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FILING OF AN INFORMAL COMPLAINT  
FEDERAL MARITIME COMMISSION

Taylor's Resources Inc (USA). dba  
Bridgewater Landing Inc (USA)  
VS MOL (America) Inc.

FILED  
SEP 2 2016

Federal Maritime Commission  
Office of the Secretary

INFORMAL COMPLAINT AMENDED DOCKET 1954 (I)

**I Summary of Complaint**

Pursuant to the Federal Maritime Commission's ("Commission") Rules of Practice and Procedure, 46 C.F.R. §502.68, Taylor's Resources Inc (TRI) dba Bridgewater Landing Inc (BLI), an Export Company of Plastic Licensed in the State of New Jersey requests that the Commission vacate a demand for detention charges, demand compensation for Taylor's Resources remove uncertainty and terminate a controversy in regard to the justness and reasonableness of the demurrage/ detention practices of MOL (America), Inc ("MOL").

This informal Complaint is directed to matters involving conduct or activity regulated by the Commission under the Shipping Act of 1984 ("Shipping Act"). The controversy giving rise to the need for a informal complaint has arisen in a proceeding in the Superior Court of Middlesex New Jersey in which MOL has sued TRI and BLI for demurrage charges. MOL (America) Inc vs Bridgewater Landing Inc.; and, Taylor's Resources Inc Docket MID-L-002082. The question on which BLI seeks to file an Informal Complaint from the Commission is whether it is a reasonable practice for MOL to wait to assert a claim for demurrage / detention on a container for more than three years **CAUSED BY FAILURE OF SERVICE BY MOL** after the parties with an interest in the goods abandoned the cargo in those containers and attempted to provide assistance to MOL to dispose of it, when MOL delay resulted in the accrual of demurrage charges

exceeding \$114,212.28, which is many times greater than the value of the containers themselves.

**IN ADDITION, TO DATE NO DETAILED COMMERCIAL INVOICE FROM MOL WAS EVER PRESENTED TO BLI DEMANDING PAYMENT FOR DETENTION/ DEMURRAGE PRIOR BEING SERVED WITH LITIGATION IN MIDDLESEX SUPERIOR COURT NJ.**

**II. Statement of Facts**

1. On or about January 18, 2013, BWL tendered a shipment of goods in a 45 foot container to MOL for shipment from Atlanta GA through the Port of Jacksonville FL to the Port of Xingang - CY. MOL issued a bill of lading for this shipment showing Bridgewater Landing Inc (BLI) as the shipper and Tianjin Shanhai Jiafu Commercial Trade Co., Ltd as the consignee. This shipment arrived in Xingang CY on or about **MARCH 12 2013**. The MOL bill of lading for this shipment is attached as **Exhibit 1**.

2. On or about March 11, 2013, BLI authorized a telex release to MOL for the consignee Tianjin Shanhai Jiafu Commercial Trade Co. A copy of this document is attached as **Exhibit 1**.

3. On April 22, 2013, MOL wrote to BLI that "CNEE (Consignee) did not come to switch D/O although we sent arrival notice via fax & pushed them for many times. We checked the Cnee's agent instead but they have no mind on this shpt. The phone no. on manifest is out of service now. Pls urgently adv shpr to push cnee fm your side. TKs. Thank You Toukta Phonharath Documentation Manager MOL". "This was the first communication BLI Received from MOL

there was a problem with consignee picking up this shipment” **IT WAS ALSO 27 DAYS AFTER FREE TIME HAD ENDED TO UNLOAD THE CONTAINER WITHOUT INCURRING DETENTION CHARGES. MOL DEMONSTRATED FAILURE OF SERVICE BY NOT NOTIFYING SHIPPER (BLI) IN A TIMELY MANNER.** Please see **exhibit 2.** On May 6<sup>th</sup>, Mr. Phonharath of MOL again communicated they were still unable to contact the consignee, On May 6<sup>th</sup> 2013 BLI advised Mr. Phonharath (Thank you for the update. I am working on trying to reach the Consignee) Please see **Exhibit # 3 A.** On May 7<sup>th</sup> 2013 Mr. Phonharath of MOL communicated to BLI (Please assist to advise any contact details you have for the Consignee so your destination office can contact them locally) Please see **Exhibit 4.** On May 8<sup>th</sup>, 2013, BLI advised to Mr. Phonharath (I will let you know) Please see **Exhibit #5.** On May 16, 2013 Mr. Phonharath sent an email (Good Evening, Please assist to advise). Please see **Exhibit #6.**

4. On May 28, 2013, BLI communicated to Mr. Phonharath “As you are probably aware there is great confusion in the China plastic scrap market due to the operation Green Fence policy enacted by the Chinese government. Our original consignee for this shipment has indicated material may not clear customs in Xingang. Every day this container collects more and more detention charges. We have another consignee lined up to take this container in Hong Kong and MOL can have its container back, Can you help us” **Please see exhibit #7.**

5. On May 29<sup>th</sup> 2013, Mr. Tony Lucas of MOL advised “ It Looks like we are unable to carry China/Hong Kong coastal cargo as we do not have the operation rights”. “Perhaps an alternate country?” “But otherwise would suggest to strip the cntr as soon as possible” **See Exhibit #8**

(5A) On May 30<sup>th</sup> (MOL-045) MOL advised a rate to move the container to Hong Kong. On May 30<sup>th</sup> (MOL-045) BLI asked MOL to advise the dollar amount of any other fees and total so we can arrange authorization. This was followed up on May 31 with another Email to Tony Lucas (MOL-050) to advise the other costs and to keep this thing moving (MOL-050). On June 5<sup>th</sup> 2013 (MOL-050) MOL advised detention charges of RMB 37500 (\$6500) for this container.

(5B) On June 5th Kerri Keith called Tony Lucas and requested a reduction in detention charges from the time notice was given on 4/22/13 until 5/29/13. Tony Lucas verbally declined this request. On July 1, 2013 BLI again followed up (MOL-058) the request for a reduction in detention and again on 7/2/13 (MOL-058) asking for an extension of free time.

(5C).On July 31, 2013 (MOL 056) MOL advised "ON THESE SHIPMENTS WE ARE STICKING TO ONLY THE ALLOWED 14 DAYS" "I have tried to plead your case because of the issues you are running into related to China's green fence, but was told we will not offer any additional free time as this outside of our control".

(5d) If Mr. Tony Lucas of MOL had authorized an extension of free time or reduced the detention as per our request of May 29, 2013. This matter would not be before the court today. If Mr. Tony Lucas of MOL had authorized re-export of the plastic scrap to Hong Kong. We could have recouped the shipping and detention charges and MOL would have not have been out of pocket. We received no further response from MOL until a letter of August 10, 2015 "See Exhibit 9" Advising the container was abandoned in Xingang, it was re-exported to Hong Kong, disposed of and a demand for US\$87,8554.60 for re-export costs, detention, ocean freight and disposal costs. We would like to comment on this letter below.

6..A. First the consignee listed on MOL letter is Tianjin Teda Hai Jie Logistics Co., LTD. Not the consignee we shipped the material to Tianjin Shanhai Jiafu Commercial Trade Co., LTD. We wonder if MOL even communicated with the correct consignee to begin with. Exhibit 9

**FOLLOW UP POINT: WE HAVE COMMUNICATED WITH AUTHORITIES IN CHINA WHO HAVE ADVISED BLI THAT THERE IS NO RECORD OF ANY COMPANY CALLED TIANJIN TEDA HAI JIE LOGISTICS CO., LTD IN MOL'S ORIGINAL LITIGATION. CAN MOL EXPLAIN HOW THE CONSIGNESS NAME IS INCORRECT AGAIN FOR THE OFFICIAL DOCUMENTATION (EXHIBIT 9) IT SEEMS THIS COMPANY DOESN'T EXIST, SO HOW CAN MOL CLAIM THIS COMPANY AS THE CONSIGNEE.**

6..B. Second the plastic scrap BLI shipped was Mixed Ridged Plastics not banned under the government of China Green Fence. MATERIAL had a commercial value and could have easily been sold in Hong Kong. In addition no certificate of destruction was ever provided for this material by MOL to BLI. Exhibit 7.

**THIS CARGO OF PLASTIC SCRAP HAD A VALUE, NO SALVAGE CREDIT WAS ADVISED BY MOL, NO CERTIFICATE OF DESTRUCTION WAS PROVIDED, NO REPORT OF CONTAMINATION FROM CHINESE CUSTOMS OR REPORT OF A PROBLEM FROM CHINA INSPECTION AND QUARANTINE WAS ADVISED. BLI QUESTIONED MOL ON WHAT HAPPENED TO THIS CARGO AND NO DOCUMENTATION WAS EVER PROVIDED TO DATE BY MOL. FINALLY BLI HAS NOT RECEIVED ANY PROOF OF WHAT HAPPENED TO OUR MERCHANDISE,**

6.C. Third, if MOL had originally allowed BLI to ship this material to Hong Kong (Which is what BLI requested) which is what MOL initially declined and decided to do this without notifying BLI, than this matter would not be before the Federal Maritime Commission. Exhibit 8

FOLLOWUP POINT: MAY 28th, 2013 EXHIBIT 8, MS. KEITH ADVISED MR TOUKTA. " AS YOU ARE AWARE THERE IS GREAT CONFUSION IN THE CHINA PLASTIC SCRAP MARKET DUE TO THE OPERATION GREEN FENCE POLICY ENACTED BY THE CHINESE GOVERNMENT. OUR ORIGINAL CONSIGNEE FOR THIS SHIPMENT HAS INDICATED MATERIAL MAY NOT CLEAR CUSTOMS IN CHINA" MS. KEITH MEANT BY THIS POINT WAS THE CONSIGNEE MAY NOT BE ABLE TO CLEAR CUSTOMS WITHIN 14 DAYS FREE TIME DUE TO THE LONG DELAY AT PORT ENACTED BY GREEN FENCE POLICY. THE MATERIAL ITSELF MET THE SPECIFICATION FOR PLASTIC SCRAP NOT GARBAGE.

WHICH IS WHY IN THE NEXT PARAGRAPH OF (EXHIBIT 8) MS. KEITH ADVISED " WE HAVE ANOTHER CONSIGNEE LINED UP TO TAKE THIS CONTAINER IN HONG KONG AN REQUEST AN ECONOMICAL RATE SO MATERIAL MAY BE UNLOADED FROM THE CONTAINER AND MOL CAN HAVE ITS CONTAINER BACK, CAN YOU HELP US"

FOLLOWUP POINT: IF MOL HAD NEGOTIATED IN GOOD FAITH TO WAVE OR REDUCE DETENTION CHARGES INCURRED PRIOR TO NOTICE TO BLI THIS MATTER WOULD NOT BE BEFORE THE FEDERAL MARITIME COMMISSION.

6.D. Fourth, MOL never requested BLI to us to issue a declaration of abandonment for this cargo. If MOL had demanded BLI to issue a declaration of abandonment for this cargo we would have considered their request to close this case.

6.E. Notwithstanding the abandonment of the goods and authorization to sell them from Tianjin Shanhai Jiafu Commercial and BLI as well as its clear legal authority to dispose of the goods of this shipment under the Chinese Customs Law and the terms and conditions of its bill of lading, MOL had taken no steps for over two years to dispose of the goods or reclaim its containers. In addition, MOL did not allow BLI a reasonable opportunity to transport this material to Hong Kong and MOL has not provided any certificate of disposal for this material.

7. On April 14, 2016, MOL filed a lawsuit in the Superior Court of New Jersey for the Middlesex County Law Division seeking recovery of in excess of \$114,212.28 in detention, Ocean Freight, Re-export Costs, Disposal Coasts and Legal Fees as well as for additional demurrage charges which, according to MOL's complaint, continue to accrue as the container(s) have yet to be retrieved. A copy of the Complaint is attached as Exhibit 10. BLI is requesting reimbursement of US\$67.00 for the filing of this complaint with FMC and attorney fees and expenses of US\$45,000.00 to defend again this lawsuit in Superior Court of New Jersey.

**FINALLY BLI IS REQUESTING A REFUND OF US\$1292.00 FOR OCEAN FREIGHT  
TRANSPORT EXPENSE PAID TO MOL.**

**UNDER SS 40503 REFUNDS AND WAIVERS ,THE FEDERAL MARITIME**

**COMMISSION ON APPLICATION OF A SHIPPER MAY PERMIT A CARRIER TO**

**REFUND A PORTION OF THE FREIGHT CHARGS COLLECTED FROM A SHIPPER.**

REPARATIONS UNDER THE SHIPPING ACT OF 1984 AS MODIFIED BY THE OCEAN SHIPPING REFORM ACT OF 1998. FOR ANY COMPLAINT FILED WITHIN 3 YEARS AFTER THE CAUSE OF ACTION ACCRUED, THE COMMISSION SHALL UPON PETITION OF THE COMPLAINT AND AFTER NOTICE AN HEARING DIRECT PAYMENT OF REPARATION TO THE COMPLAINENT FOR ACTUAL INJURY CAUSED BY THE VOILATION OF THIS ACT PLUS REASONABLE ATTORNEY FEES UPON SHOWING THAT THE INJURY WAS CAUSED BY ACTIVITY THAT IS PROHIBITED BY SECTION 10(B) (3) OR (6) OR SECTION 10 (C) (1) OR (3) OF THIS ACT, OR THAT VIOLATES SECTIONS 10 (A) (2) OR (3) THE COMMISION MAY DIRECT THE PAYMENT OF ADDITIONAL AMOUNTS. BUT THE TOTAL RECOVERY OF A COMPLAINT MAY NOT EXCEEED TWICE THE AMOUNT OF THE ACTUAL INJURY. IN THE CASE OF INJURY CAUSED BY AN ACTIVITY THAT IS PROHIBITED BY 10 (B) (4) (A) OR (B) OF THIS ACT. THE AMOUNT OF THE INJURY SHALL BE DIFFERENCE BETWEEN THE RATE PAID BY THE INJURED SHIPPER AND THE MOST FAVORABLE RATE PAID BY ANOTHER SHIPPER.

The Controversy

MOL has asserted in the Complaint it has filed against BLI in the Superior Court of New Jersey, Middlesex Law Division, BLI owes in excess of \$114,212.28 in detention, re-export, ocean freight and legal fees for one container. BLI contends that MOL's failure to not allow BLI to re-export these goods or MOL not disposing of the goods in this container for two years and counting after they were abandoned by the Chinese importer and BLI, despite MOL authority under the Chinese Customs Act as

well as the terms and conditions of its bill of lading contracts to sell the goods, and despite MOL's obligation to mitigate its damages, is an unjust and unreasonable practice in violation of Section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c). This is clearly an actual controversy arising directly under the Shipping Act for which the Commission is the appropriate forum for resolving the issue. Concurrently with the filing of this informal complaint with the Commission, BLI is filing a motion with the Court seeking a referral of this issue to the Commission pursuant to the doctrine of primary jurisdiction. A copy of that motion is attached hereto as Exhibit 11.

**UNDER 46. USC 41104 (10) A CARRIER MAY NOT UNREASONABLY REFUSE TO DEAL OR NEGOTIATE, BLI ARGUES THAT MOL REFUSAL TO NEGOTIATE DETENTION CHARGES INCURRED BEFORE NOTICE TO BLI WAS SERVED VIOLATED THIS SECTION.**

**AS THE COMMISSION SHOWED IN SEACON TERMINALS V PORT OF SEATTLE, 25 S. R.R. 866 (1993) WHAT IS CENTRAL TO DETERMINING WHETHER A REFUSAL TO DEAL OR NEGOTIATE WAS REASONABLE, IS WHETHER THE CARRIER "GAVE GOOD FAITH CONSIDERATION TO AN ENTITY'S PROPOSAL OR EFFORTS AT NEGOTIATION"**

MOL's Unjust and Unreasonable Practices

As set forth in the Statement of Facts, MOL transported one shipment at issue from the United States to Xingang China. As the carrier of the goods, MOL became their custodian under Chinese Customs Act. The shipment arrived on March 21, 2013. On March 10, 2013 BLI sent a telex release of the cargo to MOL and the consignee. It is unknown when MOL sent a communication to Tianjin

Shanghai Jiaful Commercial Trade Co of the container arrival or if MOL ever requested Tianjin Shanghai to abandoning the shipment. In its emails covering this shipment, BLI requested MOL to ship this container to Hong Kong, so they may sell the goods in this shipment pursuant to any liens. See **Exhibit # 8** Thus, within 50 days, respectively of this shipment arrival dates, MOL had clear notice that the only parties with an interest in the goods had requested they be exported to Hong Kong, which MOL later did. Nor did MOL request BLI to relinquished all of their rights in the cargo.

**MOL HAD THE ABILITY TO DECLARE FORCE MAJEURE WHEN IT RECEIVED NOTICE FROM THE CHINESE GOVERNMENT OF OPERATION GREEN FENCE IN JANUARY 2013 AND NO NOTICE WAS PROVIDED TO SHIPPER BY MOL OF THIS POLICY. IF INFORMED THE SHIPPER WOULD HAVE TAKEN SPECIAL PRECAUTIONS TO AVOID SHIPMENT TO CHINA. IF MOL HAD DECLARED FORCE MAJEURE AFTER BEING ADVISED OF OPERATION GREEN FENCE IN JANUARY 2013, BLI COULD HAVE ARRANGED FOR CARGO TO BE DELIVERED TO ANOTHER DESTINATION AS NECESSARY.**

**UNDER THE SHIPPING ACT OF 1984 SUBSECTION 414 SECTION 104 MOL HAD FIVE DAYS AFTER THE EXPIRATION OF FREE TIME TO GIVE NOTICE IN A SERVICE ISSUE NOT 27 DAYS THUS ALLOWING DETENTION CHARGES TO BALLOON. THIS PLACED BLI AT AN UNFAIR DISADVANTAGE.**

MOL had the ability to re-export this container to Hong Kong May 28<sup>th</sup> 2013, indeed, in its correspondence to BLI dated August 10, 2015, MOL acknowledged that it had re-export the Container to Hong Kong. See **Exhibit # 9**. MOL had the right as the custodian of the goods to sell them MOL,

however, failed to take any steps to dispose of the goods. Rather, it contented itself with sending notices to BLI after two years demanding payment of increasingly higher detention charges. When BLI responded to this notice by reminding MOL it could have re-exported container to Hong Kong, No Answer was received. Finally, MOL has filed suit against BLI claiming detention and other charges of US\$114,212.28, April 14, 2016. Equally clear, BLI as an Exporter not having physical custody of the goods had no right to dispose of the goods in any manner.

MOL's actions are not just or reasonable in a number of respects. First and foremost, MOL did absolutely nothing when it had the power to re-export the cargo to Hong Kong. Clearly, a reasonable carrier would have understood that, as the only party with the ability to get rid of the cargo and reclaim its containers, it had a duty to pursue all avenues to accomplish that result, particularly when there was a road map from the shipper showing what MOL had to do. This is not a case where MOL declined BLI request to transport the cargo. It never even made the effort it simply wanted its containers back. Further, MOL cannot claim that it was unsure about whether the cargo had been abandoned by Tianjin Shanhai Jiafu Commercial and BLI did not receive any request to abandon the cargo from MOL." This is clearly unreasonable. Either BLI was already responsible for the pending and additional charges as a party to the MOL's bills of lading, in which case requiring BLI could have signed a standard letter of abandonment , or BLI was not responsible for those charges. By MOL simply requesting BLI to sign a standard letter giving up its rights or face a detention claims they engineered a claim for \$114,212.28 which was extortionate. The requirements for abandonment in maritime law are clear. "[A] valid abandonment occurs through the act of deserting property without hope of recovery or intention of returning to it. See 3A Norris, Benedict on Admiralty § 134 (7<sup>th</sup> ed. 1980)" *Nunley v. M/V Dauntless Colocotronis*, 863 F.2d 1190, 1198 (5<sup>th</sup> Cir. 1989); see also *Jiri Mucha v. Charles King*, 792 F.2d

602, 610 (7<sup>th</sup> Cir. 1986) ("Abandonment is a voluntary relinquishment of rights ..."). There is no requirement in the law of abandonment that any special form of words or particular documents be used to effect a genuine abandonment. MOL's failure to recognize and act upon BLI's clear predicament of this shipment is, in the circumstances, unjust and unreasonable.

Moreover, MOL had an obligation to mitigate its damages. *Rose International, Inc. v. Overseas Moving Network International, Ltd.*, 29 S.R.R. 119, 191 (FMC 2001) ("Mitigation is a principle used in damages analysis to prevent a party from recovering damages for losses it could have reasonably avoided without an undue risk or burden, and is one applied by the Commission.") The law is clear that an injured party cannot simply wait and let its damages accrue. It must take steps to avoid any extra damages as part of the implied covenant of good faith and fair dealing that is a part of every contract. *See Adair v. Penn-Nordic Lines, Inc.*, 26 S.R.R. 11, 20-21 (I.D. 1991). In contrast, here MOL is simply sitting on its damages and allowing them to multiply beyond any reasonable measure. It certainly would not have suffered any undue risk or burden by attempting to comply with the requirements of the China Customs Act to dispose of the goods in the container at issue or allow it to be re-exported. In which case BLI and MOL would not have suffered any financial loss.

**MOL DEMONSTRATED FAILURE OF SERVICE UNDER UCC§ 2-609. RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE.**

**(1) A CONTRACT FOR SALE IMPOSES AN OBLIGATION ON EACH PARTY THAT OTHE OTHER EXPECTATION OF RECEIVING DUE PERFORMANCE WILL NOT BE IMPAIRED. WHEN REASONABLE GROUND FOR INSECURITY ARISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY THE**

OTHER PARTY MAY IN WRITING DEMAND ADEQUATE ASSURANCE OF DUE PERFORMANCE AND UNTIL HE RECEIVES SUCH ASSURANCE MAY IF COMMERCIALY REASONABLE SUSPEND ANY PERFORMANCE FOR WHICH HE HAS NOT ALREADY RECEIVED THE AGREED RETURN.

(2) BETWEEN MERCHANTS THE REASONABLENESS OF GROUNDS FOR INSECURITY AND THE ADEQUANY OF ASSURANCE OFFERED SHALL BE DETERMINED

ACCORDING TO COMMERCIAL STANDARDS.

(3) ACCEPTANCE OF ANY IMPROPER DELIVERY OR PAYMENT DOES NOT PREJUDICE THE AGGRIEVED PARTYS RIGHTS TO DEMAND ADEQUATE ASSURANCE OF FUTURE PERFORMANCE.

(4) AFTER RECEIPT OF A JUSTIFIED DEMAND FAILURE TO PROVIDE WITHIN A REASONABLE TIME NOT EXCEEDING THIRTY DAYS SUCH ASSURANCE OF DUE PERFORMANCE AS IS ADEQUATE UNDER THE CIRCUMSTANCES OF THE PARTICULAR CASE IS A REPUDIATION OF THE CONTRACT.

14 DAYS AFTER ARRIVAL OF SHIPMENT MOL FULLY WAS AWARE CONSIGNEE WOULD NOT PICKUP THE CARGO. UNDER UCC 2-609. MOL WAS OBLIGATED TO NOTIFY BLI IMMEDIATELY THEY WERE UNABLE TO PROVIDE PERFORMANCE OF COMPLETING THE DELIVERY AND SHOULD HAVE NOTIFIED BLI IMMEDIATELY INSTEAD OF WAITING AN ADDITIONAL 27 DAYS TO ALLOW DETENTION CHARGES TO ACCRUE. CLEARLY A SERVICE FAILURE BY MOL

Finally, the unreasonableness of MOL's practices in this case is highlighted by the enormous magnitude of the difference between the demurrage charges MOL is claiming from BLI and the value of the containers for which those charges are being claimed. MOL itself values its 45 foot high cube containers at \$5,400 each. Thus, MOL could have simply disposed of or destroyed the containers in question and purchased or leased replacement equipment for prices that probably would not have exceeded \$5,500. As an ocean carrier that buys or leases containers in bulk, MOL undoubtedly can obtain containers even more cheaply than this. How then, can asserting a claim for US\$114,212.28 for the loss of use of A container be considered reasonable?

In sum, the detention and related charges MOL is demanding that BLI pay have accumulated as a result of MOL's own, intentional actions. As the Commission has clearly held, "the practice of billing for detention resulting from carrier fault . . . is unjust and unreasonable." *Plaza Provision v. Maritime Services*, 17 F.M.C. 47, 51 (1973). There is no question that MOL has failed to take the actions it was clearly authorized by Chinese law and its bill of lading to pursue to dispose of the goods and reclaim its container many years ago. It should not be permitted to unjustly benefit from its own unreasonable practices.

#### **The Filed Rate Doctrine Does Not Excuse MOL's Actions**

MOL may argue that it is required, pursuant to the filed rate doctrine, to collect the detention charges as set forth in its tariff. As the Commission has made clear, however, it is not a derogation of the filed rate doctrine to find a carrier has violated other, substantive sections of the Shipping Act such as Section 10(d)(1). *Total Fitness Equipment d/b/a/ Professional Gym v. Worldlink Logistics*, 28 S.R.R. 534 (FMC 1998). There, the Commission found that "[t]he filed rate doctrine does not function as a carte blanche to justify whatever action the carrier deems is

appropriate ...." *Id.* at 539. Similarly, here, MOL should not be allowed to engage in unjust and unreasonable practices and then hide behind the filed rate doctrine to collect an exorbitant amount of money that is out of all proportion to any legitimate damages it may have suffered.

Moreover, MOL has not filed the detention charges it is seeking to collect from BLI in its tariff published pursuant to the Shipping Act. There are, in fact, no provisions in that tariff regarding detention of charges in China. Rather, it appears that MOL is relying on a local Chinese tariff. Section 10(b)(2)(A) of the Shipping Act, however, prohibits carriers such as MOL from providing services that are "not in accordance with the rates, charges, classifications, rules and practices contained in a tariff published . . . under Chapter 405 of [the Shipping Act]." 46 U.S.C. §41104(2)(A). In its lawsuit, MOL is attempting to do precisely what the Shipping Act prohibits. Manifestly, it is an unjust and unreasonable practice for a carrier to blatantly violate the Shipping Act in seeking compensation from a shipper at rates not included in its publicly filed tariff.

**MOL's Attempt to Collect Penal Detention Charges  
Is Also an Unjust and Unreasonable Practice**

As can be seen from Exhibit 10, the demurrage charges MOL is seeking to collect from BLI pursuant to its local Chinese tariff provide, with respect to 45 foot high cube containers such as those at issue, for a free time of 14 calendar days and, after that, detention charges apply. In past cases, the Commission has presumed that the first period demurrage charges "represents a compensatory charge" and that charges for the second and subsequent periods "are penal to the extent of the excess of those charges over charges for the first period" *Free Time and Demurrage Charges* ..*New York*, 3 U.S.M.C. 89, 109 (1948); *Midland Metals Corp. v. Mitsui O.S.K. Line*, 15 F.M.C. 193, 199 (1972). Consequently, any charges by MOL for detention in

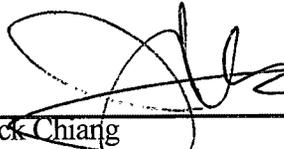
excess of the \$44 daily rate for the first period should be considered penal. When, as is the case here, the consignee cannot take any actions to claim or dispose of the cargo to stop demurrage from running, the Commission has held that the carrier cannot impose the penal element of the detention of its detention charges. *Id.* Because BLI was not the owner or importer of the goods into China, it had no rights to handle or dispose of the goods under the Chinese Customs Act. Therefore, even if MOL were entitled to collect demurrage charges, in whole or in part, from BLI - - which it is not - - it would not be authorized to collect the penal amount of those charges. Thus, to the extent MOL is demanding that penal portion of its demurrage charges, it is also engaging in an unjust and unreasonable practice.

III. CONCLUSION

For all of the foregoing reasons, BLI respectfully requests that this petition be granted and that the Commission issue an order declaring that the detention practices described in this informal complaint are unjust and unreasonable in violation of Section 10(d)(1) of the Shipping Act of 1984; 46 U.S.C. § 41102(c).

I hereby declare and swear the above statements are true to the best of my knowledge and belief and understand it is made for use as evidence in this complaint and court. I swear to these facts on this 2<sup>nd</sup> day of September 2016.

Respectfully submitted,



Jack Chiang  
Owner of Bridgewater Landing / Taylors Resources Inc  
51 Cragwood Rd, Suite 301  
South Plainfield, NJ 07080  
Tele: 732-668-4735 X 403  
Facsimile 732-668-1855

Notarized



Sworn to and subscribed  
before me this  
2 day of Sept, 2016

**KERRI J. KEITH**  
**ID # 2413530**  
**NOTARY PUBLIC OF NEW JERSEY**  
**My Commission Expires 10/14/2016**

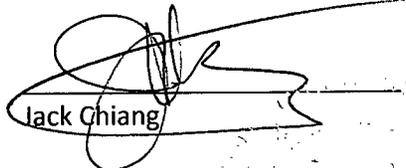
CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of September, 2016, I served the foregoing via U.S. mail, first class postage prepaid, as follows:

Secretary  
Federal Maritime Commission  
800 N. Vapitol Stgreet, NW  
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Signed and sworn to on the 2<sup>nd</sup> of September 2016

  
Jack Chiang

Notary Signature



Sworn to and subscribed  
before me this  
2 day of Sept, 20 16

KERRI J. KEITH  
ID # 2413530  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 10/14/2016