

ORIGINAL

S E R V E D  
December 1, 2009  
FEDERAL MARITIME COMMISSION

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

**DOCKET NO. 06-06**

**EUROUSA SHIPPING, INC., TOBER GROUP, INC., AND CONTAINER  
INNOVATIONS, INC. – POSSIBLE VIOLATIONS OF SECTION 10 OF THE  
SHIPPING ACT OF 1984 AND THE COMMISSION’S REGULATIONS  
AT 46 C.F. R. § 515.27**

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**INITIAL DECISION OF CLAY G. GUTHRIDGE, ADMINISTRATIVE LAW JUDGE,  
ON INVESTIGATION OF CONTAINER INNOVATIONS, INC.<sup>1</sup>**

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By Order of Investigation and Hearing dated May 11, 2006, the Commission commenced an investigation into the activities of respondents EuroUSA Shipping, Inc. (EuroUSA), Tober Group, Inc. (Tober), and Container Innovations, Inc. (Container Innovations) for possible violations of section 10 of the Shipping Act of 1984 (Shipping Act or Act)<sup>2</sup> and the Commission’s Regulations at 46 C.F.R. § 515.27. *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission’s Regulations at 46 C.F.R. § 515.27*, FMC No. 06-06, Order at 4 (May 11, 2006) (Order of Investigation and Hearing). EuroUSA, Tober, and Container Innovations are or were bonded and tariffed ocean

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<sup>1</sup> The initial decision will become the decision of the Commission in the absence of review by the Commission. Rule 227, Rules of Practice and Procedure, 46 C.F.R. § 502.227.

<sup>2</sup> After this proceeding was instituted by the Commission, the Shipping Act was reenacted as positive law through reorganization and restatement of the then current law. The bill’s purpose was to “reorganiz[e] and restat[e] the laws currently in the appendix to title 46. It codifies existing law rather than creating new law.” H.R. Rep. 109-170, at 2 (2005). Section 10(b) of the Act is now codified as 46 U.S.C. § 41104. The Commission has continued to cite provisions of the Act by their original section references. *See, e.g., City of Los Angeles, California, et al. – Possible Violations of Sections 10(b)(10), 10(d)(1) and 10(d)(4) of the Shipping Act of 1984*, FMC No. 08-05 (Sept. 24, 2008) (Order of Investigation and Hearing). Accordingly, I follow that practice in this decision.

transportation intermediaries (OTIs) licensed by the Commission. The Commission issued the notice to investigate whether the three intermediaries violated section 10(b)(11) of the Act by “knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act.” *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations*, FMC No. 06-06, Order at 4 (May 11, 2006). This Initial Decision addresses the claims against Container Innovations. Separate decisions address the claims against EuroUSA and Tober. *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations*, FMC No. 06-06 (ALJ Oct. 9, 2009) (Initial Decision of Clay G. Guthridge, Administrative Law Judge, on Investigation of Tober Group, Inc.); *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations*, FMC No. 06-06 (ALJ Oct. 9, 2009) (Memorandum and Initial Decision on Settlement Agreement and Joint Memorandum in Support of Proposed Settlement Filed by Bureau of Enforcement and EuroUSA Shipping, Inc.).

On October 30, 2009, the Bureau of Enforcement (BOE) filed its proposed findings of fact, brief, and appendix on the claims against Container Innovations as required by the October 9, 2009, Procedural Order. *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations*, FMC No. 06-06, Memorandum and Order at 28-30, 33 (ALJ Oct. 9, 2009) (Memorandum and Order on Bureau of Enforcement’s Motion for Sanctions and Summary Judgment Against Container Innovations, Inc.; Procedural Order). Container Innovations’s response to BOE’s filings and its own proposed findings of fact, brief, and appendix were due November 20, 2009. *Id.* at 30-31, 33. The parties were “directed to serve and file hard copies of the documents required by the order by overnight delivery service.” *Id.* at 32. I have been advised by the Secretary that as of close of business on November 30, 2009, the Secretary had not received Container Innovations’s documents. Therefore, this initial decision is based on the following evidence and argument:

- BOE’s Motion for Sanctions and Summary Judgment against Container Innovations, Inc., and accompanying exhibits filed January 23, 2007;
- BOE’s Response to the Administrative Law Judge’s Order to Supplement the Record and accompanying exhibits filed April 30, 2007;
- BOE’s Proposed Findings of Fact Regarding Container Innovations, Inc., BOE’s Brief and Appendix Regarding Container Innovations, Inc., and BOE’s Appendix filed October 30, 2009; and
- BOE exhibits filed in *Mateo Shipping Corp. and Julio Mateo – Possible Violations*, FMC No. 07-07 (ALJ Aug. 28, 2009) (Initial Decision of Clay G. Guthridge, Administrative Law Judge, on Investigation of Mateo Shipping Corp. and Julio Mateo), admin. final, Sept. 29, 2009.<sup>3</sup>

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<sup>3</sup> I take official notice of the record in FMC No. 07-07 pursuant to 46 C.F.R. § 502.226.

Despite Container Innovations's failure to participate in this proceeding, "it is the Commission's responsibility to consider and apply pertinent case law regardless of whether it is presented or how it is characterized by the parties." *Rose Int'l, Inc. v. Overseas Moving Network Int'l Ltd., et al.*, 29 S.R.R. 119, 163 n.34 (F.M.C. 2001) (*Rose Int'l*).

### PRELIMINARY STATEMENT

The Commission commenced this proceeding pursuant to 46 U.S.C. § 41302 to investigate the activities of three licensed OTIs that appeared to have violated section 10(b)(11) of Shipping Act in their dealings with OTIs that did not have bonds and/or tariffs pursuant to requirements of the Act. *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations*, FMC No. 06-06 (May 11, 2006) (Order of Investigation and Hearing). The Commission commenced four additional proceedings to investigate the activities of a number of entities that appeared to have operated as OTIs without a license, bond, and/or tariff as required by the Act. *See Worldwide Relocations, Inc., et al. – Possible Violations of Sections 8, 10, and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21, and 520.3*, FMC No. 06-01 (Jan. 11, 2006) (Order of Investigation and Hearing); *Parks International Shipping, Inc., et al. – Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984, as well as the Commission's Regulations at 46 C.F.R. Parts 515 and 520*, FMC No. 06-09 (Sept. 19, 2006) (Order of Investigation and Hearing); *Anderson International Transport and Owen Anderson – Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984*, FMC No. 07-02 (Mar. 22, 2007) (Order of Investigation and Hearing); *Embarque Puerto Plata, Corp., et al. – Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. Parts 515 and 520*, FMC No. 07-07 (July 31, 2007) (Order of Investigation and Hearing).

As explained more fully below, the Act recognizes two types of OTIs: non-vessel-operating common carriers (NVOCC) and ocean freight forwarders. Ocean freight forwarders and NVOCCs are involved in the business of international transportation by water of goods belonging to other persons, although neither operates vessels. In many respects, the services they perform are quite similar. The critical difference for these five proceedings is that NVOCCs are by definition common carriers (*i.e.*, they hold themselves out to the general public to provide transportation by water to and from foreign ports and assume responsibility for that transportation of the goods) while ocean freight forwarders are not common carriers.

Section 8 of the Act requires all common carriers to publish tariffs. Since an NVOCC is a common carrier, it must publish tariffs, but since an ocean freight forwarder is not a common carrier, it does not publish tariffs. Section 19 of the Act requires all OTIs (NVOCCs and ocean freight forwarders) to furnish a bond, insurance, or other form of surety to compensate shippers whose goods may be lost or damaged as a result of a violation of the Act by the OTI. Section 10(b)(11) of the Act, the section that the Commission determined Container Innovations appeared to have violated, states that a common carrier such as Container Innovations may not "knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary

that does not have a tariff as required by [section 8] and a bond, insurance, or other surety as required by [section 19].” 46 U.S.C. § 41104.

These five proceedings have in common the issue of what activities distinguish operating as an NVOCC from operating as an ocean freight forwarder. Resolution of that question requires an examination of each entity’s conduct on a particular shipment to determine whether it operated as an OTI, either an NVOCC or an ocean freight forwarder, on that shipment.

## BACKGROUND

### I. STATUTORY FRAMEWORK.

The Act defines and regulates a number of different types of entities that are involved in the international shipment of goods by water, including two types of OTIs. “The term ‘ocean transportation intermediary’ means an ocean freight forwarder or a non-vessel-operating common carrier.” 46 U.S.C. § 40102(19). “The term ‘ocean freight forwarder’ means a person that – (A) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments.” 46 U.S.C. § 40102(18). “The term ‘non-vessel-operating common carrier’ means a common carrier that – (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier.” 46 U.S.C. § 40102(16). To be an NVOCC, the intermediary must meet the Act’s definition of “common carrier.”

The term “common carrier” – (A) means a person that – (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation; (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 U.S.C. § 40102(6).

The statutory definitions are echoed in the Commission’s regulations:

*Ocean transportation intermediary* means an ocean freight forwarder or a non-vessel-operating common carrier. For the purposes of this part, the term

(1) *Ocean freight forwarder* means a person that -

(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) processes the documentation or performs related activities incident to those shipments; and

(2) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

46 C.F.R. § 515.2(o).

*Common carrier* means any person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that: (1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and (2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 C.F.R. § 515.2(f). *Landstar Express America, Inc. v. FMC*, 569 F.3d 493, 494-495 (D.C. Cir. 2009) (*Landstar*).

Section 8 of the Act requires “[e]ach common carrier and conference [to] keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.” 46 U.S.C. § 40501(a). Since an NVOCC is a common carrier, it must publish tariffs. An ocean freight forwarder is not a common carrier; therefore, it does not publish tariffs.

Section 19(b) of the Act, applicable to NVOCCs and ocean freight forwarders, requires a person wanting to operate as an OTI to furnish proof of financial responsibility.

A person may not act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety – (1) in a form and amount determined by the . . . Commission to insure financial responsibility; and (2) issued by a surety company found acceptable by the Secretary of the Treasury.

46 U.S.C. § 40902(a). An ocean freight forwarder must “furnish evidence of financial responsibility in the amount of \$50,000,” 46 C.F.R. § 515.21(a)(1), and an NVOCC must “furnish evidence of financial responsibility in the amount of \$75,000.” 46 C.F.R. § 515.21(a)(2).

“[A]n entity can operate as a freight forwarder and as an NVOCC.” (Federal Maritime Commission Frequently Asked Questions, Ocean Transportation Intermediaries, [http://www.fmc.gov/home/faq/index.asp?F\\_CATEGORY\\_ID=10](http://www.fmc.gov/home/faq/index.asp?F_CATEGORY_ID=10), accessed Dec. 1, 2009.) An intermediary that is licensed by the Commission as an ocean freight forwarder and as an NVOCC must obtain separate proofs of financial responsibility for each type of operation. “The NVOCC proof of financial responsibility will only cover claims arising from the NVOCC’s transportation-related activities and the freight forwarder proof of financial responsibility will only cover claims arising from its freight forwarder services.” (*Id.*) The bond is to be used to satisfy any civil penalty or order of reparations and “may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities.” 46 U.S.C. § 40902(b).

Transportation-related activities which are covered by the financial responsibility obtained pursuant to this part include, to the extent involved in the foreign commerce of the United States, any activity performed by an ocean transportation intermediary that is necessary or customary in the provision of transportation services to a customer, but are not limited to the following:

- (1) for an ocean transportation intermediary operating as a freight forwarder, the freight forwarding services enumerated in § 515.2(i), and
- (2) for an ocean transportation intermediary operating as a non-vessel-operating common carrier, the non-vessel-operating common carriers services enumerated in § 515.2(l).

46 C.F.R. § 515.2(w). As a guide to determine what transportation-related activities are covered by the bond or surety for NVOCCs and ocean freight forwarders, the Commission promulgated regulations providing examples of freight forwarding services and NVOCC services performed by an ocean transportation intermediary that are necessary or customary in the provision of transportation services to a customer.

*Freight forwarding services* refers to the dispatching of shipments on behalf of others, in order to facilitate shipment by a common carrier, which may include, but are not limited to, the following:

- (1) ordering cargo to port;
- (2) preparing and/or processing export declarations;
- (3) booking, arranging for or confirming cargo space;
- (4) preparing or processing delivery orders or dock receipts;
- (5) preparing and/or processing ocean bills of lading;
- (6) preparing or processing consular documents or arranging for their certification;

- (7) arranging for warehouse storage;
- (8) arranging for cargo insurance;
- (9) clearing shipments in accordance with United States Government export regulations;
- (10) preparing and/or sending advance notifications of shipments or other documents to banks, shippers, or consignees, as required;
- (11) handling freight or other monies advanced by shippers, or remitting or advancing freight or other monies or credit in connection with the dispatching of shipments;
- (12) coordinating the movement of shipments from origin to vessel; and
- (13) giving expert advice to exporters concerning letters of credit, other documents, licenses or inspections, or on problems germane to the cargoes' dispatch.

46 C.F.R. § 515.2(i).

*Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following:

- (1) purchasing transportation services from a VOCC and offering such services for resale to other persons;
- (2) payment of port-to-port or multimodal transportation charges;
- (3) entering into affreightment agreements with underlying shippers;
- (4) issuing bills of lading or equivalent documents;
- (5) arranging for inland transportation and paying for inland freight charges on through transportation movements;
- (6) paying lawful compensation to ocean freight forwarders;
- (7) leasing containers; or
- (8) entering into arrangements with origin or destination agents.

46 C.F.R. § 515.2(l).

The Commission has further described the services of ocean freight forwarders and NVOCCs as follows:

Freight Forwarding OTI services refer to the dispatching of shipments on behalf of others to facilitate shipments by common carriers, including ordering cargo to port; preparing or processing export declarations, bills of lading and other export documentation; booking or confirming cargo space; arranging for warehouse space; arranging cargo insurance; clearing shipments in accordance with United States Government export regulations; preparing and/or sending advance notice of shipments to banks, shippers, and consignees; handling freight monies on behalf of shippers; coordinating the movement of shipments from origin to the vessel; and giving expert advice to exporters.

NVOCC OTI services refers to the provision of transportation by water of cargo between the United States and a foreign country (whether import or export) for compensation without operating the vessels by which the transportation is provided. NVOCC OTI services may include purchasing transportation services from vessel-operating common carriers for resale; payment of port-to-port or multi-modal transportation charges; entering into affreightment agreements with underlying shippers; issuing bills of lading or equivalent documents; arranging and paying for inland transportation on through transportation movements; paying lawful compensation to ocean freight forwarders; leasing containers; and entering into arrangements with origin or destination agents.

(Federal Maritime Commission Frequently Asked Questions, Ocean Transportation Intermediaries, [http://www.finc.gov/home/faq/index.asp?F\\_CATEGORY\\_ID=10](http://www.finc.gov/home/faq/index.asp?F_CATEGORY_ID=10), accessed Dec. 1, 2009.)

As originally enacted, the Shipping Act defined NVOCC as “a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier,” 46 App. U.S.C.A. § 1702(17) (1997) (Westlaw), and ocean freight forwarder as “a person in the United States that – (A) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments.” 46 App. U.S.C.A. § 1702(19) (1997) (Westlaw). Section 10(b)(11) provided:

No common carrier, either alone or in conjunction with any other person, directly or indirectly, may . . . (14) knowingly and willfully accept cargo from or transport cargo for the account of a *non-vessel-operating common carrier* that does not have a tariff and a bond, insurance, or other surety as required by sections 1707 and 1721 of this title.

46 App. U.S.C.A. § 1709 (1997) (Westlaw) (emphasis added).

In 1998, the President signed the Ocean Shipping Reform Act of 1998 (“OSRA”) into law. Ocean Shipping Reform Act of 1998, Pub. L. No. 105-258, 112 Stat. 1902 (1998) (now codified at 46 U.S.C. § 40101-41309). OSRA combined NVOCC and ocean freight forwarder into the newly defined term “ocean transportation intermediary.” OSRA, Sec. 102(10), 112 Stat. at 1903 (now codified at 46 U.S.C. § 40102(19)). The pre-OSRA definitions of ocean freight forwarder and NVOCC were retained in the amended Act. 46 U.S.C. §§ 40102(18) and (16). OSRA also amended section 10(b)(11) by striking “a non-vessel-operating common carrier” and inserting the newly-defined term “ocean transportation intermediary.” OSRA, Sec. 109(a)(12), 112 Stat. at 1910 (now codified at 46 U.S.C. § 41104). Therefore, as amended, section 10(b)(11) reads:

A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not . . . (11) knowingly and willfully accept cargo from or transport cargo for the account of an *ocean transportation intermediary* that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title.

46 U.S.C. § 41104 (emphasis added).

When the Commission promulgated its regulations implementing OSRA, it did not apply the section 10(b)(11) restriction to all OTIs including ocean freight forwarders, but limited its reach to NVOCCs: “No common carrier may transport cargo for the account of a shipper known by the carrier to be an *NVOCC* unless the carrier has determined that the *NVOCC* has a tariff and financial responsibility as required by sections 8 and 19 of the Act.” 46 C.F.R. § 515.27(a) (emphasis added). The Commission did not explain the reason for this limitation in either the preamble to the proposed rule, *see* Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries, 63 Fed. Reg. 70710-70715 (Dec. 22, 1998) (Notice of Proposed Rulemaking), or the preamble to the final rule. *See* Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries, 64 Fed. Reg. 11156-11171 (Mar. 8, 1999) (Final Rule and Interim Final Rule). Tober, one of the other respondents in this proceeding, filed a motion for partial summary judgment. At the argument on Tober’s motion, the parties agreed that this difference results from the fact that NVOCCs are required to publish tariffs, but ocean freight forwarders are not:

- The statute prohibits transporting cargo for an OTI that does not have a tariff *and* a bond;
- NVOCCs are the only OTIs that are required to have tariffs;
- Therefore, the section 10(b)(11) prohibition only applies to OTIs that are NVOCCs.

*See* Transcript of Argument on Tober Motion for Partial Summary Judgment (11/14/07) (Transcript (11/14/07)) at 11-12, 20. BOE echoed this belief in its proposed findings of fact on the claims against Tober.

Since NVOCCs are the sole type of ocean transportation intermediary required to publish a tariff, a violation of Section 10(b)(11) can only occur when a common carrier knowingly and willfully accepts cargo from or transports cargo for the account of an NVOCC that does not have a tariff or a bond.

(BOE Proposed Findings of Fact, Supporting Evidence and Brief on the Claims against Tober at 29 (filed May 22, 2009).) The Commission has determined that although Congress amended section 10(b)(11) to prohibit a common carrier from carrying cargo for its newly-defined term "ocean transportation intermediary," Congress did not intend to expand the coverage of section 10(b)(11) to include ocean transportation intermediaries that are ocean freight forwarders. Therefore, if the intermediary with which Container Innovations did business operated as an NVOCC, Container Innovations has violated section 10(b)(11). If the intermediary with Container Innovations did business operated as an ocean freight forwarder, Container Innovations has not violated section 10(b)(11).

## **II. HISTORY OF THE INVESTIGATION INTO CONTAINER INNOVATIONS'S ACTIVITIES AND RESULTING ORDER OF INVESTIGATION AND HEARING.**

On September 30, 1999, the Commission issued a license to Container Innovations to operate as an ocean transportation intermediary, specifically, an NVOCC. (4/12/2007 Affidavit of Sandra L. Kusumoto ¶ 2 and Kusumoto Exhibit 1.)<sup>4</sup> On May 11, 2006, the Commission issued the Order of Investigation and Hearing (Order) that commenced this proceeding. The Order alleges that:

Container Innovations . . . was incorporated in the State of New Jersey on March 27, 1985 and is presently located at 123 Pennsylvania Avenue, Kearny, New Jersey 07032. The President and [qualifying individual]<sup>[5]</sup> of [Container Innovations] is Mr. Angelo J. Carrera. [Container Innovations] has been a licensed NVOCC since September 1999 and maintains an NVOCC bond in the amount of \$75,000.

Based on evidence available to the Commission, it appears that between September 2004 and March 2006, [Container Innovations] knowingly and willfully accepted cargo from or transported cargo for the account of several OTIs that did not have tariffs and bonds as required by sections 8 and 19 of the Act and the Commission's regulations at 46 C.F.R. § 515.27.

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<sup>4</sup> The 4/12/2007 Kusumoto Affidavit and exhibits were filed with BOE's April 30, 2007, supplement to the record.

<sup>5</sup> To obtain an OTI license, an applicant must demonstrate that "its qualifying individual has a minimum of three (3) years experience in ocean transportation intermediary activities in the United States, and the necessary character to render ocean transportation intermediary services." 46 C.F.R. § 515.11(a)(1).

Section 10(b)(11) of the Act . . . prohibits any common carrier from knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that does not have a tariff and a bond as required by sections 8 and 19 of the Act. The Commission's regulations at 46 C.F.R. § 515.27 affirm this statutory requirement. Any OTI operating as an NVOCC in the United States must provide evidence of financial responsibility in the amount of \$75,000. 46 C.F.R. § 515.21. Furthermore, section 8(a) of the Act . . . requires NVOCCs to maintain open to public inspection in an automated tariff system, tariffs showing their rates, charges, classifications and practices. Information gathered thus far indicates [Container Innovations] provided ocean transportation services to entities known to be operating as unlicensed NVOCCs. A person is subject to a civil penalty of not more than \$30,000 for each violation knowingly and willfully committed. 46 C.F.R. Part 506.

*EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc., – Possible Violations, FMC No. 06-06, Order at 2-3 (May 11, 2006).* The Commission ordered the investigation to determine:

(1) Whether [Container Innovations] violated section 10(b)(11) of the Shipping Act of 1984 and the Commission's regulations at 46 C.F.R. § 515.27 by knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act;

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(3) Whether, in the event one or more violations of section 10 of the Act and/or 46 C.F.R. § 515.27 are found, civil penalties should be assessed and, if so, the amount of the penalties to be assessed;

(4) Whether, in the event violations are found, appropriate cease and desist orders should be issued; and

(5) Whether, in the event violations are found, such violations constitute grounds for the revocation of [Container Innovations's] OTI license pursuant to 46 C.F.R. § 515.16.

*Id.* at 4. The Commission designated BOE as a party to the proceeding. *Id.* at 5. The Secretary served the Order of Investigation and Hearing on Respondents by certified mail, return receipt requested, and BOE commenced the investigation authorized by the Order.

On June 12, 2006, the BOE served its First Interrogatories and Requests for Production of Documents Directed to Container Innovations, Inc. On October 18, 2006, BOE served a Motion to Compel Discovery and Responses to Interrogatories Directed to Container Innovations, Inc., stating that Container Innovations had not responded to the discovery requests despite good faith attempts

by BOE to confer with Container Innovations and that Container Innovations had either ignored or refused to respond to repeated attempts to obtain responses to the discovery. Container Innovations did not file a reply to the motion. On November 22, 2006, I granted BOE's motion and ordered Container Innovations to serve its responses to BOE's First Interrogatories and Requests for Production of Documents Directed to Container Innovations, Inc., on or before December 8, 2006. I also ordered Container Innovations to file a Notice with the Commission stating its compliance with the Order. *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations*, FMC No. 06-06, Order at 2-3 (ALJ Nov. 22, 2006) (Order Compelling Discovery). I take official notice that Container Innovations has not filed a Notice with the Commission stating its compliance with the Order.

On January 23, 2007, BOE filed its Motion for Sanctions and Summary Judgment against Container Innovations, Inc. Container Innovations did not file a reply to the motion.

BOE based the motion for sanctions on Container Innovations's failure to respond to discovery and the November 22 Order. BOE sought:

an order prohibiting [Container Innovations] from introducing any evidence covered by BOE's discovery requests and prohibiting [Container Innovations] from contesting any of BOE's claims regarding these issues. In particular, BOE asks that [Container Innovations] be barred from presenting evidence as to whether it knowingly and willfully accepted cargo from or transported cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act. BOE also asks that [Container Innovations] be barred from presenting evidence as to whether it has the ability to pay a civil penalty.

(Motion for Sanctions and Summary Judgment against Container Innovations, Inc. at 4.) I granted the motion in part and deferred it in part.

Because Container Innovations, Inc., has failed to comply with the Order requiring [it] to respond to discovery seeking financial information, I draw the inference that the financial information would demonstrate that Container Innovations, Inc., has the ability to pay a civil penalty up to and including the maximum amount that could be imposed for any violation or violations of the Shipping Act that [it is] found to have committed. 46 C.F.R. § 502.210(a)(2). The Bureau of Enforcement's prayer that Container Innovations, Inc., be barred from presenting evidence as to whether it knowingly and willfully accepted cargo from or transported cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act is deferred pending the additional briefing required by this Order.

*EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations*, FMC No. 06-06, Memorandum and Order at 33 (ALJ Oct. 9, 2009) (Memorandum and Order on

Bureau of Enforcement's Motion for Sanctions and Summary Judgment Against Container Innovations, Inc.; Procedural Order).

In its motion for summary judgment, BOE argued that Container Innovations operated as a common carrier and transported forty-two shipments for nineteen untariffed and unbonded NVOCCs: Julio Mateo and Mateo Shipping Corp., Theodore Mack, Global Direct Shipping, A1A Cargo Express Corp., Caribbean Shipping Shipments, Yasmin Frias, ?austo Santana, Rosalia Castillo Abad, Vincente Rosario, Yudy Zuniga, Carga Latino America, Montes, Carlos D., Jose A. Acevedo, Latino Express Shipping, La Familia Int'l Shipping, Sea & Air Services of the Big Apple, Beacon Exportadora, Sea Con Exportadora, and Auto Part Movers. I found that BOE had proven by a preponderance of the evidence that Container Innovations had acted as a common carrier for each of the forty-two shipments and that none of the nineteen entities identified as the shipper on the Container Innovations bills of lading had a tariff and a bond, insurance, or other surety pursuant to sections 8 and 19 of the Shipping Act. *Id.* at 20-21. I also found that BOE had proven by a preponderance of the evidence that Mateo and Mateo Shipping had acted as an NVOCC on the thirteen shipments in which it had been involved, *Id.* at 21-24, but that BOE had not proven that Container Innovations had knowingly and willfully accept cargo from or transport cargo for Mateo and Mateo Shipping. *Id.* at 26-27. I also found that BOE had not proven by a preponderance of the evidence that the other eighteen entities had operated as NVOCCs on the shipments in which they were involved. *Id.* at 24-26. I summarized these findings as follows:

As set forth above in the ruling on the motion for summary judgment, BOE has established the following:

- a. Container Innovations operated as a common carrier on the forty-two shipments for which the record contains bills of lading;
- b. Julio Mateo and Mateo Shipping Corp. operated as a non-vessel-operating common carrier on the thirteen shipments for which Container Innovations issued bills of lading identifying Julio Mateo as the shipper; and
- c. None of the entities identified as the shipper on the Container Innovations bills of lading had a tariff and a bond, insurance, or other surety pursuant to sections 8 and 19 of the Shipping Act.

Therefore, BOE need not propose findings of fact reiterating these findings.

*Id.* at 29. I found that “[t]he Bureau of Enforcement ha[d] not established the other elements that would prove Container Innovations, Inc., violated section 10(b)(11).” *Id.* at 33.

The October 9 Order established a schedule requiring BOE to file proposed findings of fact, a brief, and an appendix on October 30, Container Innovations to file its reply to BOE's filings and

its own proposed findings of fact, brief, and appendix on November 20, and BOE file its replies to Container Innovations's filings on November 30. *Id.* at 28-32. BOE filed its papers as required. In its brief, BOE states that it "has determined not to go forward with regard to [the] shipments" of Theodore Mack, Yasmin Frias, Fausto Santana, Rosalia Castillo Abad, Vincente Rosario, Montes, Carlos D., Jose A. Acevedo, Yudy Zuniga, Global Direct Shipping, A1A Cargo Express Corp., Caribbean Shipping Shipments, Carga Latino America, Latino Express Shipping, La Familia Int'l Shipping, Sea & Air Services of the Big Apple, Beacon Exportadora, Sea Con Exportadora, and Auto Part Movers. (BOE Brief Regarding Container Innovations (BOE Brief) at 4 n.1.) "[T]herefore the shipments in question are the thirteen shipments transported for Mateo Shipping and Julio Mateo by Respondent." (*Id.*)

BOE renews its motion for sanctions against Container Innovations for failing to respond to BOE's discovery and the November 22, 2006, Order Compelling Discovery. BOE again seeks an order barring Container Innovations "from presenting evidence as to whether it knowingly and willfully accepted cargo from or transported cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19." (BOE Brief at 7.) BOE also contends that because of Container Innovations's failure to respond to discovery, every reasonable inference should be drawn against Container Innovations regarding the issue of whether it knowingly and willfully transported cargo for Mateo and Mateo Shipping in violation of section 10(b)(11) and whether it knowingly and willfully violated the Shipping Act subjecting it to the enhanced level of civil penalty authorized by the Act. (*Id.* at 10.) *See also* 46 U.S.C. § 41107(a).

BOE contends that the evidences proves that Container Innovations willfully and knowingly accepted cargo from or transported cargo Mateo and Mateo Shipping and the Commission should assess a civil penalty at the enhanced level permitted by 46 U.S.C. § 41107(a) for each violation. (BOE Brief at 18-21.) Since Container Innovations is no longer an active corporation, BOE does not seek a cease and desist order. (*Id.* at 21.)

## DISCUSSION

### I. STANDARD OF PROOF.

To prevail in a proceeding brought to enforce the Shipping Act, BOE has the burden of proving by a preponderance of the evidence that the respondent violated the Act. 5 U.S.C. § 556(d) ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."); 46 C.F.R. § 502.155; *Sea-Land Service Inc. – Possible Violations of Sections 10(b)(1), 10(b)(4) and 19(d) of the Shipping Act of 1984*, 30 S.R.R. 872, 889 (2006); *Exclusive Tug Franchises – Marine Terminal Operators Serving the Lower Mississippi River*, 29 S.R.R. 718, 718-719 (ALJ 2001). "[A]s of 1946 the ordinary meaning of burden of proof was burden of persuasion, and we understand the APA's unadorned reference to 'burden of proof' to refer to the burden of persuasion." *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The party with the burden of persuasion must prove its case by a preponderance of the evidence.

*Steadman v. SEC*, 450 U.S. 91, 102 (1981). “[W]hen the evidence is evenly balanced, the [party with the burden of persuasion] must lose.” *Greenwich Collieries*, 512 U.S. at 281. It is appropriate to draw inferences from certain facts when direct evidence is not available, and circumstantial evidence alone may even be sufficient; however, such findings may not be drawn from mere speculation. *Waterman Steamship Corp. v. General Foundries, Inc.*, 26 S.R.R. 1173, 1180 (ALJ 1993), adopted in relevant part, 26 S.R.R. 1424 (1994). The Commission then renders the agency decision in the proceeding.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of –

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

5 U.S.C. § 557(c).

## II. MOTION FOR SANCTIONS.

As noted above, I granted in part BOE’s motion for sanctions for failing to respond to discovery about its financial situation, drawing the inference that Container Innovations has the ability to pay a civil penalty up to and including the maximum amount that could be imposed for any violation or violations of the Shipping Act that they are found to have committed. *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc., – Possible Violations*, FMC No. 06-06, Memorandum and Order at 33 (ALJ Oct. 9, 2009) (Memorandum and Order on Bureau of Enforcement’s Motion for Sanctions and Summary Judgment Against Container Innovations, Inc.; Procedural Order). I deferred ruling on BOE’s prayer that Container Innovations be barred from presenting evidence as to whether it knowingly and willfully accepted cargo from or transported cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act pending the additional briefing required by the Order. *Id.*

BOE renews its prayer that Container Innovations be barred from presenting evidence. Container Innovations has not sought to present evidence in this proceeding. Therefore, BOE’s motion to bar Container Innovations from presenting evidence is dismissed as moot.

BOE also seeks an additional sanction for Container Innovations’s failure to respond to BOE’s discovery. BOE focuses on request for production of documents number 4:

With respect to all shipments transported by water in the foreign commerce of the United States at any time between January 1, 2003 and the present, produce copies of any and all documents issued, prepared, processed or received by [Container

Innovations], including, but not limited to ocean bills of lading (including house and master bills of lading), correspondence, purchase orders, invoices, shipping orders or instructions, booking notices, arrival notices, freight bills, and records reflecting payment of freight charges by and to any non-vessel-operating common carrier, freight forwarder and any other entity that booked or arranged for ocean transportation.

(Bureau of Enforcement First Interrogatories and Requests for Production of Documents Directed to Container Innovations, Inc., Request 4.) BOE contends that Container Innovations's failure to respond to this request "has deprived BOE of documents and information relevant to [Container Innovations's] efforts to verify the lawful status of NVOCCs from which it accepted cargo – both with respect to the Mateo shipments and, more broadly, with respect to other NVOCCs served." (BOE Brief at 9.) BOE also contends that since Container Innovations did not respond to request 4,

inferences should be drawn that [Container Innovations] had no procedures in place to determine the bonding and tariff status of the entities with whom it did business, never asked whether the entities were licensed by the Commission, tariffed or bonded and never asked about the ownership of the cargo, even when faced with thirteen containers of household goods from one individual.

(*Id.* at 17.)

The Commission regulation that BOE claims Container Innovations violated provides:

**Proof of compliance.**

(a) No common carrier may transport cargo for the account of a shipper known by the carrier to be an NVOCC unless the carrier has determined that the NVOCC has a tariff and financial responsibility as required by sections 8 and 19 of the Act.

(b) A common carrier can obtain proof of an NVOCC's compliance with the tariff and financial responsibility requirements by:

- (1) Reviewing a copy of the tariff published by the NVOCC and in effect under part 520 of this chapter;
- (2) Consulting the Commission to verify that the NVOCC has filed evidence of its financial responsibility; or
- (3) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff.

(c) A common carrier that has employed the procedure prescribed in either paragraphs (b)(1) or (b)(2) of this section shall be deemed to have met its obligations

under section 10(b)(11) of the Act, unless the common carrier knew that such NVOCC was not in compliance with the tariff and financial responsibility requirements.

(d) The Commission will publish at its website, *www.fmc.gov*, a list of the locations of all carrier and conference tariffs, and a list of ocean transportation intermediaries who have furnished the Commission with evidence of financial responsibility, current as of the last date on which the list is updated. The Commission will update this list on a periodic basis.

46 C.F.R. § 515.27. Although section 515.27 places an affirmative duty on a common carrier to determine that an NVOCC for which the carrier is transporting cargo has a tariff and financial responsibility before the carrier transports the cargo, and although it would be a good business practice to do so, section 515.27 does not impose a requirement on a carrier to keep written documentation of how it made this determination. BOE's Request 4 does not ask for documentation setting forth Container Innovations's procedures for determining the bonding and tariff status of the entities with whom it did business. Therefore, Container Innovations's failure to produce the documentation requested by BOE Request 4 does not give rise to the inference that BOE seeks. Accordingly, the motion for sanctions is denied.<sup>6</sup>

**III. CONTAINER INNOVATIONS VIOLATED SECTION 10(b)(11) OF THE SHIPPING ACT OF 1984 AND THE COMMISSION'S REGULATIONS AT 46 C.F.R. § 515.27 BY KNOWINGLY AND WILLFULLY ACCEPTING CARGO FROM OR TRANSPORTING CARGO FOR THE ACCOUNT OF AN OTI THAT DID NOT HAVE A TARIFF AND A BOND AS REQUIRED BY SECTIONS 8 AND 19 OF THE ACT.**

**A. Elements of a Violation of Section 10(b)(11).**

The Commission issued the Order of Investigation and Hearing to determine:

Whether [Container Innovations] violated section 10(b)(11) of the Shipping Act of 1984 and the Commission's regulations at 46 C.F.R. § 515.27 by knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act.

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<sup>6</sup> Arguably, failure to respond to an interrogatory asking Container Innovations to state how and when it determined that each NVOCC for which it transported cargo had a tariff and a bond and an interrogatory or request asking Container Innovations to set forth its procedures for determining the bonding and tariff status of the entities with whom it did business would lead to the inference that BOE seeks. BOE did not ask this interrogatory or make this request.

*EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc., – Possible Violations, FMC No. 06-06, Order at 2-3 (May 11, 2006).* To prove a violation of section 10(b)(11) on one shipment, BOE must prove by a preponderance of the evidence that:

1. Container Innovations operated as a common carrier on the shipment; that is, that Container Innovations:
  - held out to the general public that it provided transportation by water of passengers or cargo between the United States and a foreign country for compensation;
  - assumed responsibility for the transportation by water of the shipment from the port or point of receipt to the port or point of destination; and
  - used, for all or part of the transportation of the shipment, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

If the evidence proves that Container Innovations operated as a common carrier on the shipment, then BOE must prove by a preponderance of the evidence that:

2. Container Innovations accepted the shipment from or transported the shipment for the account of an NVOCC that does not have a tariff and a bond, insurance, or other surety as required by sections 8 and 19 of the Shipping Act; that is, that the entity with which Container Innovations did business:
  - did not have a tariff and a bond, insurance, or other surety pursuant to sections 8 and 19 of the Shipping Act;
  - operated as an NVOCC on the shipment by:
    - a. holding out to the general public that it provided transportation by water of passengers or cargo between the United States and a foreign country for compensation;
    - b. assuming responsibility for the transportation by water of the shipment from the port or point of receipt to the port or point of destination; and
    - c. using, for all or part of that transportation of the shipment, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country; and

3. Container Innovations knowingly and willfully accepted the shipment from or transported the shipment for the account of the entity.

If there is a failure of proof on any element regarding the shipment, then Container Innovations did not violate section 10(b)(11) on that shipment.

To support a conclusion that an entity operated as a common carrier or NVOCC, the Act and Commission precedent require that the evidence demonstrate that the entity meets the first element of the common carrier definition; that is, that it “[held] itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation,” 46 U.S.C. § 40102(6)(A)(i) (definition of common carrier).

As a “common carrier” is defined in the Shipping Act, an NVOCC “holds out” to the “general public to provide transportation by water” and “assumes responsibility for the transportation from the port or point of receipt to the port or point of destination.” 46 U.S.C. § 1702(6). The Commission has found that no single factor of an entity’s operation is determinative of its status as a common carrier. [*River Parishes Co., Inc. v. Ormet Primary Aluminum Corp.*, 28 S.R.R. 751, 763 (1999); *Tariff Filing Practices, Etc., of Containerships, Inc.*, 9 F.M.C. 56, 62-65 (1965) (*Containerships*)]. Rather, the Commission must evaluate the indicia of common carriage on a case-by-case basis. *Id.* The most essential factor is whether the carrier holds itself out to accept cargo from whoever offers to the extent of its ability to carry, and the other relevant factors include the variety and type of cargo carried, number of shippers, type of solicitation utilized, regularity of service and port coverage, responsibility of the carrier towards the cargo, issuance of bills of lading or other standardized contracts of carriage, and the method of establishing and charging rates. *Id.*

*Rose Int’l, Inc. v. Overseas Moving Network Int’l, Ltd., et al.*, 29 S.R.R. at 162.

It is also essential that the intermediary assumed responsibility for the transportation by water of the goods. For instance, an intermediary licensed by the Commission as both an NVOCC and an ocean freight forwarder is always holding itself out to accept cargo from whoever offers to the extent of its ability to carry. If the fact that the intermediary was “holding out” as a common carrier is conclusive (or even probative) in determining whether the intermediary assumed responsibility for the transportation of a particular shipment, the intermediary’s status as an NVOCC would swallow its status as an ocean freight forwarder and it would always be acting as an NVOCC. Therefore, as essential as the “holding out” element may be to support a conclusion that an intermediary is an NVOCC on a particular shipment, it is equally essential for the evidence to demonstrate that the intermediary assumed responsibility for the transportation of the shipment from the port or point of receipt to the port or point of destination. 46 U.S.C. § 40102(6)(A)(ii).

In [*Common Carriers by Water – Status of Express Companies, Truck Lines and Other Non-Vessel Carriers*, 6 F.M.B. 245, 250 (1961)], the Federal Maritime Board

noted that an entity may be considered a common carrier even if it attempts to disclaim liability because liability may be imposed by operation of law. 6 F.M.B. at 256. However, “[a]ctual liability as a common carrier over the entire journey including the water portion is essential” to determine NVOCC status. *Id.* Although the Commission has not focused on this aspect of common carrier status, favoring the “holding out” analysis, it remains an essential element of the “common carrier” definition in the Shipping Act. 46 U.S.C. § 40102(6)(A)(ii).

*In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries – Petition for Declaratory Order*, 31 S.R.R. 185, 199 (2008) (Dye, Comm’r, dissenting). If the evidence does not support a conclusion that the intermediary held itself out to the general public as a carrier AND assumed responsibility for the transportation of the shipment from the port or point of receipt to the port or point of destination AND used, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, then the intermediary cannot have been operating as an NVOCC on that shipment. *See Landstar*, 569 F.3d at 497 (“a person or entity that provides NVOCC services falls within the ambit of § 19 only when it ‘holds itself out to the general public to provide transportation’ and ‘assumes responsibility for the transportation’”). To answer this question, it is necessary to examine the intermediary’s conduct on that shipment. *Bonding of Non-Vessel-Operating Common Carriers*, 25 S.R.R. at 1684. *See also Low Cost Shipping, Inc., International Student Services, Eugene Rogoway and Marie Arnold*, 27 S.R.R. 686, 687 (1996) (intermediary found to be operating as an NVOCC on some shipments and ocean freight forwarder on other shipments).

#### **B. BOE’s Motion for Summary Judgment.**

When BOE filed its motion for summary judgment, it submitted as evidence the shipping documents and other information about forty-two separate shipments for nineteen entities with which Container Innovations conducted business and claimed that Container Innovations violated section 10(b)(11) on each shipment. I found that BOE had proven by a preponderance of the evidence that Container Innovations had operated as a common carrier on each of the shipments. *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations*, FMC No. 06-06, Memorandum and Order at 13-21 (ALJ Oct. 9, 2009) (Memorandum and Order on Bureau of Enforcement’s Motion for Sanctions and Summary Judgment Against Container Innovations, Inc.; Procedural Order). I found that BOE had proven by a preponderance of the evidence that none of the entities identified as the shipper on the Container Innovations bills of lading had a tariff and a bond, insurance, or other surety pursuant to sections 8 and 19 of the Shipping Act, *id.* at 21, but that BOE had proven that only one of the entities with which Container Innovations conducted business, Mateo/Mateo Shipping,<sup>7</sup> had operated as an NVOCC on its shipments. *Id.* at 21-26. I also found

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<sup>7</sup> Mateo Shipping Corp. is a corporation and Julio Mateo is its president. (FMC No. 07-07 BOE App. 1.) Mateo Shipping would issue documents to its customers, then Julio Mateo would have himself identified as the shipper on Container Innovations’s bills of lading. I will

that although BOE had proven by a preponderance of the evidence that Container Innovations had accepted cargo from or transported cargo for the account of Mateo/Mateo Shipping, an NVOCC that did not have a tariff and a bond as required by sections 8 and 19 of the Act, BOE had not designated specific facts and provided the Commission with their location in the record that would prove by a preponderance of the evidence that Container Innovations *knowingly and willfully* accepted cargo from or transported cargo for Mateo/Mateo Shipping. *Id.* at 26-27. The Procedural Order issued as part of the Order required the parties to submit additional proposed findings, briefing, and evidence.

In its Brief, BOE states that it has determined not to go forward with regard to the shipments of the entities other than Mateo/Mateo Shipping. “[T]herefore the shipments in question are the thirteen shipments transported for Mateo Shipping and Julio Mateo by [Container Innovations].” (BOE Brief at 4 n.1.) For the convenience of the parties and the Commission, I will repeat the findings with regard to Container Innovations’s liability and Mateo/Mateo Shipping’s status as an NVOCC in this Initial Decision.

**C. Container Innovations Operated as a Common Carrier on Thirteen Mateo/Mateo Shipping Shipments.**

With regard to proof that Container Innovations violated section 10(b)(11), BOE states:

The current investigation against [Container Innovations] began in March 2006, when Emanuel Mingione, the Commission’s New York Area Representative, received information indicating that [Container Innovations], a licensed [NVOCC], was accepting cargo from unbonded and untariffed [OTIs]. [1/22/07] Mingione Aff. ¶ 2.<sup>8</sup> Mr. Mingione visited [Container Innovations’s] office on two separate occasions and obtained documentation for forty-three (43) shipments showing that [Container Innovations] accepted shipments from thirteen (13) unbonded and untariffed OTIs. [1/22/07] Mingione Aff. ¶¶ 2,3. . . . During a previous investigation in 2004, BOE obtained evidence showing [Container Innovations] accepted one hundred and thirteen shipments for an unbonded and untariffed OTI. Based on this evidence, BOE has shown by a preponderance of the evidence that [Container Innovations] knowingly and willfully accepted cargo from or transported cargo for the account of an ocean transportation intermediary that does not have a tariff and a bond, insurance or other surety as required by section 8 and section 19 of the 1984 Act.

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identify the NVOCC operation as Mateo/Mateo Shipping. “FMC No. 07-07 BOE App.” followed by a number refers to a page in the BOE Appendix filed on April 24, 2009, in *Mateo Shipping Corp. and Julio Mateo – Possible Violations*, FMC No. 07-07.

<sup>8</sup> The 1/22/07 Mingione Affidavit is attached to BOE’s Motion for Sanctions and Summary Judgment against Container Innovations, Inc. filed January 23, 2007.

(Motion for Sanctions and Summary Judgment against Container Innovations, Inc. at 7.)

- 1. Container Innovations held out to the general public that it provided transportation by water of passengers or cargo between the United States and a foreign country for compensation.**

On September 30, 1999, the Commission issued a license to Container Innovations to operate as an OTI/NVOCC. (4/12/2007 Affidavit of Sandra L. Kusumoto ¶ 2 and Kusumoto Exhibit 1.) On June 14, 2006, the Commission revoked Container Innovations's NVOCC license for failure to maintain evidence of financial responsibility. (4/12/2007 Affidavit of Sandra L. Kusumoto ¶ 2 and Kusumoto Exhibit 2.) During the period in which it was licensed as an NVOCC, Container Innovations held out to the general public that it provided transportation by water of cargo between the United States and a foreign country for compensation. The Mateo/Mateo Shipping shipments at issue in this proceeding occurred between October 5, 2005, and March 29, 2006. Therefore, BOE has proven by a preponderance of the evidence that Container Innovations held itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation during the period in which the Mateo/Mateo Shipping shipments at issue took place. 46 U.S.C. § 40102(6)(A)(i).

- 2. Container Innovations assumed responsibility for the transportation by water from the port or point of receipt to the port or point of destination of thirteen shipments in which Mateo/Mateo Shipping was involved.**

“A bill of lading records that a carrier has received goods from the party that wishes to ship them, states the terms of carriage, and serves as evidence of the contract for carriage.” *Norfolk Southern Railway Co. v. Kirby*, 543 U.S. 14, 18-19 (2004). *See also Prima U.S. Inc. v. Panalpina, Inc.*, 223 F.3d 126, 129 (2d Cir. 2000) (“If anything happens to the goods during the voyage the [common carrier] is liable to the shipper because of the bill of lading that it issued.”); *Scholastic Inc. v. M/V Kitano*, 362 F. Supp. 2d 449, 455-456 (S.D.N.Y. 2005) (the bill of lading is the [common carrier's] contract with the shipper).

The record contains bills of lading that Container Innovations issued for thirteen Mateo/Mateo Shipping shipments identifying Julio Mateo as the shipper. Each bill of lading identifies a vessel that would carry the goods described in the bill of lading, a port of loading in the United States, and a port of discharge in a foreign country. By issuing the bills of lading, Container Innovations assumed responsibility for the transportation of the goods identified in the bills from the port or point of receipt to the port or point of destination. 46 U.S.C. § 40102(6)(A)(ii).

**3. Container Innovations used for all or part of the transportation a vessel operating on the high seas between a port in the United States and a port in a foreign country on the thirteen Mateo/Mateo Shipping shipments.**

The bills of lading issued by Container Innovations prove that each shipment was carried by a vessel from a port in the United States to a port in a foreign country.

BOE has proven by a preponderance of the evidence that Container Innovations operated as a common carrier on each of the thirteen Mateo/Mateo Shipping shipments. Container Innovations accepted the shipments from or transported the cargo for Mateo/Mateo Shipping.

**D. BOE Has Proven by a Preponderance of the Evidence That Mateo/Mateo Shipping Operated as a Non-Vessel-Operating Common Carrier on the Thirteen Shipments.**

To prove a violation of section 10(b)(11) on a shipment, BOE has the burden of proving by a preponderance of the evidence that the intermediary with which the common carrier conducted business operated as an NVOCC on that shipment. Accordingly, BOE must prove that the Mateo/Mateo Shipping: held itself out to the general public that it provided transportation by water of cargo between the United States and a foreign country for compensation; assumed responsibility for the transportation of the shipment from the port or point of receipt to the port or point of destination; and used, for all or part of that transportation of the shipment, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country. As discussed above, each of the thirteen Mateo/Mateo Shipping shipments used for all or part of the transportation a vessel operating on the high seas between a port in the United States and a port in a foreign country.

In FMC No. 06-06, BOE submitted as evidence bills of lading issued by Container Innovations identifying Julio Mateo as the shipper for thirteen shipments. I also take official notice of the evidence filed in *Mateo Shipping Corp. and Julio Mateo – Possible Violations*, FMC No. 07-07 (ALJ Aug. 28, 2009) (Initial Decision of Clay G. Guthridge, Administrative Law Judge, on Investigation of Mateo Shipping Corp. and Julio Mateo), admin. final, Sept. 29, 2009.

**1. Mateo/Mateo Shipping held itself out to the general public that it provided transportation by water of cargo between the United States and a foreign country for compensation.**

During his investigation of Mateo/Mateo Shipping, AR Mingione photographed a sign at Mateo Shipping's office advertising its service to the Dominican Republic. The English translation of the sign reads: "Mateo Shipping; Moves\*Vehicles\*Packages and Documents; Door to door to the Dominican Republic; Sale of Furniture and Appliances; Let us serve you; Free Estimates; We will be your favorite." (FMC No. 07-07 BOE App. 3, 66, 68-69.) AR Mingione also photographed Mateo Shipping's truck which advertised its service to the Dominican Republic. The

English translation of the side of Mateo Shipping's truck reads: "Mateo Shipping; Transfers door to door to the Dominican Republic; Moves\*Vehicles; Parcels\*Documents; Let us serve you; We will be your favorite; Free Estimates." (FMC No. 07-07 BOE App. 3, 67, 68-69.) AR Mingione obtained a photocopy of Julio Mateo's business card describing the transportation services Mateo Shipping provided in the Dominican Republic trade. The English translation of the business card reads: "Mateo Shipping; Shipment of Automobiles, Appliances; Moves-Packages-Documents-Boxes" and notes a Dominican Republic address. (FMC No. 07-07 BOE App. 3, 54-55.) Therefore, I find that BOE has proven by a preponderance of the evidence that during the period from October 2005 through March 2006, the period of time during which Container Innovations carried the Mateo/Mateo Shipping shipments, Mateo/Mateo Shipping held itself out to the general public to provide transportation by water of cargo between the United States and the Dominican Republic for compensation. 46 U.S.C. § 40102(6)(i).

**2. BOE has proven by a preponderance of the evidence that Mateo/Mateo Shipping assumed responsibility for the transportation by water of the shipments from the port or point of receipt to the port or point of destination.**

AR Mingione obtained the shipping documents from twelve proprietary shippers who used the services of Mateo/Mateo Shipping. AR Mingione avers that the pattern was the same for the shipments. The shippers provided their cargo to Mateo/Mateo Shipping for transportation from the New York area to the Dominican Republic, prepaid Mateo Shipping for the transportation, and received a bill of lading and a cash receipt. The bill of lading provided the details of the shipment and was signed by the shipper and Mateo and/or his warehouseman. The document contained the name and address of the shipper in New York and of the consignee in the Dominican Republic. The bill of lading contained printed shipment terms in both English and Spanish in which Mateo/Mateo Shipping accepted responsibility for transportation of the goods from point of receipt in the United States through to destination in the Dominican Republic. The English version of the shipment terms reads as follows:

1. We are not responsible for merchandise not declared.
2. The sender is responsible for what he or she sends.
3. Check your merchandise upon receiving it, and make whatever claims you have to in front of the acting employee.
4. Absolutely, we do not accept claims 15 days after the merchandise is delivered. All claims must be done at our Dominican Republic office.
5. We are not responsible for broken glass, china, or porcelain; neither for any merchandise packed by the client.
6. If there is a balance, it will be notified at the delivery of the merchandise. After 10 days, of the balance notice, a 10% weekly charge will apply. After 30 days, the client will lose all ownership rights.

7. We are not responsible for damaged or lost merchandise due to nature catastrophes, [*sic*] such as earth shakes, ship sinkings or any other accident or any other cause rather than our own negligence.
8. We are not responsible for merchandise to be storage [*sic*] at the piers.
9. If you wish to do so, you can pay for an additional insurance. We will charge 9% of the merchandise declared value, If insured, we will restore 100% of the merchandise value.

(FMC No. 07-07 BOE App. 5; FMC No. 07-07 BOE App. 9-17; FMC No. 07-07 BOE App. 56-65.)

Based on the documents that Mateo/Mateo Shipping issued to the proprietary shippers, I conclude that Mateo/Mateo Shipping entered into affreightment agreements with proprietary shippers, issued bills of lading or equivalent documents to those shippers, and assumed responsibility for the transportation of the goods from the port or point of receipt to the port or point of destination. 46 U.S.C. § 40102(6)(A)(ii).

3. **BOE has proven by a preponderance of the evidence that Mateo/Mateo Shipping used, for all or part of that transportation of the shipments, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.**

The thirteen Container Innovations bills of lading establish that each container was loaded on board a vessel in Pennsauken, NJ, and discharged in the Dominican Republic. I find that after assuming responsibility for the transportation of the individual shipments of goods that Mateo/Mateo Shipping consolidated into thirteen shipments, Mateo/Mateo Shipping used, for all or part of the transportation of each shipment, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. § 40102(6)(iii).

4. **BOE has proven by a preponderance of the evidence that Mateo/Mateo Shipping operated as an NVOCC on the thirteen shipments for which Container Innovations issued bills of lading identifying Julio Mateo as the shipper.**

BOE has proven by a preponderance of the evidence that Mateo/Mateo Shipping: (1) held itself out itself out to the general public to provide transportation by water of cargo between the United States and the Dominican Republic for compensation, 46 U.S.C. § 40102(6)(i); (2) assumed responsibility for the transportation of the goods of as many as fifty to one hundred shippers on each of thirteen shipments with Container Innovations and consolidated the shipments into one container, 46 U.S.C. § 40102(6)(ii); and (3) used for all or part of the transportation a vessel operating on the high seas between a port in the United States and a port in a foreign country, 46 U.S.C. § 40102(6)(iii). Container Innovations issued one bill of lading for the goods of the individual shippers in the container identifying Julio Mateo as the shipper. Each container was then loaded

onto a vessel on the high seas for transportation between a port in the United States and a foreign port in the Dominican Republic. (FMC No. 07-07 BOE App. 22-52.)

The job of [an NVOCC] is to consolidate cargo from numerous shippers into larger groups for shipment by an ocean carrier. A NVOCC – as opposed to the actual ocean carrier transporting the cargo – issues a bill of lading to each shipper. If anything happens to the goods during the voyage the NVOCC is liable to the shipper because of the bill of lading that it issued.

*Prima U.S. Inc. v. Panalpina, Inc.*, 223 F.3d at 129. See also *Nat'l Customs Brokers & Forwarders Ass'n of Am., Inc. v. United States*, 883 F.2d 93, 101 (D.C. Cir. 1989) (“NVOCCs consolidate and load small shipments from multiple shippers into a single large reusable metal container obtained from a steamship company, and ship the container by vessel under a single bill of lading in the NVOCC’s name.”). Compare 46 C.F.R. § 515.2(l) (“*Non-vessel-operating common carrier services* refers to the provision of transportation by water of cargo between the United States and a foreign country for compensation without operating the vessels by which the transportation is provided, and may include, but are not limited to, the following: (1) purchasing transportation services from a VOCC and offering such services for resale to other persons.”); Federal Maritime Commission *Frequently Asked Questions, Ocean Transportation Intermediaries*, [http://www.fmc.gov/home/faq/index.asp?F\\_CATEGORY\\_ID=10](http://www.fmc.gov/home/faq/index.asp?F_CATEGORY_ID=10), accessed Dec. 1, 2009 (“NVOCC OTI services may include purchasing transportation services from vessel-operating common carriers for resale.”).

The above quotations precisely describe the activities of Mateo/Mateo Shipping on the thirteen shipments that Container Innovations carried for Mateo. Therefore, BOE has proven by a preponderance of the evidence that Mateo/Mateo Shipping operated as an NVOCC without a tariff, license, or bond on each of the thirteen shipments and that Container Innovations accepted each shipment from or transported each shipment for the account of Mateo/Mateo Shipping.

**E. BOE Has Demonstrated by a Preponderance of the Evidence That Container Innovations Knowingly and Willfully Accepted the Thirteen Mateo/Mateo Shipping Shipments.**

To violate section 10(b)(11), a common carrier must *knowingly and willfully* accept cargo from or transport cargo for the account of an NVOCC that does not have a tariff and a bond, insurance, or other surety.

The phrase “knowingly and willfully” means purposely or obstinately and is designed to describe the attitude of a carrier, who having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements. A violation of section 10(b)(1) could be termed “willful” if the carrier knew or showed “reckless disregard” for the matter of whether its conduct was prohibited by the 1984 Act. The conduct could also be described as willful if it was “marked by careless

disregard for whether or not one has the right so to act.” The Supreme Court cited with approval this “reckless or careless disregard” standard in *Trans World Airlines, Inc. v. Thurston*, 469 US 111, 125-129 (1985).

*Trans-Pacific Forwarding, Inc – Possible Violations of Section 10(b)(1) of the Shipping Act of 1984*, 27 S.R.R. 409, 412 (ALJ Dec. 12, 1995), admin. final, Feb. 9, 1996.

In 2002, AR Mingione sent a letter to Container Innovations setting forth the text of section 10(b)(11) of the Shipping Act and the text of 46 C.F.R. § 515.27(a). (BOE Brief at 15; 4/4/2007 Affidavit of Emanuel J. Mingione ¶ 2 and Mingione Exhibit 1.)<sup>9</sup> BOE contends that this letter proves that Container Innovations knew that it is unlawful for a common carrier to accept cargo from or transport cargo for the account of an NVOCC that does not have a tariff and a bond, insurance, or other surety as required by the Act. Each of the bills of lading Container Innovations issued identifying Julio Mateo described the goods as “household goods, personal effects, and ‘Cargo, NOS’ (not otherwise specified).” (BOE Brief at 15.)

In accepting thirteen containers of household goods and personal effects from the same individual, [Container Innovations] showed reckless disregard as to whether it was in violation of section 10(b)(11) and failed to use diligent inquiry or indeed any normal business resources to determine whether its conduct was prohibited by the Act. Acceptance of the thirteen containers over a six month period showed a repeated failure on the part of [Container Innovations] to educate itself through normal business resources. Showing reckless disregard, failing to use diligent inquiry or normal business resources to determine whether one’s conduct is prohibited constitutes knowing and willful conduct. A preponderance of evidence in the record supports a conclusion that [Container Innovations] acted knowingly and willfully.

(*Id.* at 15-16.)

I conclude that this letter proves that Container Innovations knew that it is unlawful for a common carrier to accept cargo from or transport cargo for the account of an NVOCC that does not have a tariff and a bond, insurance, or other surety as required by the Act.

Between October 5, 2005, and March 29, 2006, Container Innovations issued bills of lading identifying Julio Mateo as the shipper for thirteen containers. Twelve shipments were 45' high cube containers and one shipment (February 15, 2006) was 40' high cube container. Each bill of lading described the goods as “household goods and personal effects.” While it is likely that Container Innovations knew Mateo/Mateo Shipping was operating as an NVOCC, I conclude that even if Container Innovations did not know that Mateo/Mateo Shipping was operating as an NVOCC, its

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<sup>9</sup> The 4/4/2007 Mingione Affidavit and exhibit were filed with BOE’s April 30, 2007, supplement to the record.

failure to make further inquiry in a situation where one individual was making regular full container load shipments of household goods and personal effects proves by a preponderance of the evidence that Container Innovations was plainly indifferent to the Act's requirements and/or showed a reckless disregard for the matter of whether its conduct was prohibited by the 1984 Act. Therefore, BOE has proven by a preponderance of the evidence that on thirteen occasions, Container Innovations knowingly and willfully accepted cargo from or transported cargo for the account of Mateo/Mateo Shipping, an NVOCC that did not have a tariff and a bond, insurance or other surety as required by section 8 and section 19 of the Act, in violation of section 10(b)(11) of the Act.

#### **F. Conclusion on Liability.**

BOE has demonstrated by a preponderance of the evidence that on thirteen shipments, Container Innovations, a common carrier, knowingly and willfully accepted cargo from or transported cargo for the account of Mateo/Mateo Shipping, and that on each of those occasions, Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act. Therefore, BOE has proven that Container Innovations violated section 10(b)(11) on thirteen separate occasions.

#### **IV. SANCTIONS.**

As sanction for Container Innovation's violations of the Act, BOE seeks assessment of a civil penalty. Section 13(c) of the Act provides:

A person that violates this part or a regulation or order of the . . . Commission issued under this part is liable to the United States Government for a civil penalty. Unless otherwise provided in this part, the amount of the penalty may not exceed [\$6,000] for each violation or, if the violation was willfully and knowingly committed, [\$30,000] for each violation.

46 U.S.C. § 41107(a).<sup>10</sup> Civil penalties are punitive in nature. The main Congressional purpose of imposing civil penalties is to deter future violations of the 1984 Act. *Stallion Cargo, Inc. Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984*, 29 S.R.R. 665, 681 (2001); *Refrigerated Container Carriers Pty. Ltd. – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, 28 S.R.R. 799, 805 (ALJ 1999, admin. final May 21, 1999). As the proponent of an order assessing a civil penalty, BOE has the burden of proving that a civil penalty should be assessed and the burden of establishing the amount of the civil penalty. 5 U.S.C. § 556(d); 46 C.F.R. § 502.155; *Greenwich Collieries*, 512 U.S. at 276; *Anderson International Transport and Owen*

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<sup>10</sup> The Act originally provided for maximums of \$5,000 and \$25,000. In 2000, before Container Innovations committed these violations, the Commission increased these amounts to \$6,000 and \$30,000. 65 Fed. Reg. 49741, 49742 (Aug. 15, 2000) (codified at 46 C.F.R. § 506.4(d) (Table)).

*Anderson – Possible Violations*, FMC No. 07-02, Memorandum and Order at 77-79 (ALJ Aug. 28, 2009) (Initial Decision of Clay G. Guthridge, Administrative Law Judge).

“In determining the amount of a civil penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.” 46 U.S.C. § 41109(b). *See also* 46 C.F.R. § 502.603(b) (“In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission’s rules and regulations and the applicable statutes. The Commission shall also consider the respondent’s degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.”).

Although the Commission may in its discretion determine how much weight to place on each factor, the Commission must make specific findings with respect to each of the factors set forth in section 13(c), regardless of whether the party on whom a fine will be imposed has participated in the hearings against him.

*Merritt v. United States*, 960 F.2d 15, 17 (2d Cir. 1992). No one statutory factor is to be weighed more heavily than any other. *Refrigerated Container Carriers Pty. Ltd. – Possible Violations*, 28 S.R.R. at 805-806.

To determine a specific amount of civil penalty is a most challenging responsibility. The matter is one for the exercise of sound discretion, essentially requires the weighing and balancing of eight factors set forth in law, and is ultimately subjective and not one governed by science. As was stated in *Cari-Cargo, Int., Inc.*, 23 S.R.R. 1007, 1018 (I.D., F.M.C. administratively final, 1986):

... in fixing the exact amount of penalties, the Commission, which is vested with considerable discretion in such matters, is required to exercise great care to ensure that the penalty is tailored to the particular facts of the case, considers any factors in mitigation as well as in aggravation, and does not impose unduly harsh or extreme sanctions while at the same time deters violations and achieves the objectives of the law. (Case citation omitted.) Obviously, “[t]he prescription of fair penalty amounts is not an exact science,” and “[t]here is a relatively broad range within which a reasonable penalty might lie.” (Case citation omitted.)

*Universal Logistic Forwarding Co., Ltd. – Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984*, 29 S.R.R. 323, 333 (ALJ 2001), *adopted in relevant part*, 29 S.R.R. 474 (2002).

As set forth above, the evidence proves that Container Innovations violated section 10(b)(11) of the Act on thirteen occasions by knowingly and willfully accepting cargo from or transporting cargo for the account of Mateo/Mateo Shipping, an NVOCC that did not have a tariff and a bond as required by sections 8 and 19 of the Act. Therefore, Container Innovations is liable to the United States Government for a civil penalty for each violation. The civil penalty may not exceed \$6,000 for each violation, unless BOE proves that it was willfully and knowingly committed, in which case the penalty may not exceed \$30,000 for each violation. 46 U.S.C. § 41107(a).

**A. “Willfully and Knowingly.”**

The first question that must be answered in determining a civil penalty is whether the “violation was willfully and knowingly committed.” *Stallion Cargo, Inc. – Possible Violations*, 29 S.R.R. at 678. BOE contends that Container Innovations willfully and knowingly violated the Act on each shipment; therefore, it contends Container Innovations is liable for a civil penalty for each violation at the augmented amount. BOE has the burden of persuasion on this issue.

BOE has proven that Container Innovations knowingly and willfully violated section 10(b)(11) on thirteen shipments. “The normal rule of statutory construction [is] that identical words used in different parts of the same Act are intended to have the same meaning.” *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570 (1995), quoting *Department of Revenue of Ore. v. ACF Industries, Inc.*, 510 U.S. 332, 342 (1994) (internal quotation marks and citations omitted). “Knowingly and willfully” in section 10(b)(11) has the same meaning as “willfully and knowingly” in section 13. Therefore, BOE has also proven that Container Innovations is liable for a civil penalty that may not exceed \$30,000.00 for each violation of section 10(b)(11). 46 U.S.C. § 41107(a).

**B. Balancing the Eight Factors.**

BOE contends that “a weighing and balancing of the eight factors . . . supports a conclusion that imposition of the maximum civil penalty, \$390,000.00 (13 shipments X \$30,000.00), is appropriate.” (BOE Brief at 19.)

With regard to the nature, circumstances, extent, and gravity of the violations, Mateo/Mateo Shipping consolidated the shipments of fifty to one hundred proprietary shippers into each container that Container Innovations carried for it. The several hundred shippers whose goods were being transported by Mateo/Mateo Shipping and Container Innovations were not protected by the bonding and tariff provisions of the Act. Container Innovations’s acceptance of the shipments from Mateo/Mateo Shipping permitted Mateo/Mateo Shipping to operate in violation of the Act, and without the participation of Container Innovations (or some other NVOCC or vessel-operating common carrier), Mateo/Mateo Shipping could not have operated as an NVOCC.

The Commission licensed Container Innovations as an NVOCC and had reason to expect it to operate within the restrictions of the Shipping Act. Despite actual notice of its duty to determine whether an NVOCC for which it transported cargo had a tariff and bond, and the ease with which

this determination could be made, *see* 46 C.F.R. § 515.27, Container Innovations transported Mateo/Mateo Shipping's cargo without making this determination. Therefore, Container Innovations has a high degree of culpability. Container Innovations does not have a history of prior offenses. Based on Container Innovations' failure to respond to BOE's discovery seeking financial information, I have drawn the inference that Container Innovations has the ability to pay a civil penalty up to and including the maximum amount that could be imposed for any violation or violations of the Shipping Act that they are found to have committed. Commission regulations also require taking into account its policies "for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes." 46 C.F.R. § 502.603(b). I do not find other matters that justice requires be taken into account.

BOE has met its burden of persuasion and demonstrated that Container Innovations willfully and knowingly committed thirteen violations of the Shipping Act. Therefore, with due consideration to the eight factors set forth in section 13 of the Act, Container Innovations is liable to the United States for a civil penalty for each of the thirteen violations. The evidence in the record demonstrates that for each of the thirteen proven violations, the shipments of as many as fifty to one hundred shippers were at risk. Therefore, a civil penalty of \$30,000, the maximum civil penalty authorized by the Shipping Act, is appropriate for each of the thirteen violations for a total of \$390,000.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>11</sup>**

1. On September 30, 1999, the Commission issued a license to Container Innovations, Inc. (Container Innovations) to operate as an ocean transportation intermediary (OTI)/non-vessel-operating common carrier (NVOCC). (4/12/2007 Affidavit of Sandra L. Kusumoto ¶ 2 and Kusumoto Exhibit 1.)
2. As a licensed NVOCC, Container Innovations held "itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation." 46 U.S.C. § 40102(6)(A)(i).
3. On June 14, 2006, the Commission revoked Container Innovations's NVOCC license for failure to maintain evidence of financial responsibility. (4/12/2007 Affidavit of Sandra L. Kusumoto ¶ 2 and Kusumoto Exhibit 2.)
4. On November 19, 2002, Commission Area Representative Emanuel J. Mingione (AR Mingione) issued a warning letter to Container Innovations setting forth the text of section

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<sup>11</sup> To the extent individual findings of fact may be deemed conclusions of law, they shall also be considered conclusions of law. Similarly, to the extent individual conclusions of law may be deemed findings of fact, they shall also be considered findings of fact.

10(b)(11) of the Shipping Act of 1984 (Shipping Act or Act) and the text of 46 C.F.R. § 515.27(a). (4/4/2007 Affidavit of Emanuel J. Mingione ¶ 2 and Mingione Exhibit 1.)<sup>12</sup>

5. I conclude from the November 12, 2002, warning letter that Container Innovations knew that section 10(b)(11) of the Shipping Act prohibits a common carrier from knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that does not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act.
6. On May 11, 2006, the Commission commenced an investigation into the activities of Container Innovations for possible violations of section 10 of the Shipping Act and the Commission's Regulations at 46 C.F.R. § 515.27. *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. § 515.27*, FMC No. 06-06, Order at 4 (May 11, 2006) (Order of Investigation and Hearing).
7. The Secretary served the Order of Investigation and Hearing on Container Innovations by U.S. Postal Service at its registered corporate address and published notice of the Order of Investigation and Hearing in the Federal Register. 71 Fed. Reg. 29964 (May 24, 2006).
8. On July 21, 2007, the Commission issued an Order of Investigation and Hearing to determine whether Julio Mateo and Mateo Shipping Corp. and other entities violated section 8 of the Shipping Act by operating as NVOCCs without publishing tariffs showing rates and charges, and whether the entities violated sections 19(a) and (b) of the Act by operating as OTIs without obtaining a license from the Commission and without providing proof of financial responsibility in the form of surety bonds. *Embarque Puerto Plata, Corp. and Embarque Puerto Plata Inc. d/b/a Embarque Shipping and Embarque El Millon Corp., Estebaldo Garcia, Ocean Sea Line, Maritza Gil, Mateo Shipping Corp. and Julio Mateo – Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. Parts 515 and 520*, FMC No. 07-07, Order at 1-2 (ALJ July 21, 2007) (Order of Investigation and Hearing).
9. On August 28, 2009, I issued an Initial Decision on the claims against Julio Mateo and Mateo Shipping finding that Mateo and Mateo Shipping:

- (1) violated section 8 of the Shipping Act of 1984, 46 U.S.C. § 40501(a), and the Federal Maritime Commission's regulations at 46 C.F.R. 520 by operating as a non-vessel-operating common carrier without publishing tariffs showing its rates and charges; and
- (2) violated sections 19(a) and (b) of the Act, 46 U.S.C. §§ 40901 and

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<sup>12</sup> The 4/4/2007 Mingione Affidavit and exhibit were filed with BOE's April 30, 2007, supplement to the record.

40902, and the Commission's regulations at 46 C.F.R. 515 by operating as an ocean transportation intermediary ([non]-vessel-operating common carrier) in the United States trades without obtaining a license from the commission and without providing proof of financial responsibility.

*Mateo Shipping Corp. and Julio Mateo – Possible Violations*, FMC No. 07-07 (ALJ Aug. 28, 2009) (Initial Decision of Clay G. Guthridge, Administrative Law Judge, on Investigation of Mateo Shipping Corp. and Julio Mateo), admin. final, Sept. 29, 2009.

10. I take official notice of the evidence presented in FMC No. 07-07 and base findings on the operations of Container Innovations and Mateo/Mateo Shipping on that evidence. See 46 C.F.R. § 502.226 (“Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general knowledge of the Commission as an expert body, provided, that where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.”).
11. Mateo/Mateo Shipping did not furnish a bond, proof of insurance, or other surety as required by section 19(b) of the Shipping Act, 46 U.S.C. § 40902(a). (FMC No. 07-07 BOE App. 3.)
12. Mateo/Mateo Shipping never maintained open to public inspection in an automated tariff system, tariffs showing its rates, charges, classifications and practices pursuant to section 8 of the Shipping Act. (FMC No. 07-07 BOE App. 3.)
13. AR Mingione photographed a sign at Mateo Shipping’s office advertising its service to the Dominican Republic. (FMC No. 07-07 BOE App. 3, 66.)
14. The English translation of the sign at Mateo Shipping’s office reads: Mateo Shipping; Moves\*Vehicles\*Packages and Documents; Door to door to the Dominican Republic; Sale of Furniture and Appliances; Let us serve you; Free Estimates; We will be your favorite. (FMC No. 07-07 BOE App. 3, 68-69.)
15. AR Mingione photographed Mateo Shipping’s truck which also advertises its service to the Dominican Republic. (FMC No. 07-07 BOE App. 3, 67.)
16. The English translation of the side of Mateo Shipping’s truck reads: Mateo Shipping; Transfers door to door to the Dominican Republic; Moves\*Vehicles; Parcels\*Documents; Let us serve you; We will be your favorite; Free Estimates. (FMC No. 07-07 BOE App. 3, 68-69.)

17. AR Mingione obtained a photocopy of Julio Mateo's business card describing the transportation services Mateo Shipping provided in the Dominican Republic trade. (FMC No. 07-07 BOE App. 3, 54-55.)
18. The English translation of the business card reads: Mateo Shipping; Shipment of Automobiles, Appliances; Moves-Packages-Documents-Boxes and notes a Dominican Republic address. (FMC No. 07-07 BOE App. 3, 54-55.)
19. BOE has proven by a preponderance of the evidence that during the period from October 2005 through June 2007, Mateo/Mateo Shipping held itself out to the general public to provide transportation by water of cargo between the United States and the Dominican Republic for compensation. 46 U.S.C. § 40102(6)(i).
20. AR Mingione determined that Mateo/Mateo Shipping shipped cargo for individual shippers wanting transportation to the Dominican Republic. The cargo generally consisted of small shipments of used household goods and appliances, personal effects, and vehicles such as individual pieces or boxes being sent to relatives or friends in the Dominican Republic. Cargo was either received by Mateo/Mateo Shipping at its place of business in the Bronx or Mateo Shipping arranged for pick up. (FMC No. 07-07 BOE App. 4; FMC No. 07-07 BOE App. 9-17; FMC No. 07-07 BOE App. 56-65.)
21. Mateo/Mateo Shipping consolidated with the cargo of individual shippers with the cargo of other shippers and tendered the consolidated shipment to a licensed NVOCC or ocean common carrier. (FMC No. 07-07 BOE App. 4; FMC No. 07-07 BOE App. 9-17; FMC No. 07-07 BOE App. 56-65.)
22. Five of the six shippers complaining about Mateo/Mateo Shipping faxed to AR Mingione copies of the documentation Mateo Shipping Corp. issued to them. The documents consisted of a receipt issued by Mateo Shipping, which serves as the bill of lading, and a cash receipt confirming the amount paid by the shipper. The bill of lading provided the details of the shipment and was signed by the shipper and Mateo and/or his warehouseman. The document contained the name and address of the shipper in New York and of the consignee in the Dominican Republic. The document also described the goods to be shipped and the price charged. (FMC No. 07-07 BOE App. 4; FMC No. 07-07 BOE App. 9-17.)
23. Based on AR Mingione's discussions with the complaining shippers, I find that the pattern was the same for each shipment. The shippers provided their cargo to Mateo/Mateo Shipping for transportation from the New York area to the Dominican Republic, prepaid Mateo and Mateo Shipping for the transportation, and received a bill of lading and a cash receipt. (FMC No. 07-07 BOE App. 4.)
24. The bill of lading contained printed shipment terms in both English and Spanish in which Mateo/Mateo Shipping accepted responsibility for transportation of the goods from point of

receipt in the United States to the destination in the Dominican Republic. The English version of the shipment terms reads as follows:

1. We are not responsible for merchandise not declared.
2. The sender is responsible for what he or she sends.
3. Check your merchandise upon receiving it, and make whatever claims you have to in front of the acting employee.
4. Absolutely, we do not accept claims 15 days after the merchandise is delivered. All claims must be done at our Dominican Republic office.
5. We are not responsible for broken glass, china, or porcelain; neither for any merchandise packed by the client.
6. If there is a balance, it will be notified at the delivery of the merchandise. After 10 days, of the balance notice, a 10% weekly charge will apply. After 30 days, the client will lose all ownership rights.
7. We are not responsible for damaged or lost merchandise due to nature catastrophes, [sic] such as earth shakes, ship sinkings or any other accident or any other cause rather than our own negligence.
8. We are not responsible for merchandise to be storage [sic] at the piers.
9. If you wish to do so, you can pay for an additional insurance. We will charge 9% of the merchandise declared value, If insured, we will restore 100% of the merchandise value.

(FMC No. 07-07 BOE App. 5; FMC No. 07-07 BOE App. 9-17; FMC No. 07-07 BOE App. 56-65.)

25. Mateo/Mateo Shipping issued a cash receipt to the shippers for the amount paid to ship the goods. The cash receipts were on Mateo Shipping's letterhead and documented not only the amount of money received, but also a description of the goods shipped. The cash receipts included an entry for a "Fact. #," an abbreviation of the Spanish word *factura* meaning invoice. That number matched the number in the upper right hand corner of the corresponding cargo receipt or bill of lading. For example, for the Celeste Flores shipment (FMC No. 07-07 BOE App. 14-15), the cargo receipt has the number 6739 and that number is listed as the Fact. # on the receipt. No other documentation is issued. In AR Mingione's experience, this level of documentation is standard for smaller NVOCCs, particularly those serving immigrant communities. There is a holding out by advertising and word-of-mouth, an agreement describing the terms under which the cargo will be transported, and a cash receipt. (FMC No. 07-07 BOE App. 5; FMC No. 07-07 BOE App. 9-17; FMC No. 07-07 BOE App. 56-65.)
26. In the Commission's investigation of Container Innovations, the Commission obtained documents demonstrating that between October 5, 2005, and March 29, 2006, Container Innovations transported thirteen shipments for Mateo/Mateo Shipping.

27. Based on the "description of package and goods" section of each bill of lading, each shipment that Container Innovations carried for Mateo/Mateo Shipping consisted of a full container loaded with "household goods and personal effects." (FMC No. 07-07 BOE App. 6; FMC No. 07-07 BOE App. 22-53.)

**October 05, 2005, Shipment.**

28. On October 05, 2005, Container Innovations issued bill of lading 5152-37711 for container UESU4800150 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Autopista San Isidro, the vessel as SB Caribbean v 18, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45' HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 25.)
29. Container Innovations assumed responsibility for the transportation of container UESU4800150 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
30. Container Innovations operated as a common carrier for the transportation of container UESU4800150.
31. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container UESU4800150.
32. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container UESU4800150. (FMC No. 07-07 BOE App. 7.)
33. Mateo/Mateo Shipping assumed responsibility for the transportation of container UESU4800150 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
34. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the October 5, 2005, shipment of container UESU4800150.
35. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as

required by section 40902 of the Act on the October 5, 2005, shipment of container UESU4800150.

36. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the October 5, 2005, shipment of container UESU4800150.
37. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the October 5, 2005, shipment of container UESU4800150.

**October 12, 2005, Shipment.**

38. On October 12, 2005, Container Innovations issued bill of lading 5188-37742 for container UXXU480971-1 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Caribbean v 19, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45' HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 29.)
39. On October 19, 2005, Seaboard Marine, Ltd. issued bill of lading SMLU RHA040A77264 for container UXXU4809711 identifying the shipper as Container Innovations, Inc., Kearny, NJ, the consignee as TACSA, Santo Domingo, Dominican Republic, the vessel as SBD Caribbean 19S, the place of receipt as Kearny, NJ, the port of loading as Philadelphia, the port of discharge as Rio Haina, the place of delivery as Rio Haina, and describing the goods as "45' dry high cube cntr S.L.W.C. 1 lot of household goods and personal effects." (FMC No. 07-07 BOE App. 31.)
40. Container Innovations assumed responsibility for the transportation of container UXXU480971-1 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
41. Container Innovations operated as a common carrier for the transportation of container UXXU480971-1.
42. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container UXXU480971-1.

43. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container UXXU480971-1. (FMC No. 07-07 BOE App. 7.)
44. Mateo/Mateo Shipping assumed responsibility for the transportation of container UXXU480971-1 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
45. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the October 12, 2005, shipment of container UXXU480971-1.
46. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the October 12, 2005, shipment of container UXXU480971-1.
47. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the October 12, 2005, shipment of container UXXU480971-1.
48. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the October 12, 2005, shipment of container UXXU480971-1.

**October 26, 2005, Shipment.**

49. On October 26, 2005, Container Innovations issued bill of lading 5200-37750 for container SMLU8455718 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Rio Haina v 17, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45' HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 22.)
50. Container Innovations assumed responsibility for the transportation of container SMLU8455718 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas

between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).

51. Container Innovations operated as a common carrier for the transportation of container SMLU8455718.
52. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU8455718.
53. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU8455718. (FMC No. 07-07 BOE App. 7.)
54. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU8455718 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
55. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the October 26, 2005, shipment of container SMLU8455718.
56. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the October 26, 2005, shipment of container SMLU8455718.
57. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the October 26, 2005, shipment of container SMLU8455718.
58. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the October 26, 2005, shipment of container SMLU8455718.

**November 02, 2005, Shipment.**

59. On November 02, 2005, Container Innovations issued bill of lading 5197-37765 for container UXXU480778-7 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Caribbean 20, the

place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45' HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 32.)

60. Container Innovations assumed responsibility for the transportation of container UXXU480778-7 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
61. Container Innovations operated as a common carrier for the transportation of container UXXU480778-7.
62. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container UXXU480778-7.
63. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container UXXU480778-7. (FMC No. 07-07 BOE App. 7.)
64. Mateo/Mateo Shipping assumed responsibility for the transportation of container UXXU480778-7 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
65. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the November 02, 2005, shipment of container UXXU480778-7.
66. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the November 02, 2005, shipment of container UXXU480778-7.
67. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the November 02, 2005, shipment of container UXXU480778-7.
68. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be

assessed against Container Innovations for the November 02, 2005, shipment of container UXXU480778-7.

**November 16, 2005, Shipment.**

69. On November 16, 2005, Container Innovations issued bill of lading 5214-37780 for container SMLU8501588 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Rio Haina v. 18, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45' HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 36.)
70. Container Innovations assumed responsibility for the transportation of container SMLU8501588 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
71. Container Innovations operated as a common carrier for the transportation of container SMLU8501588.
72. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU8501588.
73. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU8501588. (FMC No. 07-07 BOE App. 7.)
74. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU8501588 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
75. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the November 16, 2005, shipment of container SMLU8501588.
76. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the November 16, 2005, shipment of container SMLU8501588.

77. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the November 16, 2005, shipment of container SMLU8501588.
78. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the November 16, 2005, shipment of container SMLU8501588.

**November 30, 2005, Shipment.**

79. On November 30, 2005, Container Innovations issued bill of lading 5257-37816 for container SMLU8500036 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Caribbean v 22, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45' HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 39.)
80. Container Innovations assumed responsibility for the transportation of container SMLU8500036 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
81. Container Innovations operated as a common carrier for the transportation of container SMLU8500036.
82. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU8500036.
83. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU8500036. (FMC No. 07-07 BOE App. 7.)
84. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU8500036 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).

85. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the November 20, 2005, shipment of container SMLU8500036.
86. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the November 20, 2005, shipment of container SMLU8500036.
87. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the November 20, 2005, shipment of container SMLU8500036.
88. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the November 20, 2005, shipment of container SMLU8500036.

**December 10, 2005, Shipment.**

89. On December 10, 2005, Container Innovations issued bill of lading 5277-37836 for container SMLU849855-6 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Rio Haina v:20, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 41.)
90. Container Innovations assumed responsibility for the transportation of container SMLU849855-6 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
91. Container Innovations operated as a common carrier for the transportation of container SMLU849855-6.
92. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU849855-6.

93. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU849855-6. (FMC No. 07-07 BOE App. 7.)
94. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU849855-6 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
95. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the December 10, 2005, shipment of container SMLU849855-6.
96. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the December 10, 2005, shipment of container SMLU849855-6.
97. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the December 10, 2005, shipment of container SMLU849855-6.
98. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the December 10, 2005, shipment of container SMLU849855-6.

**December 14, 2005, Shipment.**

99. On December 14, 2005, Container Innovations issued bill of lading 5300-37855 for container UESU4831783 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Caribbean v:23, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45' HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 43.)
100. Container Innovations assumed responsibility for the transportation of container UESU4831783 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas

between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).

101. Container Innovations operated as a common carrier for the transportation of container UESU4831783.
102. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container UESU4831783.
103. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container UESU4831783. (FMC No. 07-07 BOE App. 7.)
104. Mateo/Mateo Shipping assumed responsibility for the transportation of container UESU4831783 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
105. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the December 14, 2005, shipment of container UESU4831783.
106. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the December 14, 2005, shipment of container UESU4831783.
107. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the December 14, 2005, shipment of container UESU4831783.
108. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the December 14, 2005, shipment of container UESU4831783.

#### **January 4, 2006, Shipment.**

109. On January 4, 2006, Container Innovations issued bill of lading 5316-37871 for container SMLU8454769 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Rio Haina v:22, the place of

receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45 HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 45.)

110. Container Innovations assumed responsibility for the transportation of container SMLU8454769 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
111. Container Innovations operated as a common carrier for the transportation of container SMLU8454769.
112. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU8454769.
113. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU8454769. (FMC No. 07-07 BOE App. 7.)
114. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU8454769 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
115. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the January 4, 2006, shipment of container SMLU8454769.
116. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the January 4, 2006, shipment of container SMLU8454769.
117. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the January 4, 2006, shipment of container SMLU8454769.
118. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be

assessed against Container Innovations for the January 4, 2006, shipment of container SMLU8454769.

**January 18, 2006, Shipment.**

119. On January 18, 2006, Container Innovations issued bill of lading 5350-37906 for container SMLU8498474 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Mateo Shipping Corp Y/O Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Rio Haina v:23, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 47.)
120. Container Innovations assumed responsibility for the transportation of container SMLU8498474 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
121. Container Innovations operated as a common carrier for the transportation of container SMLU8498474.
122. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU8498474.
123. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU8498474. (FMC No. 07-07 BOE App. 7.)
124. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU8498474 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
125. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the January 18, 2006, shipment of container SMLU8498474.
126. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the January 18, 2006, shipment of container SMLU8498474.

127. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the January 18, 2006, shipment of container SMLU8498474.
128. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the January 18, 2006, shipment of container SMLU8498474.

**February 15, 2006, Shipment.**

129. On February 15, 2006, Container Innovations issued bill of lading 5386-37938 for container SMLU7815872 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Mateo Shipping Corp Y/O Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Rio Haina v:25, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "40HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 48.)
130. Container Innovations assumed responsibility for the transportation of container SMLU7815872 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
131. Container Innovations operated as a common carrier for the transportation of container SMLU7815872.
132. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU7815872.
133. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU7815872. (FMC No. 07-07 BOE App. 7.)
134. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU7815872 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).

135. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the February 15, 2006, shipment of container SMLU7815872.
136. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the February 15, 2006, shipment of container SMLU7815872.
137. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the February 15, 2006, shipment of container SMLU7815872.
138. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the February 15, 2006, shipment of container SMLU7815872.

**March 9, 2006, Shipment.**

139. On March 9, 2006, Container Innovations issued bill of lading 5431-37973 for container SMLU8495388 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Mateo Shipping Corp Y/O Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Caribbean v:29, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45HC container SLAC STC: 1 lot of household goods and personal effects No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 50.)
140. Container Innovations assumed responsibility for the transportation of container SMLU8495388 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
141. Container Innovations operated as a common carrier for the transportation of container SMLU8495388.
142. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU8495388.

143. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU8495388. (FMC No. 07-07 BOE App. 7.)
144. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU8495388 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
145. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the March 9, 2006, shipment of container SMLU8495388.
146. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the March 9, 2006, shipment of container SMLU8495388.
147. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the March 9, 2006, shipment of container SMLU8495388.
148. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the March 9, 2006, shipment of container SMLU8495388.

**March 29, 2006, Shipment.**

149. On March 29, 2006, Container Innovations issued bill of lading 5461-38000 for container SMLU8470100 identifying the shipper as Julio Mateo, Bronx, NY, the consignee as Mateo Shipping Corp Y/O Julio Mateo, Santo Domingo, Dominican Republic, the vessel as SB Rio Haina v:28, the place of receipt as New York, the port of loading as Pennsauken, the port of discharge as Rio Haina, the place of delivery as Dominican Republic, and describing the goods as "45HC container SLAC STC: 1 lot of NOS No SED req. value under 2500.00." (FMC No. 07-07 BOE App. 52.)
150. Container Innovations assumed responsibility for the transportation of container SMLU8470100 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas

between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).

151. Container Innovations operated as a common carrier for the transportation of container SMLU8470100.
152. Mateo/Mateo Shipping resold transportation services Mateo/Mateo Shipping purchased from Container Innovations to proprietary shippers to fill container SMLU8470100.
153. Mateo/Mateo Shipping consolidated the shipments of an unknown number (fifty or more) of proprietary shippers to fill container SMLU8470100. (FMC No. 07-07 BOE App. 7.)
154. Mateo/Mateo Shipping assumed responsibility for the transportation of container SMLU8470100 and its contents from the port or point of receipt to the port or point of destination and used, for all or part of that transportation, a vessel operating on the high seas between a port in the United States and a port in a foreign country. 46 U.S.C. §§ 40102(6)(A)(ii) and (iii).
155. Mateo/Mateo Shipping operated as an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the March 29, 2006, shipment of container SMLU8470100.
156. Container Innovations violated section 10(b)(11) of the Act by knowingly and willfully accepting cargo from or transporting cargo for the account of an NVOCC that did not have a tariff as required by section 40501 of the Act and a bond, insurance, or other surety as required by section 40902 of the Act on the March 29, 2006, shipment of container SMLU8470100.
157. Container Innovations is liable to the United States Government for a civil penalty that may not exceed \$30,000.00 for the March 29, 2006, shipment of container SMLU8470100.
158. Given the number of proprietary shippers whose goods were shipped and taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require, I find that the maximum civil penalty of \$30,000.00 should be assessed against Container Innovations for the March 29, 2006, shipment of container SMLU8470100.

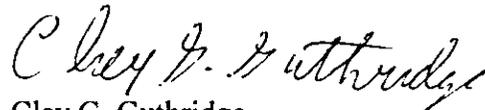
## ORDER

Upon consideration of the Bureau of Enforcement's renewed Motion for Sanctions, the record herein, and for the reasons discussed above, it is hereby

**ORDERED** that Bureau of Enforcement's Motion for Sanctions Against Container Innovations, Inc., be **DISMISSED AS MOOT** in part and **DENIED** in part. The Bureau of Enforcement's prayer that Container Innovations, Inc., be barred from presenting evidence as to whether it knowingly and willfully accepted cargo from or transported cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Shipping Act is dismissed as moot. The Bureau of Enforcement's prayer that based on Container Innovations's failure to produce the documentation requested by BOE Request 4, I draw the inference that Container Innovations had no procedures in place to determine the bonding and tariff status of the entities with whom it did business, never asked whether the entities were licensed by the Commission, tariffed or bonded, and never asked about the ownership of the cargo, even when faced with thirteen containers of household goods from one individual, is denied.

Upon consideration of the foregoing findings of fact and conclusions of law, and the determination that on thirteen shipments, respondent Container Innovations, Inc., violated section 10(b)(11) of the Shipping Act of 1984, 46 U.S.C. § 41104(11), by knowingly and willfully accepting cargo from or transporting cargo for the account of a non-vessel-operating common carrier that does not have a tariff as required by section 40501 of the Shipping Act and a bond, insurance, or other surety as required by section 40902 of the Shipping Act, it is hereby

**ORDERED** that respondent Container Innovations, Inc., remit to the United States the sum of \$390,000.00 as a civil penalty for thirteen willful and knowing violations of the Shipping Act of 1984.



Clay G. Guthridge  
Administrative Law Judge