

ORIGINAL

S E R V E D
March 18, 2009
FEDERAL MARITIME COMMISSION

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WASHINGTON, D.C.

DOCKET NO. 07-04

**NORLAND INDUSTRIES, INC.,
LINNA TEXTILES MANUFACTURING LIMITED,
MEDCORP DISTRIBUTORS, INC.,
MALAN GARMENT LIMITED, and
MALAN GARMENT, INC.**

v.

RELIABLE LOGISTICS, LLC

**MEMORANDUM AND ORDER ON
MOTION TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT**

On April 11, 2007, complainants Norland Industries, Inc., Linna Textiles Manufacturing Limited, Medcorp Distributors, Inc., Malan Garment Limited, and Malan Garment, Inc., commenced this proceeding by filing a complaint alleging that respondent Reliable Logistics, LLC (Reliable) violated the Shipping Act of 1984. The Secretary's attempt to send notice of this proceeding to Respondent was returned.

By letter to the Secretary dated September 19, 2007, counsel for Complainants informed the Commission that Respondent "is no longer in active business and left no forwarding address" and "requested that this matter remain pending before the FMC notwithstanding that service has not been effected on Respondent." Counsel also stated that Complainants had commenced a parallel action against Respondent in a New York state court. Counsel asked that this proceeding remain pending, but inactive, until resolution of the New York state court case. (Letter dated September 19, 2007, from counsel for Complainants to Secretary, FMC.) This proceeding was stayed while Complainants pursued their New York case to judgment. *Norland Industries, Inc. v. Reliable Logistics, LLC*, Index No. 7039-07 (N.Y. Sup. Ct. (County of Queens) May 21, 2008) (Judgment After Inquest) (entering judgment for Plaintiffs in the amount of \$181,375.03).

Complainants stated they would present the judgment against the FMC OTI bond and requested that this matter continue pending collection under the bond. (Complainants' Status Report

filed June 9, 2008.). The stay of this proceeding continued while Complainants contacted Respondent's surety and discussed the matter with the surety's counsel. On November 13, 2008, Complainants submitted a Status Report stating:

[Complainants'] initial assumption that [their] judgment would be settled by the FMC OTI Bond underwriters of Reliable Logistics (the "[Bond]") was apparently unfounded. On September 24, 2008 Henry P. Gonzales, Esq. of [Rodriguez], O'Donnell, Gonzales & Williams, P.C. counsel for the Bond responded to [Complainants'] demand for payment by setting out a number of reasons supporting their contention that the Bond was not obligated to respond to [Complainants'] judgment. A number of issues raised by the Bond's counsel required us to obtain further information from our client, and we are presently in the process of formulating a response to that declination. We expect [Complainants'] response will be submitted by November 24, 2008, and thereafter we will assess the necessity of petitioning the Commission to allow amendment of the proceedings so as to include the Bond as an additional defendant.

In light of the foregoing, Complainants respectfully request further continuation of this proceeding, for reasons previously stated, pending further settlement discussions with counsel for the Bond. If the matter is not . . . resolved between counsel directly, Complainants will, unless directed otherwise, provide a further status report on or before December 17, 2008.

([Complainants'] November 13, 2008, Status Report at 1-2.) On December 18, 2008, Complainants submitted a Status Report stating that counsel's efforts to resolve the matter with the surety's counsel had not been successful and stating that Complainants would submit an amended complaint adding the surety as a respondent.

On January 15, 2009, Complainants filed their pending Motion to File Amended and Supplemental Complaint and served the motion on Reliable, Washington International Insurance Company (Washington International) (Reliable's surety), and counsel for Washington International. Neither Reliable nor Washington International has replied to the motion.

Complainants' Amended and Supplemental Complaint adds Washington International as a party and sets forth events occurring after the original Complaint was filed. I will grant Complainants' Motion to File Amended and Supplemental Complaint.

Complainants requested that the original Complaint be handled on an expedited basis pursuant to 46 C.F.R. Subpart K (Shortened Procedure). Reliable did not oppose that request. The Amended and Supplemental Complaint also requests that it be handled pursuant to the Subpart K Shortened Procedure. If Washington International consents to this procedure, on or before April 3, 2009,¹ Washington International should file with the Commission and serve on the respondents its answering memorandum of facts and arguments. If Washington International does not consent to

¹ Commission Rule 183 provides that a respondent reply within 25 days of service of a complaint handled pursuant to Subpart K "unless a shorter period is fixed." 46 C.F.R. § 502.183. Given Washington International's prior knowledge of Complainants' claims and the issues raised in this proceeding, I find that a shorter period is appropriate.

the Shortened Procedure, the matter will be governed by 46 C.F.R. Subpart E. 46 C.F.R. § 502.183. Washington International shall file its answer on or before April 3, 2009. 46 C.F.R. § 502.64.

It is suggested that the parties familiarize themselves with the Commission's discussion in the preamble to the promulgation of its final rule adding 46 C.F.R. Part 515 to its regulations. *Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries*, FMC Docket No. 98-28, 64 Fed. Reg. 11156, 11159-11164, 28 S.R.R. 629, 639-646 (Mar. 8, 1999) (discussing Financial Responsibility Requirements). *See also Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries – Petitions of the American Surety Association and Kemper National Insurance Companies for Reconsideration of the Final Rule*, FMC Docket No. 98-28, 28 S.R.R. 1028 (1999) (denying petitions for reconsideration).

ORDER

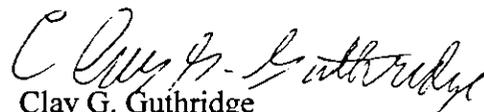
Upon consideration of Complainants' Motion to File Amended and Supplemental Complaint and the record herein, it is hereby

ORDERED that Complainants' Motion to File Amended and Supplemental Complaint be **GRANTED**. The Secretary is asked to file the Amended and Supplemental Complaint lodged with the Motion to File Amended and Supplemental Complaint and serve the Amended and Supplemental Complaint on Respondents. It is

FURTHER ORDERED that on or before April 3, 2009, respondent Reliable Logistics, LLC, serve and file its answering memorandum of facts and arguments. It is

FURTHER ORDERED that on or before April 3, 2009, Washington International Insurance Company serve and file its answering memorandum of facts and arguments as required by 46 C.F.R. § 183 if Washington International Insurance Company consents to the request that this proceeding be handled pursuant to 46 C.F.R. Subpart K. It is

FURTHER ORDERED that on or before April 3, 2009, Washington International Insurance Company answer or otherwise respond to the Amended and Supplemental Complaint pursuant to 46 C.F.R. Subpart E if Washington International Insurance Company does not consent to the request that this proceeding be handled pursuant to 46 C.F.R. Subpart K. Within fourteen days of the service of Washington International Insurance Company's answer, the parties shall submit a joint proposed schedule for discovery and submission of evidence and briefs that will permit issuance of an Initial Decision in this proceeding by July 23, 2009. If the parties are unable to agree on a joint proposed schedule, within fourteen days of the service of Washington International Insurance Company's answer, each party is ordered to submit its individual proposed schedule with an explanation of why the parties could not agree on a joint proposal.


Clay G. Guthridge
Administrative Law Judge