ORIGINAL

FILED

JAN 29 2015

Federal Maritime Commission
Office of the Secretary

FEDERAL MARITIME COMMISSION, WASHINGTON, D.C.

Informal Docket No. 1949(I)

WALTER MUZORORI,
Claimant

vs.

CANADA STATES AFRICA LINES INC. (CSAL),
Respondent

ANSWER TO SMALL CLAIMS COMPLAINT AND ASSIGNMENT

Respondent Canada States Africa Lines, Inc. ("CSAL") by and through its attorneys, Foley & Lardner LLP, as and for its Answer to the Small Claims Complaint and Assignment filed by WALTER MUZORORI ("Claimant"), states as follows:

1. Respondent admits that CSAL is a shipping company incorporated in Canada with offices at 478 McGill Street, Montreal, Quebec H2Y 2H2, Canada. *See* Respondent's Affidavit, Muzorori v. Canada States Africa Lines, Inc., (Fed. Mar. Comm'n. 2015) (No. 1949(I)), at Exhibit 1.

2. Respondent admits that Claimant booked carriage from Baltimore, Maryland to Cape Town, South Africa for two (2) used Volvo 2005 road tractors ("Cargo") aboard the CSAL vessel *Atlantic Impala*. *See* Bill of Lading No. BACP0314002 (May 10, 2014), at Exhibit 2.

3. Respondent admits that that Claimant asked CSAL to change the Cargo's Port of Discharge ("POD") to Walvis Bay, Namibia while the *Atlantic Impala* was en route to Cape

Town. Respondent further admits that Claimant and CSAL subsequently exchanged communications discussing Claimant's request.

4. Respondent denies that CSAL failed to perform under the carriage contract. The Claimant's clearing agent at Walvis Bay presented Respondent's agent with a draft Bill of Lading proposing Cape Town as the POD, *see* Draft Bill of Lading, at Exhibit 3, which was the same as the previously-agreed POD. Consequently, the Claimant's own miscommunications and commercial oversights caused the circumstances and alleged injuries stated in his claim. Additionally, CSAL states that other operational complications involving the Cargo compelled the *Atlantic Impala* to discharge the cargo at Cape Town. This discharge was consistent with the original Bill of Lading and CSAL's discretion under the carriage contract, *see* Exhibit 2, as well as the draft Bill of Lading presented by Claimant's clearing agent at Walvis Bay. *See* Exhibit 3.

5. Respondent denies that it is liable for any of the $21,948 in transportation costs that Claimant allegedly incurred for all of the reasons identified in paragraphs 4 and 5, *supra.* Respondent further denies that CSAL refused to communicate with Claimants or seek an equitable resolution to this dispute. Instead, Claimant terminated his negotiations with CSAL and now refuses to resolve this dispute in the manner previously agreed by the parties under the carriage contract. *See* Exhibit 2 at Art. 3.

AFFIRMATIVE DEFENSES

1. CSAL does not agree to the informal resolution of this claim by the Federal Maritime Commission, *see* Exhibit 1. Nor does CSAL waive the terms of the carriage contract, which require that any claims "be decided *exclusively by arbitration* in New York before a single arbitrator pursuant to the rules of the Society of Maritime Arbitrators if not exceeding $50,000 ..." *See* Exhibit 2, at Art. 3. (emphasis added). Because the Federal Arbitration Act mandates contractually-based compulsory and binding arbitration, *see* Pub. L. 68-401, 43 Stat. 833 (Feb.

12, 1925), the Claimant must arbitrate this dispute in the manner agreed under that carriage contract. *See Southland Corp. v. Keating*, 465 U.S. 1 (1984). Consequently, the carriage contract's arbitration clause is binding on both parties and the Commission should not entertain the Claimant's attempt to "shop" for an alternative forum.

2. Assuming *ad arguendo* that the Commission may exercise jurisdiction in this manner, the Claimant is responsible for the alleged damages because he and/or his clearing agent miscommunicated information regarding any potential POD change.

3. Assuming *ad arguendo* that the Commission may exercise jurisdiction in this manner, the carriage contract states that CSAL "shall not be liable for any direct, indirect consequential, or special damages, or for any other losses sustained through delay of the [Cargo]." *See* Exhibit 2, at Art. 17. Even if Claimant should show the alleged breach, which he cannot, Respondent cannot be held liable for any consequential damages that Claimant alleged incurred by shipping the Cargo from South Africa to Namibia.

PRAYER FOR RELIEF

WHEREFORE, CSAL respectfully requests that the Commission dismiss Claimant's Complaint with prejudice, permit the Parties to arbitrate this claim as required under the Federal Arbitration Act, and award CSAL attorney fees and costs given the frivolous nature of this claim.

CANADA STATES AFRICA LINES INC. (CSAL)
By its Attorneys:

Steven B. Chameides

Steven B. Chameides by. Christopher Swift
Christopher M. Swift
Foley & Lardner LLP
3000 K Street, N.W., Suite 600
Washington, D.C. 20007
(202) 672-5300 – Telephone
(202) 672-5399 -- Facsimile

Canada States Africa Lines Inc. (CSAL)

By: _____
Milena Dimitrova, First Vice President
478 McGill Street
Montreal, Quebec H2Y 2H2 Canada

Verification

Province of Quebec
City of Montreal

Milena Dimitrova, being duly sworn on oath deposes and says that she is the First Vice President of Canada States Africa Lines Inc. (CSAL), and is the person who signed the foregoing Answer that he has read the Answer and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to me, a notary public in and for the Province of Quebec, City of Montreal, this 29th day of January, 2015.

_____
Notary Public / Commissioner of Oaths
My Commission Expires: Nov. 9, 2017

COMMISSAIRE À L'ASSERMENTATION
COMMISSIONER FOR OATHS
DIANA DE VINCENZI
#111 495
POUR LE QUÉBEC / FOR QUEBEC

4825-2700-2401.1

Federal Maritime Commission

Washington, DC.

Informal Docket No. 1949(I)

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by sending a copy to each such person in sufficient time to reach such person on the date the document is due to be filed with the Commission.

Dated at Washington, D.C. this 29th day of January, 2015.

Signature

Christopher Swift

For Canada State Africa Lines, Inc. (CSAL)

EXHIBIT 1

Federal Maritime Commission

Washington, DC.

Informal Docket No. 1949(I)

Respondent's Affidavit

I do not authorize the Small Claims Officer to determine the above-numbered claim in accordance with subpart S (46 C.F.R Part 502) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission Review.

27 January, 2015
(Date)

M Dimitrova
(Signed)

First Vice President, Canada States Africa Lines, Inc.
(Capacity)

Verification

Canada
Province of Quebec
City of Montreal

Milena Dimitrova, being first duly sworn on oath deposes and says that he or she is the First Vice President of Canada States Africa Lines, Inc., and is the person who signed the foregoing and agrees without qualification to its truth.

Subscribed and sworn to before me, a notary public in and for the Province of Quebec, Canada, this 27th day of January, 2015.

Diana De Vincenzi
(Commissioner for Oaths)
My Commission Expires:

4836-4536-9377.1

EXHIBIT 2

CANADA-STATES-AFRICA-LINE, INC.
478 MCGILL STREET
MONTREAL,QUEBEC H2Y 2H2 CANADA

INTERNATIONAL BILL OF LADING

NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER"

SHIPPER / EXPORTER (COMPLETE NAME AND ADDRESS)
WALTER MUZORORI
344 REDBUD DRIVE
OXFORD PA 19363 USA
TEL: 484-880-5964

BOOKING NO.
S002863CH

BILL OF LADING NO
BACP03140002

EXPORT REFERENCES

CONSIGNEE (COMPLETE NAME AND ADDRESS)
MR RONALD MACHUMI
5 BARBOUR ROAD
CRANBORNE,
HARARE, ZIMBABWE

FORWARDING AGENT, F.M.C. NO

NOTIFY PARTY (COMPLETE NAME AND ADDRESS)
ALTITUDE FREIGHT
4 PEARSON ROAD
TABLEVIEW 7441
CT: Gerald Binneman
TEL: 021-5561212 CELL: .0823021793
FAX: 021-5567723

ALSO NOTIFY-ROUTING & INSTRUCTIONS

PLACE OF INITIAL RECEIPT*

PLACE OF INITIAL RECEIPT**

PORT AND COUNTRY OF ORIGIN

VESSEL	VOY.	FLAG	PORT OF LOADING	LOADING PIER / TERMINAL
ATLANTIC IMPALA	S403	MALTA	BALTIMORE	

PORT OF DISCHARGE
CAPE TOWN

PLACE OF DELIVERY BY ON-CARRIER *

PLACE OF DELIVERY BY ON-CARRIER **

PARTICULARS FURNISHED BY SHIPPER – CARRIER NOT RESPONSIBLE

Container No./Seal No. Marks and Numbers	No. of Pkgs.	Description of Packages and Goods	Gross Weight KGS	Measure CBM
	2 X --- 2	UNIT(S) ROAD TRACTORS, USED VIN: 4V4NC9GH35N396534 - VOLVO 2005 VIN: 4V4NC9GHX5N396529 - VOLVO 2005 VEHICLES NEW OR USED RECEIVED WITHOUT TECHNICAL INSPECTION AND WITHOUT CHECKING EQUIPMENT AND ACCESSORIES INSIDE OR OUTSIDE AND ANY LOOSE ITEMS INSIDE VEHICLE,THEREFORE CARRIER, SHIP OWNER, STEVEDORE AND TERMINAL OPERATORS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE OF WHATEVER CAUSE AND WITHOUT LIABILITY AS TO CONDITION OF VEHICLE. **** FREIGHT PREPAID **** AES ITN: X20140507396159 "CARRIED ON DECK WITH SHIPPER'S PERMISSION AND KNOWLEDGE, CARRIER IS WITHOUT LIABILITY FOR LOSS AND DAMAGE HOWSOEVER CAUSED"	12700.00 ---------- 12700.00	150.00 ---------- 150.00

THESE COMMODITIES, TECHNOLOGY OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S.LAW PROHIBITED.

RECEIVED On Board the vessel Container or Packages or other shipping units said to contain the goods described above in apparent good order and condition unless otherwise stated. Weight, measure, marks, numbers, quality, contents and value unknown for transport and delivery at the port or place stated herein into Consignees or their Assigns. Freight paying as freight due plus other charges incurred in accordance with the Terms and Conditions contained on the face and back of this Bill of Lading.
IN ACCEPTING this Bill of Lading, Merchant expressly agrees that Containers may be stowed on deck without notice pursuant to Clause 18 on the back side of this Bill of Lading, and accepts and agrees to all the following terms and conditions including definitions, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by Merchant.
DELIVERY OPTIONS for Containerized Goods: (A) direct unstuffing at the port after expiration of free time period; (B) Carrier haulage arrangements under the inland rates of Carrier (payable in advance, and at Merchant haulage subject to either deposit with Carrier of full replacement value of the Container or other security arrangements acceptable to Carrier.
Note: "apparent good order and condition" when used with reference to Goods that are made of wood/paper products does not include that wood/paper. Such Goods or the packaging thereof were free of visible staining, chafing, cutting or breakage or of moisture, or of mist, mildew or other solid/liquid/gas thereof, at the time packaging and loading of the Goods were completed to ensure safe transit and proper delivery. In the absence of intensity, a substitute bill of lading will be issued omitting the foregoing definition and setting forth any notations as to staining, chafing, cutting, breakage, moisture, etc., that may appear on the carriers' or terminal receipts. (Terms and Conditions continued on the back hereof)
* Port Loading only when minimum used for through-transport
** For information only, does not imply through-transportation
A set of 3 Bills of Lading (excluding copies) is hereby issued by Carrier all of the same tenor and date, one of which being accomplished the others shall be void. One original Bill of Lading must be surrendered for delivery of Goods

ON BEHALF OF MASTER
MITCHELL COTTS MARITIME
By: _____
A member of the Sturrock Grindrod Maritime Group
As agents only for
C.S.A.L.

ISSUED AT: CAPE TOWN

DATED: 05.10.2014
MO/DAY/YR

ORIGINAL

1. Definitions.

In this Bill of Lading, and except as otherwise expressly provided:

(a) "Carrier" means and includes the ocean carrier named on the face side hereof, the Vessel, its owner, Master, operator, demise charterer, ... the time charterer, and any substitute carrier, whether the owner, operator, charterer ... and their respective agents, officers and employees.

ALTITUDE FREIGHT CC
T: 021-558-1212
F: 021-558-7723

(b) "Vessel" means and includes the ocean vessel named on the face side hereof, any substitute vessel, and any feeder vessel, ... used in the performance of this contract.

(c) "Merchant" means and includes the shipper, the consignee, ... the owner of the Goods, and the person or entity entitled to the possession of the Goods, and their respective agents, representatives and employees.

(d) "Charges" means and includes freight and all expenses and money obligations incurred and payable by Merchant hereunder, including demurrage and dead freight.

(e) "Goods" means and includes the cargo received from the Merchant and described on the face side hereof and any Container not supplied by or on behalf of Carrier.

(f) "Container" means and includes any container, van, trailer, transportable tank, flat rack or similar article of transport used to consolidate goods.

(g) "Package" means the single largest unit of Goods (e.g., Container, pallet, box, bale, vehicle, etc.) tendered to Carrier for transport hereunder.

(h) "Inland Carrier" means any barge line, vessel, trucker, or railroad with custody of the Goods under this Bill of Lading, and their respective agents and subcontractors.

(i) "On board" means and includes on board the Vessel when the Goods are being transported to a port and on board a means of conveyance of Inland Carrier en route to the port of loading for transport from an inland point; and

(j) "Subcontractor" means and includes all interests owning, operating or chartering the Vessel, inland conveyance, terminal or warehouse, or otherwise performing services with respect to the Goods under this Bill of Lading.

(k) "Hague Rules" means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on August 25th, 1924.

(l) "COGSA" means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936.

(m) "COGWA" means the Carriage of Goods by Water Act 1936 of Canada.

2. Clause Paramount

[illegible]

3. Jurisdiction and Claims

[illegible]

4. Notice of Loss/Time Bar

[illegible]

5. Tariff and Booking Note

[illegible]

6. Method and Route of Transport

[illegible]

7. Matters Affecting Performance

[illegible]

8. Stowage and Special Handling

[illegible]

9. Loading and Discharging

[illegible]

10. Deck Cargo

[illegible]

11. Notification and Delivery

[illegible]

12. Shipper Packed Containers

[illegible]

13. Freight and Charges

[illegible]

14. Lien

[illegible]

15. Identity of Carrier

[illegible]

16. Subcontracting

[illegible]

17. Delay

[illegible]

18. Limitation of Liability

[illegible]

19. War Risks Clause

[illegible]

20. Responsibility Clause for Combined Transport

[illegible]

21. Temperature Range

[illegible]

22. New Jason Clause

[illegible]

23. General Average

[illegible]

24. Both-to-Blame Collision Clause

[illegible]

25. Warranty

[illegible]

26. Goods of perishable nature

[illegible]

26. Packing and Description of cargo, Forbidding of Narcotic drugs and other illegal Substances

[illegible]

27. Return of empty containers

[illegible]

28. ISPS Code

[illegible]

29. Alteration

No agent, officer or employee of Carrier shall have authority to waive or vary any provision of this Bill of Lading unless in writing and expressly authorized or ratified in writing by Carrier.

EXHIBIT 3

From: Rencia Balhao [mailto:RenciaB@sturrockgrindrod.com]
Sent: Friday, June 06, 2014 9:06 AM
To: CSALINE Ivan Kokorzhytskyi
Cc: Armando Calaca; Mitchell Cotts Darryn L
Subject: RE: BACP03140002 (POD changing)

Good Day Ivan

Please be advised that I received the draft bill from the clearing agent as per attached.

Thank you..,

Sturrock Grindrod Maritime | Rencia Balhao
Freight Coordinator Clerk

As Agents only

Grindrod House, 174 3rd Street, Walvis Bay
PO Box 529, Walvis Bay, 9000, Namibia
P +264 64 219 550, **F** +26 64 203 994, **M** +264 81 682 3938
E RenciaB@sturrockgrindrod.com

www.sturrockgrindrod.com

Sturrock Grindrod Maritime | **Sturrock Grindrod Maritime (Namibia)**
A member of the Sturrock Grindrod Maritime Group

Disclaimer
All business is undertaken subject to the standard trading conditions of the company and the South African Association of Ship Operators and Agents, copies available on request.

SHIPPER / EXPORTER (COMPLETE NAME AND ADDRESS)	BOOKING NO	BILL OF LADING NO
WALTER MUZORORI 344 REDBUD DRIVE OXFORD PA 19363 USA TEL: 484-880-5964	S002863CH EXPORT REFERENCES	BACP03140002
CONSIGNEE (COMPLETE NAME AND ADDRESS) RONALD MACHUMI 19 UITERWYK STREET VAN REEBIEKSHOFF BELLVILLE 7530 CAPE TOWN SOUTH AFRICA	FORWARDING AGENT, F.M.C. NO	
NOTIFY PARTY (COMPLETE NAME AND ADDRESS) RONALD MACHUMI 19 UITERWYK STREET VAN REEBIEKSHOFF BELLVILLE 7530 CAPE TOWN SOUTH AFRICA	ALSO NOTIFY-ROUTING & INSTRUCTIONS	

PLACE OF INITIAL RECEIPT*	PLACE OF INITIAL RECEIPT**	POINT AND COUNTRY OF ORIGIN:
VESSEL / VOY / FLAG ATLANTIC IMPALA S403 MALTA	PORT OF LOADING BALTIMORE	LOADING PIER / TERMINAL
PORT OF DISCHARGE CAPE TOWN	PLACE OF DELIVERY BY ON-CARRIER *	PLACE OF DELIVERY BY ON-CARRIER**

PARTICULARS FURNISHED BY SHIPPER – CARRIER NOT RESPONSIBLE

Container No./Seal No. Marks and Numbers	No. of Pkgs	Description of Packages and Goods	Gross Weight KGS	Measure CBM
	2 X --- 2	UNIT(S) ROAD TRACTORS, USED VIN: 4V4NC9GH35N396534 - VOLVO 2005 VIN: 4V4NC9GHX5N396529 - VOLVO 2005 VEHICLES NEW OR USED RECEIVED WITHOUT TECHNICAL INSPECTION AND WITHOUT CHECKING EQUIPMENT AND ACCESSORIES INSIDE OR OUTSIDE AND ANY LOOSE ITEMS INSIDE VEHICLE,THEREFORE CARRIER, SHIP OWNER, STEVEDORE AND TERMINAL OPERATORS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE OF WHATEVER CAUSE AND WITHOUT LIABILITY AS TO CONDITION OF VEHICLE. **** FREIGHT PREPAID **** AES ITN: X20140507396159 "CARRIED ON DECK WITH SHIPPER'S PERMISSION AND KNOWLEDGE, CARRIER IS WITHOUT LIABILITY FOR LOSS AND DAMAGE HOWSOEVER CAUSED"	12700.00 ---------- 12700.00	150.00 ---------- 150.00

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RECEIVED On Board the sealed Container or Packages or other shipping units said to contain the goods described above in apparent good order and condition unless otherwise stated, weight, measure, marks, numbers, quality, contents and value unknown, for transport and delivery at the port or place stated herein unto Consignee or their Assigns, they paying all freight due plus other Charges incurred. In accordance with the Terms and Conditions contained on the face and back of this Bill of Lading.
IN ACCEPTING this Bill of Lading, Merchant expressly agrees that Containers may be stowed on deck without notice pursuant to Clause 10 on the back of this Bill of Lading, and accepts and agrees to all the following terms and conditions (including definitions), whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by Merchant.
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Note: "apparent good order and condition" when used with reference to Goods that are metal or wood/paper products does not mean that, when received, such Goods or the packaging thereof were free of visible staining, chafing, cutting or breakage, or of moisture or of rust oxidation or other consequences thereof, or that the packaging and marking of the Goods were adequate to ensure their safe transit and proper delivery. If the shipper so requests, a substitute bill of lading will be issued omitting the foregoing definition and setting forth any notations as to staining, chafing, cutting, breakage, moisture, etc. that may appear on the mates, or tally clerks' receipts. [Terms and Conditions continued on the back hereof]
* Applicable only when document used for through-transport
** For information only, does not imply through-transportation
A set of 3 Bills of Lading (excluding copies) is hereby issued by Carrier, all of the same tenor and date, one of which being accomplished the others shall be void. One original Bill of Lading must be surrendered for delivery of Goods.

ON BEHALF OF MASTER

By: _____

ISSUED AT:

DATED: 05.10.2014

MO/DAY/YR