

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14 -10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

V.

AMOY INTERNATIONAL, LLC.

RESPONDENT

**RESPONDENT'S OBJECTIONS TO THE
DECLARATION OF JOHN KAMADA**

I. INTRODUCTION

Respondent Amoy International, LLC (“Amoy”), hereby objects to the Declaration of John Kamada filed in support of Complainant’s Brief.

An declaration is a substitute for oral testimony, and therefore must conform to the same requirements of competency as would be applicable if the

declarant were to testify at trial. F.R.E. 601-02: Travelers Cas. & Sur. Co. of America v. Telstar Constr. Co., Inc., 252 F. Sup. 2d 917, 922, 923 (D. Az. 2003).

It is not enough for the declarant simply to state that he or she has personal knowledge of the facts asserted. Rather, the declaration must contain facts showing the declarant's connection with the matter stated therein and establishing his or her personal knowledge of the facts alleged and the source of his or her information. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir 1989). Opinion testimony may be offered, but only if an adequate foundation for the declarant's knowledge and the basis of his or her opinion has first been established. F.R.E. 701. All declarations must be made by witnesses having personal knowledge of the facts stated therein and must state facts that would be admissible in evidence (rather than, for example, the declarant's unfounded personal opinions or conclusions). F.R.C.P. 56(e); W. Schwarzer, A. Tashima, J. Wagstaffe, Practice Guide: Federal Civil Procedure Before Trial (Nat. Ed.), § 12:57 at page 12-16 (The Rutter Group 2014).

Testimony with a proper foundation based on personal knowledge must be based upon what the witness directly saw, heard, perceived, or otherwise experienced with his own senses. See, Fed. R. Evid. 602 and Adv. Comm. Notes

(1972). Moreover, a mere summary of a writing is not the best evidence to prove the content of a writing, and must be excluded. See Fed. R. Evid. 1002.

Documentary evidence may be offered, but it must first be properly authenticated by a declarant with personal knowledge of the document's genuineness and execution. Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 (9th Cir. 1990).

Of course the most basic element of admissibility is relevance. While “[n]ot all relevant evidence is admissible” (Advisory Committee Notes to F.R.E. 402), all irrelevant evidence is inadmissible. F.R.E. 402. Evidence is only relevant if it has a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence. See Fed. R. Evid. 401.

II. SPECIFIC OBJECTIONS TO JOHN KAMADA'S

DECLARATION IN SUPPORT OF ECONOCARIBE'S

BRIEF

Material Objected To:	Grounds for Objections:	Ruling on the Objection
1. Kamada declaration ¶9, pg.2: "Econocaribe's Terms and Conditions were included into said contract. The Bill of Lading states 'transportation pursuant to this Bill of Lading is subject to conditions set forth in Econocaribe's published tariff.'"	1. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802), irrelevant. Uncertain, vague and ambiguous as to what "Econocaribe's Terms and Conditions" are and what "said contract" is being referred to. Legal conclusion. "Subject to conditions" does not incorporate the Tariff.	Sustained: _____ Overruled: _____

<p>2. Kamada declaration ¶10, pg. 2: “The said Tariff fully incorporates Econocaribe’s Terms and Conditions that is identical to the one issued to Amoy.”</p>	<p>2. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802), irrelevant. Uncertain, vague and ambiguous as to what “Econocaribe’s Terms and Conditions” are. A comparison of ECONO PFF App. 00377-00388, the Tariff, with the terms and conditions of Econocaribe’s Bill of Lading ECONO PFF 003783 and Amoy’s Bill of Lading ECONO PFF App. 00371, will confirm that this is a misstatement of the cited documents. For example, Rule 4 of the Tariff has 35 numbered paragraphs, Econocaribe’s bill of lading has 25 numbered paragraphs and Amoy’s bill of lading has 34 numbered paragraphs.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
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<p>3. Kamada declaration ¶11, pg 2: “Amoy notified Econocaribe that the cargo arrived in China on June 17, 2013. Subsequently, Chinese Customs opened the containers for inspection and found that the contents were in fact goods prohibited entry into China, i.e. baled used truck tires. It seized the four containers from Maersk Line, the importing carrier, and Maersk’s notification of that fact then went to Econocaribe and Amoy.”</p>	<p>3. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). There is no foundation for the statement that “Maersk’s notification of that fact then went to Econocaribe and Amoy.” Mr. Kamada is not an employee of Maersk and has no personal knowledge of what notification, if any, Maersk may have given. This is hearsay.</p>	<p>Sustained: _____ Overruled: _____</p>
<p>4. Kamada declaration ¶15, pg. 2: “On September 6, 2013, Maersk emailed Econocaribe that the best option would be to re-export the cargo before cargo was seized and if the cargo was to be seized by China Customs, it would take China Customs an undetermined amount of time to decide cargo disposition; and Econocaribe did not have commercial documents to present to China Customs.”</p>	<p>4. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). Mr. Kamada’s statement is based on an email from Maersk, which is hearsay The statements in Maersk’s email also lack foundation.</p>	<p>Sustained: _____ Overruled: _____</p>

<p>5. Kamada declaration ¶16, pg 2: “Maersk advised Econocaribe that the commercial documents presentable and acceptable to China Customs should contain correct commodity description, genuine invoices and packing slips.”</p>	<p>5. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). Mr. Kamada’s statement is based on communication from Maersk, which is hearsay. The statements in that communication lack foundation.</p>	<p>Sustained: _____ Overruled: _____</p>
<p>6. Kamada declaration ¶17, pg 2: “Econocaribe never received these commercial documents from Amoy.”</p>	<p>6. Uncertain, vague and ambiguous as to what “these commercial documents” means or refers to.</p>	<p>Sustained: _____ Overruled: _____</p>
<p>7. Kamada declaration ¶18, pg 2: “I called Melissa Chen informing her of the substance of this email”</p>	<p>7. Uncertain, vague and ambiguous as to what “this email” refers to.</p>	<p>Sustained: _____ Overruled: _____</p>
<p>8. Kamada declaration ¶24 pg 3 “Maersk would not start the re-export process without being compensated for demurrage and other associated costs. In order to avoid lawsuit by Maersk and to avoid further demurrage and a potential fine imposed by Chinese Customs, Econocaribe settled with Maersk.</p>	<p>8. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). Mr. Kamada’s statement is based on communication from Maersk, which is hearsay. The statements in that communication also lack foundation.</p>	<p>Sustained: _____ Overruled: _____</p>

Respectfully submitted,

Dated: May 4, 2015

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENT'S**
OBJECTIONS TO THE DECLARATION OF JOHN KAMADA was sent to
the below-mentioned counsel via email on May 4, 2015.

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