

**Before The  
Federal Maritime Commission**

**Formal Docket No. 1954 (F)**

**Taylor's Resources Inc (USA) d/b/a Bridgewater Landing Inc (USA)  
Complainant  
V.  
Mitsui O.S.K Lines Ltd  
Respondent**

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**REBUTTAL TO RESPONDENTS MITSUI O.S.K. LTD RESPONSE TO BRIEF**

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In rebuttal to Mitsui O.S.K. Lines Ltd, (MOL) response to Bridgewater Landing Inc (BLI) opening Statements. BLI requests the court to consider the following points.

**Introduction**

BLI does not dispute in 2013 it contracted with MOL for service to deliver a container of plastic scrap to Xingang China, or the consignee never took delivery. The Center of this case is not that BLI did not attempt to work with MOL to resolve this matter (Indeed BLI did try to work with MOL) Rather this case is about MOL failure of service per their own published tariff to off load the container within 15 days after arrival in an attempt to unjustly enrich themselves through manipulation and non-notification to the complainant of a serious issue until 27 days after demurrage had begun to accrue or through gross mismanagement to notify BLI.

**Rebuttal to Respondents Find of Fact**

Point Number 1: BLI does not dispute.

Point Number 2: BLI does not dispute.

Point Number 3: BLI does not dispute.

Point Number 4: BLI does not dispute.

Point Number 5: BLI does not dispute.

Point Number 6: BLI does not dispute.

Point Number 7: BLI disputes this point. MOL sent sporadic emails to BLI.

Point Number 8: BLI does not dispute.

Point Number 9: BLI does not dispute.

Point Number 10: BLI does not dispute.

Point Number 11: BLI does not dispute.

Point Number 12: BLI does not dispute.

Point Number 13: BLI disputes this point as conjecture and asked the court to review MOL  
Point Number 14 the same cargo description was delivered to Xingang to other consignee's without Incident.

Point Number 15: BLI disputes this point MOL shipped this container direct to Hong Kong without notification to BLI.

Point Number 16: BLI does not dispute this point.

Point Number 17: BLI does not dispute this point.

Point Number 18: BLI does not dispute this point.

Point Number 19: BLI disputes this point. First some detention charges did incur for 8 other containers and were paid by the consignees in China to MOL. This case centers around one container. Second on June 5<sup>th</sup> Kerri Keith did request MOL a reduce detention charges from 4/22/13 until 5/29/13. MOL verbally declined this request on this one container's and any others. BLI refutes MOL claim that BLI did not communicate with them for over a one month period. BLI simply refused an unreasonable demand of clear extortion from MOL on this one container.

Point Number 20: BLI disputes this point eight of these container excluding the one at the center of this controversy were ultimately picked up and the consignee paid MOL for detention charges on these eight loads.

Point Number 21: BLI does not dispute this point but must reiterate the detention for the 8 containers in point 19 were paid by the consignees and the cargoes were allowed into China.

Point Number 22: BLI does not dispute this point. BLI refused to give into an unreasonable demand of extortion.

Point Number 23: BLI does not dispute this point.

Point Number 24: BLI does not dispute this point.

Point Number 25: BLI does not dispute this point.

Point Number 26: BLI does not dispute this point.

Point Number 27: BLI does not dispute this point.

Point Number 28: BLI does not dispute this point.

Point Number 29: BLI does not dispute this point.

Point Number 30: BLI does not dispute this point.

Point Number 31: BLI disputes this point. BLI attempted to negotiate for only those detention charges it had incurred after notification from MOL. MOL demanded an extortionist amount include detention charges incurred prior to notification to BLI.

Point Number 32: BLI disputes this point. MOL had not opened the container as evidenced by the original seal remaining intact. Therefore MOL cannot contend prohibitively expensive costs for disposal of the plastic scrap and are baseless. If MOL had off loaded this container after the expiration of free time, which was their option. Another party could have purchased this scrap. BLI contends MOL violated 46 U.S. Code 41102 (A) by Means of false billing and failing to observe just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivery of property.

Point Number 33: BLI disputes this document as is was not issued by CIQ the official government agency in China.

Point Number 34: BLI disputes this statement. Cargo was good quality plastic scrap that had a commercial value and should not have been disposed.

Point Number 35: BLI disputes this point as this inspection service was not CIQ the official government agency in China and their qualifications cannot be authenticated.

Point Number 36: BLI disputes this point as cargo could have been sold locally in Xingang.

Point Number 37: BLI disputes this point as cargo could be been sold locally in Xingang.

Point Number 38: BLI does not dispute this point cargo was re-exported, except through no fault of BLI.

Point Number 39: BLI does not dispute this point.

Point Number 40: BLI cannot comment on this point.

Point Number 41: BLI cannot comment on this point as this communication was not received by BLI until after receiving notification from Middlesex County Court New Jersey and was addressed to this court and was an out of date address of BLI that MOL choose to use instead of the address on BLI contract with MOL.

Point Number 42: BLI disputes this point on the grounds it was extortion.

Point Number 43: BLI disputes this point. As of this date BLI or Taylors Resources has not received from Middlesex County court or attorneys from MOL any copy of a default Judgment. Further it is BLI intention to revisit issues before the court in New Jersey after findings have been decided this this court, who BLI believes is the correct venue.

### **Rebuttal to Respondent Legal Argument**

Complainant contention is not that MOL acted unreasonably in is delay in bring legal action in New Jersey. Complainant's contention is MOL acted unreasonably in delay of notification to Complainant on an issue of detention and then demanding an amount that could only be called exorbitant, when many other options were available to minimize damages of all parties. This is in clear violation of 46 U.S. Code & Section 41104 (4) (D) for service pursuant to a tariff, engaged in any unfair or unjustly discriminatory practice in the matter of loading and landing of freight. Please refer to Exhibit #14 Page 19, section 2.1.5.1 of MOL Line Rule Tariff. Therefore the argument that the detention charges, disposal costs constitute a freight claim that the shipper is liable should be dismissed as a defense. BLI contends MOL failed in its service and therefore owns US\$1292 for failure of service under Section 40503 (3).

Defendant MOL has contended in its defense that neither the consignee nor any other party attempted to take delivery. BLI must ask the court to dismiss this defense based on evidence BLI submitted to this court in emails documenting BLI wanted to move this container to another port and another consignee and were blocked by MOL efforts through direct shipment and then demanding extortion detention charges. Based on this MOL knowing violated Section 41104 (10) by unreasonably refuse to deal or negotiate to minimize expenses being incurred or allow BLI to Move this container to another country that MOL had to ability to accomplish.

Defendant MOL contends its only mean of generating revenue is through the use of containers. Clearly based on the amount of detention MOL claimed for a 27 day delay in notifying BLI after it was discovered there was a problem, this defense should be dismissed. Defendant MOL contends it is a longstanding industry practice to collect fees for detention/ demurrage. Mediterranean Shipping Co (USA) v Cargo Agents Inc. However when considering the exorbitant amount requested \$6500, When BLI was ready to move this container to another port. This defense should be dismissed.

Defendant MOL contends a party in default is suppose to assume the risk, that further expenditures will be needed to remedy his breach and cannot cast this risk on plaintiff. If on the day after free detention had ended MOL had notified BLI of a breach and the consignee was not picking up the cargo. BLI would have been responsible for detention from that point on. MOL waited 27 days and ran up a detention bill and demanded BLI pay it. MOL also failed in allowing for a direct shipment to another port and when BLI agreed to ship through another port provided its bill for exorbitant detention charges. MOL failed in service to BLI. BLI contends MOL violated 46 U.S. Code 41102 "C" failing to observe just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivery of property.

### **Final Closing Summation**

This is a case about alleged abuse of power or incompetence, BLI has contented from the beginning, MOL failed in its service to BLI. First by MOL failure to notify BLI there was a problem for 27 days, second MOL failed to direct ship this container upon request to another buyer which BLI had lined up, third MOL presented exorbitant bill for detention charges no reasonable exporter should have to face. Fourth MOL presented bills for transport and alleged destruction of materials that had commercial value.

Throughout these proceedings MOL has provided questionable opinions and documentation not issued by government agencies and has relied on the defense it's all BLI's fault and BLI should pick up the entire bill. BLI respectfully requests the Federal Maritime Commission find in BLI favor and award BLI Ocean Freight charges of US\$1292.00, FMC court costs, instruct MOL to reverse its detention bill and sanction MOL for its actions.

Dated: South Plainfield, New Jersey  
November 14, 2016

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Certificate of Service

I hereby certify that I have this 17 day of November 2016, served a copy of the foregoing Rebuttal Brief upon the following by e-mail, and copies by courier shall follow:

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I further certify that the electronic copy of the Response Brief served by e-mail is a true and correct copy of the paper original, and that the signed paper original and five (5) copies are being forwarded to the Secretary of the Commission via courier.

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Jack Chiang

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