

Exhibit No. 1 to Subpart S [502.304(a)]

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FEDERAL MARITIME COMMISSION

Small Claim Form for Informal Adjudication and Information Checklist

Federal Maritime Commission, Washington, D.C.

Informal docket No.1885(1).....

**D&W CLUTCH & BRAKE (formerly D&W Rebuilders),
2601 Sisson Street, Baltimore, MD 21211, USA
Tel. (410) 235 8829, Fax (410) 235 8862, Email: kkeller@dwclutch.com
Contact Person : Mr. Kevin Keller, President
(CLAIMANT)**

VS.

**1. INTERNATIONAL TOUCH CONSOLIDATOR INC., USA. (RESPONDENT - I)
Ocean Imports Dept., 147-148 182nd Street, 2nd Floor, Jamaica, NY 11413, USA
Tel. (718) 656 0831, Fax (708) 656 0579, Email: Raymond.Wu@itcny.com
Contact Person: Mr. Raymond Wu
In Joint Venture with [as per Section 10(e) of Shipping Act 1984]**

And

**2. MaCANDREW & COMPANY LIMITED, USA (Respondent – II)
40 Cragwood Road, South Plainfield, NJ 07080, USA
Tel. (908) 412 2175, (908) 791 6800, Mobile: (908) 432 6547
Email: msullivan@macandrews.net
Contact Person: Ms. Mary C. Sullivan, Owner's Representative
(RESPONDENTS)**

I. The Claimant, D&W Clutch & Brake (herein referred as D&W) is Company incorporated in USA since

**Represented by : Mr. Kevin Keller, President (....)
Mr. Brian Engleman, (.....)**

Nature of business : Distribution of Clutch Assemblies, Clutch Components, Clutch Kits and Brake systems for Commercial Vehicles, Automotive Applications, Agricultural Tractors & Off Highway Vehicles.

Principal place of Business : 2601 Sisson Street, Baltimore, MD 21211, USA.

Establishments at :

II The Respondents

- a) **INTERNATIONAL TOUCH CONSOLIDATOR INC** (herein referred as ITC) is a freight forwarder / common carrier incorporated in Jamaica, NY, USA. Represented by Mr. Raymond Wu.
FMC Organization No. 014239.

In Joint Venture with [as per Section 10(e) of Shipping Act 1984]

Indian Agent:

ROSMARINE SHIPPING PRIVATE LIMITED, B-57, II Floor, Kalkaji, New Delhi – 110019, India.

Tel. (+91) 11 4171 6550, 4171 6551, Fax: (+91) 11 4171 6554

Email: custcare@eosmarine.com, rosmarine@rosmarine.com

Contact Persons : Mr. Rajesh Bhatia, Managing Director

Mr. S. K. Gosain, Director

And

- b) **MaCANDREWS & COMPANY LIMITED** (a UK based Company, established in 1771), Cragwood Road, South Plainfield, NJ 0780, USA (herein referred as **MacAndrews**), USA, an Ocean Common Carrier.
Represented by : Ms. Mary C Sullivan, Owner Representative.
Email: msullivan@macandrews.com

III. The matters that gave rise to the claim are:

A. Non-delivery of shipment

- Shipment to D&W Rebuilders, USA (herein referred as D&W) against invoice No. EX/2005-2006 / 72 dated 22 June, 2005 of Clutch Auto Limited, Faridabad India (herein referred to as CAL) was sent through common carrier ITC and Rosmarine.
- The shipment is being held in warehouse at Baltimore by ITC on the grounds that have no relevance at all in this case.
- The shipment has not been released to D&W even after surrendering the Original HBL to ITC for release of the shipment and HBL does not even specify that MBL is required to be Surrendered / Presented for release of the shipment.
- Rosmarine has not sent the Master B/L of MacAndrews to ITC ever since the shipment arrived at Baltimore on 24 January 2006.
- The shipment is still held up at Baltimore, USA at the instructions of Rosmarine, duly Custom Cleared by ITC.

The shipment is incurring Detention and demurrage charges in Warehouse at Baltimore.

B. Malafide intention

- B/L No. RSPLDELBAL005151 dt. 14 December, 2005 issued by Rosmarine as agents on behalf of their Principals ITC duly mentioning "freight prepaid at Delhi subject to realization" & "FREIGHT PREPAID, FREIGHT AS ARRANGED, IHC PREPAID"
- Payment towards this shipment was paid by CAL vide cheque no. 954571 dt. 16th January 2006 for INR 150,000.00 against Rosmarine Debit Note No. ROS/DEL490 dt. 15th December 2005 for Rs. 130,158.00. The cheque was en-cashed by Rosmarine and there is no payment due as far as this consignment is concerned.

C. Misguidance

D&W & CAL were misguided by the Joint Venture Common Carrier **ITC & Rosmarine** by indicating different Carrier names in the House Bill of Lading and Arrival Notice.

- Carrier mentioned in-house B/L **C P KANHA VOY 5151**.
- Arrival Notice/Remarks indicates it as **APL ALEXANDRIT / 5152W**,
- D&W was not aware of the name of the actual Carrier vessel till the Arrival Notice/Remarks dt. 3rd Feb 2006 was received at their end and was not sure about the motive behind this misleading information.

D. Extortion

Common Carriers are in league with each other and every action of their's test amounts to, "Virtual Extortion" of amounts not due to them and they are carrying the complainant's to Ransom just because they manipulated to collect MBL from MacAndrew's and even though House B/L does not specify the presentation / Surrender of MBL for the release of cargo to the Receiver.

Understandably, there is no issue pending either from D&W or CAL and ITC is holding us at ransom on extraneous reasons with malafide intentions.

E. Efforts for settlement

- We have been in constant touch with ITC for release of the consignment to meet the urgent commitments of our customers.
- We also requested ITC directly and through a legal notice dated 8th March 2006 issued by our legal Attorneys Miles & Stockbridge P.C., USA for release of the shipment and even offered to give a Bank Guarantee against release of the consignment, vide Email dated 25th April' 2006 which was neither acknowledged nor replied.

We the Claimant have taken all the steps and have exhausted all the channels to resolve the issue but the Defendant's has no interest of settling the same amicably. Hence your assistance is required to help us out of this stalemate.

IV. NOT APPLICABLE, SINCE THE CLAIM IS NOT FOR OVERCHARGES.

V. **Sections violated as per US Shipping Act, 1984.**

- ITC has violated the Section 10(b)(3) of the US Shipping Act 1984 by retaliating and refusing us delivery of shipment handled by them.
- As per section 10(d)(1) all common carriers and ocean transportation intermediary or marine terminal operator has to establish, observe and enforce just and reasonable regulations and practices relating or connected with receiving, handling, sorting or delivering the property.
- ITC/ MacAndrews have willfully and knowingly committed the above violations to harass and blackmail us by non-delivery of the shipment.

VI. **Injury and damages**

- Business between D&W and CAL is of an ongoing nature. In this particular case demurrage charges are mounting day by day ever since we have surrendered the Bill of Lading on January 13, 2006. Arrival Notice was faxed to us on February 3, 2006 and the shipment is on hold till the last day of intimation and after that all our efforts to get the consignment retrieved have been frustrated because of the ulterior motives of both ITC and MacAndrews.
- The Shipment value is US\$ 36,186.00. The last assessed value of the shipment is approximately US\$ 10,000.00.
- Since we have no access to the shipment, we are not aware whether it is abandoned nor are we aware of the whereabouts of the shipment.
- No correspondence not even legal notice have been able to work on release of this shipment because they are intentionally holding back the shipment without any plausible reason.
- We are losing goodwill, business opportunities and loss of further orders from prospective customers.
- We as well as CAL have suffered a lot at the hands of ITC and hence plea to your highness for recovery of the damages as under:
 - (i) Release of container to us.
 - (ii) Demurrage and Detention Charges Estimated – US\$ 40000.00
 - (iii) Damages towards loss of Business, Goodwill and Opportunities.

VII. The undersigned authorizes the Settlement Officer to determine the above-stated claim pursuant to the informal procedure outlined in Subpart S (46 CFR 502.301 – 502.305) of the Commission's informal procedure for adjudication of small claims to discretionary Commission review.

We enclose herewith the following relevant Annexures along with related documents and correspondence.

- | | |
|--|-----------------|
| | <u>Annexure</u> |
| a) Shipment Details | I |
| b) Details of payments | II |
| c) Efforts made by D&W and CAL | III |
| d) Demand Draft No. dt. for US\$ 67.00 towards Filing Fee. | |

Date: 8-25-, 2006.

Kevin Keller

Kevin Keller
President ()
D&W CLUTCH & BRAKE
2601 Sisson Street, Baltimore, MD 21211, USA
Tel. (410) 235 8829, Fax (410) 235 8862, Email: kkeller@dwclutch.com

(Signature of agent or attorney)

(Agent's or attorney's address)

Verification

State of Maryland, Country of Baltimore, ss: _____, being first duly sworn on oath deposes and says that he / she is

The claimant has read the foregoing and that the facts set forth without qualification are true and that the facts upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of Maryland
Country of Baltimore, day of 25 Aug 2006 (Seal)

Alexander Cooper
(Notary Public)

My Commission expires, 10/1/09

ANNEXURE I – SHIPMENT DETAILS

- A. House B/L No. RSPLDELBAL005151 dt. 14 December, 2005 issued by **RSPL** as agents on behalf of their Principals **ITC**, a Common Carrier.
- B. B/L No. AMS HB/L No. MCAWDELORF00157A issued by M/s. **RSPL.**, Consignee shipping agent being **ITC**, Ocean Imports Deptt. 147-48, 182nd Street, 2nd Floor, Jamaica, NY 11413, USA.
- D. Ocean B/L # MCAWDELORF00157 issued by **HLA**, 415 Ansal Tower, 38 Nehru Place, New Delhi-11019, India as Agent on behalf of **MCL**.
- E. Container No. IPXU-3304500/20'
- F. Vessel / Voyage: APL ALEXANDRIT / 5152W
- G. Date of Sailing out from Delhi: 14 December 2005
- H. Date of Sailing out from Mumbai: 27 December, 2005
- I. Port of Discharge: Norfolk, USA: ETA – 16 January, 2006
- J. Final Destination: Baltimore - ETA January 24, 2006
- K. Actual date of Arrival at Destination (Baltimore): January 24, 2006

ANNEXURE II – PAYMENTS

- a. The Defendant's Debit Note No. ROS/DEL490 dt. 15th December 2005 for **INR130,158.00.**
- b. The Complainant's **Cheque No. 954571** dt. 16th January 2006 for **INR 150,000.00,**
- c. Bank statement of the Complainant's highlighting relevant portion of cheque **en-cashed by the Defendant's on 21st January 2006,** is attached and there exists no liability on this consignment.
- d. Reconciliation Statement of The Complainant and the Defendant's dated 10/27/2005 duly **acknowledged** by the Defendant's subject to verification, **but no verification statement / receipts / bills provided by the Defendant's.**

ANNEXURE III – EFFORTS MADE BY THE DEFENDANT'S

- A. The Complainant has been in constant touch with the Defendant's for release of the consignment to meet the urgent commitments of our customer, vide letters dated 13 Feb 2006, 14 Feb 2006, 23 Feb 2006, 24 Feb 2006 & 25 Feb 2006, 9th March 2006 & 8th April 2006.**

- B. The Defendant's also requested the Complainant's directly and through a legal notice dt. 8th March 2006 issued by their legal Attorneys Miles & Stockbridge P.C., release of the shipment.**

- C. The Complainant's even offered to give Bank Guarantee vide Email dated 25 April, 2006 for release of the consignment but no response given by the Defendant's for release of the consignment.**

**Exhibit No. 1 to Subpart S [§ 502.304(a)] –
Small Claim Form for Informal Adjudication
and Information Checklist**

Federal Maritime Commission, Washington, D.C.

Informal Docket No. _____

(Claimant)

vs.

(Respondent)

I. The claimant is [state in this paragraph whether claimant is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

II. The respondent named above is [state in this paragraph whether respondent is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

III. That [state in this and subsequent paragraphs to be lettered A, B, etc., the matters that gave rise to the claim. Name specifically each rate, charge, classification, regulation or practice which is challenged. Refer to tariffs, tariff items or rules, or agreement numbers, if known. If claim is based on the fact that a firm is a common carrier, state where it is engaged in transportation by water and which statute(s) it is subject to under the jurisdiction of the Federal Maritime Commission].

IV. If claim is for overcharges, state commodity, weight and cube, origin, destination, bill of lading description, bill of lading number and date, rate and/or charges assessed, date of delivery, date of payment, by whom paid, rate or charge claimed to be correct and amount claimed as overcharges. [Specify tariff item for rate or charge claimed to be proper].

V. State section of statute claimed to have been violated. (Not required if claim is for overcharges).

VI. State how claimant was injured and amount of damages requested.

VII. The undersigned authorizes the Settlement Officer to determine the above-stated claim pursuant to the informal procedure outlined in Subpart S (46 CFR 502.301 - 502.305) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission review.

Attach memorandum or brief in support of claim. Also attach bill of lading, copies of correspondence or other documents in support of claim.

8-25-06
(Date)

Kenneth K. K...
(Claimant's signature)

2601 SUSSEX ST BALTIMORE, MD 21211
(Claimant's address)

(Signature of agent or attorney)

(Agent's or attorney's address)

Verification

State of _____, County of _____, ss: _____, being first duty sworn on oath deposes and says that he or she is _____

The claimant (or if a firm, association, or corporation, state the capacity of the affiant) and is the person who signed the foregoing claim, that he or she has read the foregoing and that the facts set forth without qualification are true and that the facts stated therein upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of _____, County of _____, this _____ day of _____, 19_____, (Seal)

(Notary Public)

My Commission expires, _____

Information To Assist in Filing Informal Complaints

Informal Docket procedures are limited to claims of \$50,000 or less and are appropriate only in instances when an evidentiary hearing on disputed facts is not necessary. Where, however, a respondent elects not to consent to the informal procedures [See Exhibit No. 2 to Subpart S], the claim will be adjudicated by an administrative law judge under Subpart T of Part 502.

Under the Shipping Act of 1984 (for foreign commerce), the claim must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of claimant.

A violation of a specific section of a particular shipping statute must be alleged.

The format of Exhibit No. 1 must be followed and a verification must be included. [See §§ 502.21 - 502.32, 502.112, and 502.304] An original and two (2) copies of the claim and all attachments, including a brief in support of the claim, must be submitted.

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984; 55 FR 28388; 64 FR 7804, Feb. 17, 1999]