

**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'S OBJECTIONS TO THE  
DECLARATION OF BOB GOLDENBERG**

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**I. INTRODUCTION**

Respondent Amoy International, LLC ("Amoy"), hereby objects to the Declaration of Bob Goldenberg filed in support of Complainant's Reply 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 than it would be without the evidence. See Fed. R. Evid. 401.

**II. SPECIFIC OBJECTIONS TO BOB GOLDENBERG’S DECLARATION IN SUPPORT OF ECONOCARIBE’S REPLY BRIEF**

| <b>Material Objected To:</b>  | <b>Grounds for Objections:</b>   | <b>Ruling on the Objection</b>       |
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| 1. Goldenberg declaration ¶4: “The Cargo was found to be used tires and subsequently detained by China Customs.”  | 1. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802), irrelevant.   | Sustained: _____<br>Overruled: _____ |
| 2. Goldenberg declaration ¶5: “In this case, the case (sic), I believe all the communications, requests or demands had been communicated from Amoy to Maersk or vice versa.”  | 2. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802), speculation. Mr. Goldenberg’s statement, that “I believe,” confirms that he is speculating on what, if any, communications were exchanged between Maersk and Amoy. Irrelevant. Uncertain, vague and ambiguous | Sustained: _____<br>Overruled: _____ |
| 3. Goldenberg declaration ¶7, “In April 2014,, Maersk notified Econocaribe that Chinese Customs had ordered the cargo be returned to the U.S., but in order to initiate the re-exporting process, all accrued detention, demurrage and storage costs had do be paid.” | 3. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). Hearsay as to what Chinese Customs ordered. Ambiguous as to whose order it was that certain conditions had to be satisfied prior to re-exporting.   | Sustained: _____<br>Overruled: _____ |



**CERTIFICATE OF SERVICE**

I hereby certify that the original and appropriate number of copies of the foregoing **RESPONDENT'S OBJECTIONS TO THE DECLARATION OF BOB GOLDENBERG** were sent by overnight mail to the Commission on June 2, 2015 and that a copy was also emailed to the Commission on that date.

I certify that a true and correct copy of the foregoing **RESPONDENT'S OBJECTIONS TO THE DECLARATION OF BOB GOLDENBERG** was served on the below-mentioned counsel via Email on June 2, 2015.

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