tried to pursue that request. At no time did Econocaribe allow Amoy to communicate directly with Maersk, even though Amoy made several request to do so. Amoy's line of communication with Maersk was through Econocaribe and Amoy was relying on Econocaribe for any information. See Declaration of Melissa Chen, ¶13, AMOY 0158.**

238. John Kamada told Melissa Chen that return was usually more expensive. (ECONO PFF App. 00129-00130). The statement is just a general conclusion. John Kamada never told Melissa Chen that in this case, abandonment would be more expensive. (ECONO PFF App. 00129-00130).

**Response: Objection. Lack of foundation, misleading, argumentative. The email speaks for itself. There is no foundation that what John Kamada told Melissa Chen was "just a general conclusion." That is argument. Notwithstanding, Mr. Kamada told Ms. Chen that return is usually more expense and if she choose abandonment, and that she could begin the process immediately.**

239. After being threatened with suit, Econocaribe settled with Maersk, so that Maersk could start the re-export process as soon as possible. (ECONO PFF App. 00227 ("just note that the

charges need to be paid up front PRIOR to the cargo returning to Los Angeles" and John Kamada Declaration (ECONO PFF App. 00441)).

**Response: Objection. Hearsay, lack of foundation, argument. Neither ECONO PFF App. 00227 nor ECONO PFF App. 00441 provides any foundation that Maersk threatened Econocaribe with suit.**

240. Econocaribe could have waited until it has been fully indemnified by Amoy. Econocaribe did not wait because it was mitigating demurrage costs.

**Response: Objection. Lack of foundation, irrelevant, speculative, vague and ambiguous. The proposed "finding" is argument without foundation. Econocaribe has a duty to mitigate independent of any indemnity claim. The proposed "finding" is vague and ambiguous as to the term "Econocaribe could have waited"; "Could have waited" for what?**

241. The original storage, demurrage, seizure, per diem etc. charge in China was \$216,363.00. It was ultimately mitigated by Econocaribe to \$70,000 - an amount which has been paid in full by Econocaribe to Maersk. (ECONO PFF App. 00265-00266).

**Response: Objection. Lack of foundation, authentication, hearsay. ECONO PFF App. 00265-00266 are inadmissible hearsay. There is a lack of foundation and authentication for those documents. The cited document ECONO PFF App. 00265-00266 does not support the proposed "finding." The proposed "finding" is the same as proposed Findings of Fact Nos. 133, 134 and 242.**

242. Econocaribe has mitigated and paid Maersk the demurrage charge of \$70,000 (ECONO PFF App. 00265-00266).

**Response: Disputed. Objection. Lack of foundation, authentication, hearsay, legal argument. ECONO PFF App. 00265-00266 are inadmissible hearsay. There is a lack of foundation and authentication for those documents and a lack of foundation of any mitigation by Econocaribe. The proposed “finding” is the same as proposed Finding of Fact No. 134. The phrase “Econocaribe has mitigated” is a legal conclusion that is disputed by Amoy and undermined by the sequence of events.**

243. The return freight is \$17,300. (Arrival Notice (ECONO PFF App. 00271)).

**Response: Objection. Lack of foundation, authentication, hearsay. ECONO PFF App. 00271 is inadmissible hearsay. There is no foundation or authentication for that document, nor has Econocaribe offered any proof of payment.**

244. Customs clearance, drayage, devanning and costs of destruction are estimated be \$20,000. (ECONO PFF App. 00274).

**Response: Objection. Lack of foundation, authentication, hearsay, speculation. ECONO PFF App. 00274 is inadmissible hearsay. There is no foundation or authentication for that document**

245. Legal fees and costs have approximated \$55,000.00 to date.

**Response: Objection. Lack of foundation. The proposed “finding” is argument and speculation, not fact.**

246. After the destruction of returned used tires, Econocaribe will provide an accurate accounting.

**Response: Objection. Lack of foundation. The proposed “finding” is argument and speculation; not fact.**

Respectfully submitted,

Dated: May 4, 2015

RUSSELL, MIRKOVICH & MORROW

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AMOY INTERNATIONAL LLC

**CERTIFICATE OF SERVICE**

I hereby certify that the original and appropriate number of copies of the foregoing Respondent Amoy International, LLC's Response and Opposition To Complainant Econocaribe Consolidators, Inc.'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 Amoy International, LLC's Response and Opposition To Complainant Econocaribe Consolidators, Inc.'s Proposed Findings of Fact was served on the below-mentioned counsel via U.S. Mail and Email on May 4, 2015.

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