

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 16-03

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KSB SHIPPING & LOGISTICS LLC

v.

DIRECT CONTAINER LINES ALSO KNOWN AS VANGUARD LOGISTICS

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RESPONDENT, VANGUARD LOGISTICS SERVICES (USA), Inc., DOING BUSINESS  
UNDER TRADE NAME DIRECT CONTAINER LINE'S VERIFIED ANSWER AND  
AFFIRMATIVE DEFENSES TO THE COMPLAINT OF KSB SHIPPING & LOGISTICS LLC

Respondent Vanguard Logistics Services (USA), Inc., doing business under trade name Direct Container Line ("Vanguard"), by and through its attorneys, hereby submits its Verified Answer and Affirmative Defenses to the Complaint of KSB Shipping & Logistics LLC ("KSB"). In support, Vanguard states as follows:

**ANSWER**

**COMPLAINANT IS AN LLC**

I. Vanguard lacks knowledge or information to either admit or deny the allegations contained in Section I of the Complaint and, for that reason, denies them.

## RESPONDENT IS AN INCORPORATED COMPANY IN THE USA

II. Vanguard admits that it is a California corporation with an ocean transportation intermediary ("OTI") license number 017237 with offices in Long Beach, California. The remaining allegations contained in Section II of the Complaint are denied.

## ALLEGATIONS OF JURISDICTION

III. Vanguard admits that an OTI is subject to the jurisdiction of the Federal Maritime Commission (the "Commission") pursuant to certain provisions of the Shipping Act. Vanguard denies that it violated the Shipping Act or that Bimsha International v. Chief Cargo Services governs this case. Vanguard issued a non-negotiable bill of lading number NYCVIE3344445D ("HBL"). Vanguard admits that Risona Inc. appears in the box marked "shipper" on the Vanguard lacks knowledge or information to either admit or deny the allegations concerning Risona Inc.'s invoice or packing list and, for that reason, denies these allegations. Vanguard lacks knowledge or information to either admit or deny the allegations concerning Brach Export, or its commercial invoice and packing list or what cargo was loaded into an ocean container and for that reason denies these allegations. Vanguard lacks knowledge or information to either admit or deny the allegations concerning R&A International Trading, Inc. and, for that reason, denies these allegations. Vanguard

lacks knowledge or information to either admit or deny the allegations concerning World Company S.R.O., Slovakia and, for that reason, denies these allegations. Vanguard lacks knowledge or information to either admit or deny the allegations concerning KSB Shipping & Logistics LLC and, for that reason, denies these allegations. Vanguard admits that Cargo Partner GMBH, Vienna Austria, acted as arrival notice agent for the subject shipment, but lacks knowledge or information to either admit or deny the remaining allegations concerning Cargo Partner and, for that reason, denies these allegations. Vanguard lacks knowledge or information to either admit or deny the allegations concerning the export declarations filed by R&A International Logistics or the consolidation of the cargo onto the container and Complainant's agent relationship with R&A International Trading, Inc. Vanguard admits that Cargo Partner GMBH, Vienna Austria, acted as arrival notice agent for the subject shipment, but lacks knowledge or information to either admit or deny the remaining allegations concerning Cargo Clearing GMBH Australia and, for that reason, denies these allegations. Vanguard denies the allegation that the HBL was negotiable and lacks knowledge or information to either admit or deny the allegations concerning R&A International Trading, Inc. possession of the HBL or the consolidation of the cargo onto the container and its alleged value and, for that reason, denies these allegations. Vanguard lacks knowledge or information to

either admit or deny the allegations concerning settlement and Complainant's discussion with the Federal Maritime Commission's General Counsel and, for that reason, denies these allegations. The remainder of the allegations in section III of the Complaint asserts legal conclusions rather than averments of fact and Vanguard therefore neither admits nor denies the same.

#### SYNOPSIS

IV. Vanguard denies the first line of Section IV of the Complaint and addresses the subparagraphs of Section IV as follows: 1-12 The documents speak for themselves and are not properly authenticated, accordingly Vanguard lacks knowledge or information to either admit or deny the allegations and, for that reason, denies these allegations.

V. Vanguard denies that Complainant is entitled to reparations, interest and attorney's fees. The remainder of the allegations in section V of the Complaint asserts legal conclusions rather than averments of fact and Vanguard therefore neither admits nor denies the same.

VI. Any allegation in KSB's Complaint not specifically responded to above is hereby denied.

#### **FIRST AFFIRMATIVE DEFENSE**

KSB fails to state a claim upon which relief can be granted against Vanguard.

## **SECOND AFFIRMATIVE DEFENSE**

The real party in interest sold the cargo under EX WORKS terms of Sale to a non-party. Neither KSB, nor any of its alleged principals, bore the risk of loss or damage. Neither KSB, nor any of its alleged principals are real parties in interest and lack standing to bring the claim or receive reparations.

## **THIRD AFFIRMATIVE DEFENSE**

KSB fails to join certain parties in whose absence the Commission cannot accord complete relief among the existing parties.

## **FOURTH AFFIRMATIVE DEFENSE**

The Commission lacks subject matter jurisdiction in that this is a claim for cargo loss or damage governed by the Carriage of Goods by Sea Act.

## **FIFTH AFFIRMATIVE DEFENSE**

Under the terms of Vanguard's non-negotiable bill of lading and tariff the United States District Court in the Southern District of New York has exclusive jurisdiction over any disputes.

## **SIXTH AFFIRMATIVE DEFENSE**

There has been no assignment of rights by any relevant party to KSB.

**SEVENTH AFFIRMATIVE DEFENSE**

The non-negotiable bill of lading and the tariff terms and conditions included therein represent the entire agreement between Vanguard and any party to the non-negotiable bill of lading.

**EIGHTH AFFIRMATIVE DEFENSE**

To the extent KSB is entitled to any recovery, a limitation of liability applies per the terms and conditions of service that are part of the Carriage of Goods by Sea Act, Vanguard's non-negotiable bill of lading and tariff.

**NINTH AFFIRMATIVE DEFENSE**

To the extent KSB is entitled to any recovery, such recovery is barred by the reporting/claim filing requirements contained in Vanguard's non-negotiable bill of lading and tariff.

**TENTH AFFIRMATIVE DEFENSE**

KSB failed to file a timely claim and failed to file a legal action within the timeframe permitted by Vanguard's non-negotiable bill of lading and tariff.

**ELEVENTH AFFIRMATIVE DEFENSE**

KSB's claims are time-barred by applicable statutes of limitations.

### **TWELVETH AFFIRMATIVE DEFENSE**

KSB violated the Shipping Act when it contracted with an unlicensed and unregistered consolidator, R&A International Trading, Inc., and facilitated the issuance of a R&A International Trading, Inc.'s bill of lading for the subject cargo without a tariff. Accordingly, KSB's allegations are barred by the doctrine of unclean hands.

### **THIRTEENTH AFFIRMATIVE DEFENSE**

Any damages that KSB has allegedly suffered have resulted, in whole or in part, from its own conduct and omissions and/or the conduct and omissions of persons or entities other than Vanguard.

### **FOURTEENTH AFFIRMATIVE DEFENSE**

KSB failed to mitigate its claimed damages, and, accordingly, KSB's alleged right to recover is precluded or limited.

### **FIFTEENTH AFFIRMATIVE DEFENSE**

The alleged Shipping Act violation by Vanguard does not amount to a "failure to establish, observe, and enforce just and reasonable regulations and practices."

**SIXTEENTH AFFIRMATIVE DEFENSE**

The alleged Shipping Act violation by Vanguard are not the proximate cause of KSB's alleged loss, and, KSB suffered no damages as a result of the alleged acts or omissions of Vanguard.

**WHEREFORE** Vanguard prays:

1. That Complainant KSB takes nothing from its Complaint, and that the Complaint is dismissed with prejudice;
2. That Vanguard is awarded its costs, expenses, and reasonable attorney's fees; and
3. That Vanguard be awarded such other, and further relief as the Court may deem just and proper.

Vanguard reserves the right to amend this Answer and Affirmative Defenses as a result of information learned during discovery or otherwise.

Dated: May 9, 2016

Respectfully submitted,

By: /S/Cameron W. Roberts  
Cameron W. Roberts  
ROBERTS & KEHAGIARAS LLP  
One World Trade Center, Suite 2350  
Long Beach, CA 90831  
cwr@tradeandcargo.com  
Phone: (310) 642-9800 x 7003  
Fax: (310) 868-2923

By: /S/Daniel G. McDermott  
Daniel G. McDermott  
MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN  
Wall Street Plaza  
88 Pine Street – 21st Floor  
New York, NY 10005-1801  
DGMcdermott@MDWCG.com  
Phone: (212) 376.6432  
Fax: (212) 376-6490

Attorneys for Respondent Vanguard  
Logistics Services (USA) Inc. doing business  
under trade name Direct Container Line

**VERIFICATION**

Joe Newman, being first duly sworn on oath, deposes and says that he is Global Claims Manager for Vanguard Logistics (USA), Inc. and the person who signed the Answer; that he had read the foregoing Answer and that the facts stated therein, upon information received by others, are believed to be true.

Joe Newman  
Joe Newman

**NOTARY**

State of California  
County of Los Angeles

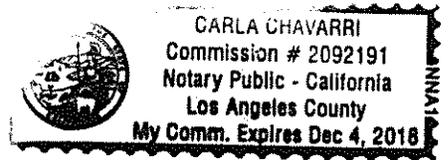
On May 9<sup>th</sup> 2016 before me, Carla Chavarri - Notary Public  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carla Chavarri



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Los Angeles )

On May 9th 2016 before me, Carla Chavarri - Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Joe Newman

Name(s) of the Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

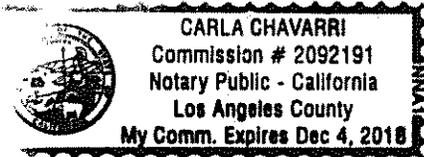
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Handwritten Signature]

Signature of Notary Public



Seal

Optional Document Information

Completing this section helps avoid alteration of the document or fraudulent reattachment of this form to an unintended document.

Title or description of attached document \_\_\_\_\_

Document date \_\_\_\_\_

Total number of pages including this certificate \_\_\_\_\_

Notary contact number ( ) - \_\_\_\_\_

## CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of May, 2016, served a copy of the foregoing RESPONDENT, VANGUARD LOGISTICS SERVICES (USA), Inc., DOING BUSINESS UNDER TRADE NAME DIRECT CONTAINER LINE's VERIFIED ANSWER AND AFFIRMATIVE DEFENSES TO THE COMPLAINT OF KSB SHIPPING & LOGISTICS LLC by First-Class Mail and/or e-mail upon the following:

David P. Street  
Email: [dstreet@gkglaw.com](mailto:dstreet@gkglaw.com)  
Brendan Collins  
Email: [bcollins@gkglaw.com](mailto:bcollins@gkglaw.com)  
GKG LAW, PC  
1055 Thomas Jefferson St., NW, #500  
Washington, DC 20007

Daniel G. McDermott  
Marshall Dennehey Warner Coleman & Googin  
88 Pine Street, 21<sup>st</sup> Floor  
New York, NY 10005-1801  
Email: [dgmcdermott@mdwgc.com](mailto:dgmcdermott@mdwgc.com)

Karen V. Gregory, Secretary  
Federal Maritime Commission  
Office of the Secretary  
800 North Capitol Street, N.W.  
Washington, DC 20573-0001  
Email: [secretary@fmc.gov](mailto:secretary@fmc.gov)

/s/ Cameron W. Roberts  
Cameron W. Roberts