

FEDERAL MARITIME COMMISSION

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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

BUREAU OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT REGARDING
CONTAINER INNOVATIONS, INC.

PROPOSED FINDINGS OF FACT

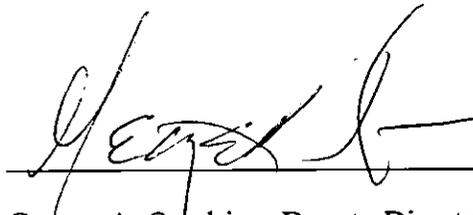
1. Container Innovations, Inc. was registered as a New Jersey domestic profit corporation on March 27, 1985. The registration of Container Innovations, Inc. as a New Jersey domestic profit corporation was revoked for failure to pay annual reports on October 16, 2007 and had not been reinstated as of October 30, 2009. (BOE Appendix, Exhibit 1, Statement of Dorothy Wade).
2. A NVOCC license (No. 6062N) was issued to Container Innovations, Inc. ("Respondent") on September 30, 1999. Respondent's NVOCC license was revoked on June 14, 2006. (Sandra L. Kusumoto affidavit, Paragraph 2, BOE's April 30, 2007 filing).
3. On November 19, 2002, New York Area Representative Emanuel J. Mingione ("AR Mingione") issued a warning letter to Container Innovations, Inc. The letter recited the text of Section 10(b)(11) of the Act and 46 C.F.R. § 515.27, requested that Container Innovations, Inc. disclose all unlicensed ocean transportation intermediaries for which it

provided service and warned that failure to cooperate could result in additional investigation, citation of violation and the assessment of civil penalties. (AR Mingione Affidavit, BOE Motion for Sanctions and Summary Judgment against Container Innovations, Inc., Paragraph 2; AR Mingione affidavit and warning letter, BOE's April 30, 2007 filing).

4. Respondent transported thirteen shipments for Mateo Shipping and Julio Mateo between October 5, 2005 and March 29, 2006. (Finding of Fact 32, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).
5. For each of the thirteen shipments transported for Mateo Shipping and Julio Mateo, Respondent issued a bill of lading listing Julio Mateo in the shipper block of the bill of lading. (Finding of Fact 34, 42, 51, 59, 67, 75, 83, 91, 99, 107, 115, 123, 131, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).
6. For each of the thirteen shipments transported for Mateo Shipping and Julio Mateo, Respondent issued a bill of lading listing Julio Mateo or Mateo Shipping y/o Julio Mateo in the consignee block of the bill of lading. (Finding of Fact 34, 42, 51, 59, 67, 75, 83, 91, 99, 107, 115, 123, 131, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).

7. Based on the “description of package and goods” section of each bill of lading, each of the thirteen shipments carried by Respondent for Mateo Shipping and Julio Mateo consisted of a full container loaded with household goods, personal effects, and “Cargo, NOS” (not otherwise specified). Finding of Fact 33, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).
8. Mateo Shipping and Julio Mateo resold transportation services purchased from Respondent to proprietary shippers in order to fill the thirteen containers. (Findings of Fact 35, 44, 52, 60, 68, 76, 84, 92, 100, 108, 116, 124 and 132, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).
9. Mateo Shipping and Julio Mateo consolidated the shipments of an unknown number (fifty or more) proprietary shippers to fill each container carried by Respondent. (Findings of Fact 36, 45, 53, 61, 69, 77, 85, 93, 101, 109, 117, 125 and 133, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).
10. Mateo Shipping and Julio Mateo were the subject of six complaints from shippers alleging loss of cargo between approximately December 2005 and April, 2006. (Finding of Fact 12, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).

11. Mateo Shipping and Julio Mateo did not furnish a bond, proof of insurance, or other surety as required by section 19(b) of the Shipping Act. (Findings of Fact 15, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).
12. Mateo Shipping and Julio Mateo 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. (Findings of Fact 16, 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, (I. D. August 28, 2009, Administratively Final, September 29, 2009)).
13. On June 12, 2006, BOE served its First Request. The First Request was served via Federal Express on the registered corporate address. (C. Eric Roper affidavit, BOE's April 30, 2007 filing).
14. Request for Production of Documents No. 4 of BOE's First Request requested that Respondent "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 Respondent, 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." (BOE's First Request, Request for Production of Documents No. 4, BOE Appendix, Exhibit 2).



George A. Quadrino, Deputy Director
Elisa P. Holland, Trial Attorney
Bureau of Enforcement
Federal Maritime Commission
October 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October 2009, a copy of the foregoing **BUREAU OF ENFORCEMENT'S PROPOSED FINDINGS OF FACT REGARDING CONTAINER INNOVATIONS, INC.** has been served upon all the parties of record by Federal Express with regard to Container Innovations, Inc. or e-mail.



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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**

**BUREAU OF ENFORCEMENT'S BRIEF AND APPENDIX
REGARDING
CONTAINER INNOVATIONS, INC.**

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PROCEDURAL HISTORY

This proceeding was instituted by Order of Investigation (“Order”) served May 11, 2006. The Order was issued by the Federal Maritime Commission (“Commission”) pursuant to sections 10, 11 and 13 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (“the Act”), and named Container Innovations, Inc. (“Container Innovations”) as a Respondent. The Order was served upon Container Innovations (“Respondent”) via Federal Express and U.S. Postal Service at its registered corporate address. On June 12, 2006, the Bureau of Enforcement (“BOE”) filed and served its First Interrogatories and Request for Production of Documents Directed to Container Innovations, Inc. (“First Request”) (BOE Appendix, Exhibit 1). The First Request was served via Federal Express at the registered corporate address. No response to the First Request has ever been received from Respondent.

On October 18, 2006, BOE filed a motion seeking an order to compel Respondent to respond to the interrogatories and to respond to the request for production of documents contained in BOE’s First Request. Respondent did not respond to BOE’s motion. On November 22, 2006, the Administrative Law Judge (“ALJ”) granted BOE’s motion and ordered Respondent to serve its response to BOE’s First Request on or before December 8, 2006. The ALJ further ordered Respondent to file a Notice with the Commission stating its compliance with the Order. Respondent has never complied with the ALJ’s November 22 order.

On January 23, 2007, BOE filed a Motion for Sanctions and Summary Judgment Against Container Innovations, Inc. (“Motion for Sanctions and Summary Judgment”). BOE’s Motion for Sanctions and Summary Judgment included an affidavit from New York Area Representative Emmanuel J. Mingione and copies of Respondent’s bills of lading. On April 3, 2007, the ALJ issued a Memorandum and Order to Show Cause on the Bureau of Enforcement’s Motion for

Sanctions and Summary Judgment Against Container Innovations, Inc., deferring BOE's motion for summary judgment but ordering Respondent to file its opposition, if any, to BOE's motion for summary judgment by May 1, 2007. Respondent never did so. The ALJ also issued an order for Respondent to show cause by May 1, 2007, why Respondent should not be barred from presenting evidence as to whether it knowingly and willfully accepted cargo from or transported cargo for the account of an ocean transportation intermediary ("OTI") that did not have a tariff and a bond as required by sections 8 and 19 of the Act and why Respondent should not be barred from asserting financial hardship and presenting other evidence on the issue of civil penalty or other relief that may be entered if it is found to have violated the Act. Respondent never did so.

On the same date, the ALJ also ordered BOE to supplement the record by providing the following information: 1) Non-Vessel-Operating Common Carrier (NVOCC) License No. 006062N issued to Container Innovations, Inc.; 2) Warning letter written in 2002 from Emanuel J. Mingione to Container Innovations, Inc. detailing the consequences of violating Section 10(b)(11); 3) Record of Federal Express delivery of BOE's First Request; 4) Record of service on Container Innovations, Inc. of electronic versions of the Order of Investigation and Hearing and Notice of Assignment; and 5) Notice of Revocation of NVOCC License No. 006062N. On April 30, 2007, BOE complied with the ALJ's order and provided copies of all the requested documents along with affidavits from Area Representative Emanuel J. Mingione, Trial Attorney C. Eric Roper and Director, Bureau of Certification and Licensing, Sandra J. Kusumoto.

On August 28, 2009, the ALJ issued an initial decision in Docket 07-07, 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. (I. D. August 28, 2009, Administratively Final, September 29, 2009)) ("Mateo decision"). The ALJ found that BOE had

demonstrated by a preponderance of the evidence that Respondents Mateo Shipping Corp. (“Mateo Shipping”) and Julio Mateo had knowingly and willfully operated as an NVOCC without a license, bond or tariff in violation of Sections 8(a) and 19 of the Act. *Id.* The ALJ found that Mateo Shipping and Julio Mateo had violated the Act thirteen times by reselling transportation services purchased from Container Innovations and that Mateo Shipping and Julio Mateo consolidated the shipments of as many as fifty to one hundred individual shippers into each container. *Id.* at 26.

On October 9, 2009, the ALJ issued a Memorandum and Order on Bureau of Enforcement’s Motion for Sanctions and Summary Judgment against Container Innovations, Inc; Procedural Order. The ALJ granted BOE’s motion for sanctions in part, finding that since Respondent had failed to comply with the ALJ’s order compelling it to respond to discovery seeking financial information, an inference could be drawn that Respondent has the ability to pay a civil penalty up to and including the maximum amount that could be imposed for violations of the Act. (October 9, 2009, Memorandum and Order, p. 3 and 4). The ALJ again deferred ruling on BOE’s motion to bar Respondent 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. (October 9, 2009, Memorandum and Order, p. 4).

The ALJ held that BOE has proven by a preponderance of the evidence that: 1) Respondent operated as a common carrier for all the shipments at issue in this proceeding; 2) Julio Mateo and Mateo Shipping Corp operated as an NVOCC on thirteen shipments at issue in this proceeding;¹ and 3) none of the entities identified as the shipper on Respondent’s bills of

1. The ALJ denied BOE’s motion for summary judgment with regard to the Theodore Mack, Yasmin Frias, Fausto Santana, Rosalia Castillo Abad, Vincente Rosario, Carlos D. Montes, Jose A. Acevedo, Yudy Zuniga, Global Direct

lading had a tariff and a bond, insurance or other surety as required by sections 8 and 19 of the Shipping Act. (October 9, 2009, Memorandum and Order, p. 33). The ALJ also found that BOE proved by a preponderance of the evidence that the entities used 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. (October 9, 2009, Memorandum and Order, p. 21). However, the ALJ held that BOE had not shown by a preponderance of the evidence that Respondent knowingly and willfully accepted cargo from or transported cargo for Mateo and Mateo Shipping. (October 9, 2009, Memorandum and Order, p. 26).

The ALJ determined that additional briefing was necessary before the claims against Respondent were ripe for decision and ordered BOE and Respondent to file Proposed Findings of Fact, Supporting Evidence and a Brief.² The ALJ set a deadline of October 30, 2009, for the filing of BOE's Proposed Findings of Fact, Supporting Evidence and Brief. Respondent's Show Cause, Reply to BOE's Proposed Findings of Fact, Supporting Evidence and Brief are due on November 20, 2009, with any reply from BOE due on November 30, 2009. The ALJ found in his October 9, 2009 Memorandum and Order that all of the elements of a section 10(b)(11) violation have been proven by BOE with regards to the thirteen shipments accepted from Mateo Shipping and Julio Mateo by Respondent with the exception of whether Respondent acted knowingly and willfully. BOE's Proposed Findings of Fact (attached) and Brief will address this element as

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 shipments, finding that BOE had not shown that these entities were NVOCCs. (October 9, 2009, Memorandum and Order, p. 26). BOE has determined not to go forward with regard to these shipments and therefore the shipments in question are the thirteen shipments transported for Mateo Shipping and Julio Mateo by Respondent.

2. With the exception of a statement of records showing Respondent's current corporate status and BOE's First Request, which are contained in BOE's Appendix, the documentation attached to BOE's Motion for Sanctions and BOE's Response to the ALJ's Order to Supplement the Record constitutes all of the supporting evidence in this proceeding. The ALJ's October 9, 2009 Memorandum and Order stated that BOE "need not include the documents attached as exhibits to its Motion for Sanctions and Summary Judgment against Container Innovations, Inc.," therefore, this documentation has not been included in BOE's Appendix. (October 9, 2009, Memorandum and Order, p. 30).

well as facts related to the factors governing imposition of a civil penalty for violations set forth in Section 13 of the Act.

ARGUMENT

Official Notice

In the ALJ's October 9, 2009, Memorandum and Order, the ALJ took official notice of the evidence filed in the Mateo decision pursuant to 46 C.F.R. § 502.226.³ (October 9, 2009, Memorandum and Order, p. 21). The same thirteen shipments of full containers which were the subject of the Mateo decision are the subject of this proceeding. Therefore, BOE requests that, pursuant to 46 C.F.R. §502.226, official notice be taken in this proceeding of the Findings of Fact issued in the Mateo decision.

Sanctions should be imposed on Respondent

As an initial matter, BOE renews its motion for sanctions against Respondent for failure to comply with the ALJ's November 22, 2006, order directing it to respond to BOE's First Request. Under Rule 210, if a party "refuses to obey an order requiring such party to answer designated questions or to produce any document or other thing", the presiding officer may "make such orders in regard to the refusal as are just" including an order "refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence". 46 C.F.R. § 502.210(a)(2). See Shipman Int'l (Taiwan) Ltd. – Possible Violations of Section 8, 10(a) and 10(b)(1) of the Shipping Act of 1984 and 46 CFR Part 514, 28 SRR 98 (1998) and 28 SRR 100 (I.D. 1998). As requested by BOE in January 2007, at this point in the proceeding, the ALJ should bar Respondent 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

3. 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." 46 C.F.R. § 502.226.

required by sections 8 and 19. As noted in the Procedural History section of this filing, Respondent has been given several opportunities to comply with the ALJ's November 22, 2006, Order and has failed to do so.

Rule 210 also provides that as a sanction for violation of a discovery order, the presiding officer can enter "an order that with respect to matters regarding which the order was made or any other designated fact, inferences will be drawn adverse to the person or party refusing to obey such order." 46 C.F.R. § 502.210(a)(2). The Commission has applied Rule 210, holding in William R. Adair v. Penn-Nordic Lines, Inc., 26 SRR 11 (I.D. 1991), that:

A failure to respond to specific charges by default or otherwise can mean that adverse inferences may be drawn against the defaulting or non-replying party. It is an elementary principle of law that when a party refuses or declines to come forward with information peculiarly within its possession and its adversary, who is not privy to such information, introduces only circumstantial evidence, such circumstantial evidence can carry the burden of persuasion and every reasonable inference may be drawn against the non-furnishing party. Id. at 15.

See 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, (Memorandum and Order on BOE's Motion for Sanctions, August 28, 2009); Ever Freight Int'l Ltd., et al.-Possible Violations of Section 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 28 S.R.R. 329, 335, n.4 (ALJ 1998, admin. final June 26, 1998). Federal case law also holds that when the absence of positive proof results from the actions of the respondent, negative inferences may be drawn. In Alabama Power Co. v. F.P.C., the Court of Appeals for the D. C. Circuit stated,

It is a familiar rule of evidence that a party having control of information bearing upon a disputed issue may be given the burden of bringing it forward and suffering an adverse inference from failure to do so....In regulatory proceedings, placing such a burden on the regulated firm, where the relevant information concerns its operations and management, has become part of the 'common law' of regulations." 511 F2d 383, 391, n.14 (DC Cir 1974).

See also Societe Internationale v. Rogers, 357 US 197, 213 (1958); United States v. Federal Maritime Commission at 253-54; Dazzio v. F.D.I.C., 970 F.2d 71 (5th Cir. 1992); Int'l Union, United Automobile, Aerospace and Agric. Implement Workers of Am. (U.A.W.) v. N.L.R.B., 459 F.2d 1329 (D.C. Cir. 1972).

In particular, Respondent failed to respond to Production Request 4 in BOE's First Request. Production Request 4 required Respondent to provide 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, copies of any and all:

. . . documents issued, prepared, processed or received by Respondent 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. (PFF 14).

The instructions to BOE's First Request provided that the term "document or documents" is to be broadly construed to include, but not be limited to

. . . all forms of typewritten, handwritten, computer-generated or reproduced hard copy and electronic records, notes, minutes, letters, facsimile transmissions, telexes, memos, notices, electronic mail, ledgers, invoices, correspondence, and proposals. (BOE's First Request, BOE Appendix, Exhibit 2).

and "correspondence" includes both internal and external communications, including, but not limited to:

. . . all forms of letters, notes, records of telephone conversations, electronic mail, facsimile transmissions, telexes, and memos. (BOE's First Request, BOE Appendix, Exhibit 2)

Respondent's persistent failure to respond to BOE's discovery requests, including production request 4, has deprived BOE of documents and information relevant to Respondent'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.

The Commission's rules (Rule 210) provide penalties for those who fail to abide by orders governing discovery. 46 C.F.R. §502.210. Respondent should not be allowed to flout the orders of the ALJ or ignore its discovery obligations without consequences. As detailed below in the sections discussing the knowingly and willfully standard as well as imposition of civil penalties, every reasonable inference should be drawn against Respondent. Failing to draw reasonable inferences against Respondent would encourage future respondents to operate with limited or no documentation, withhold or destroy compromising documentation and information and refuse to cooperate with Commission investigations, thereby stymieing enforcement actions under the Shipping Act.⁴

Standard of proof and inferences in administrative proceedings

Enforcement proceedings are governed by the Administrative Procedure Act ("APA") which establishes practices for "each authority of the Government of the United States," including the Federal Maritime Commission, to conduct its mandate. 5 U.S.C. § 557(c)(3)(A). The standard of proof in an administrative proceeding is to show by a preponderance of the evidence that something in fact occurred. 5 U.S.C. § 556(d); Portman Square Ltd. – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984, 28 SRR 80, 84 (1998). 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

4. The purpose of this enforcement proceeding before the Commission is to determine whether Respondent has violated the Shipping Act. In doing so, it must be kept in mind that the Shipping Act is a remedial act and as such "should be broadly construed in order to enable an agency to give effect to the statute's salutary purposes." River Parishes Co., Inc. v. Ormet Primary Aluminum Corp., 28 SRR 188, 209 (I.D. 1998). In that case, the Administrative Law Judge went on to note that the "Commission has held that the Shipping Act is remedial and accordingly should be liberally construed when persons seek to avoid Commission jurisdiction", citing Containerships, Inc., 9 F.M.C. 56, 65 (1965), *Id.* In the Containerships case, the Commission stated that: "[I]n determining the true nature of the transportation, it is necessary to have in mind the purpose of the Act. . . . In addition, the court should have in mind the fact that this legislation is remedial and should be liberally construed to effect its evident purpose and that exemption from the operation of the act should be limited to effect the remedy intended." Containerships, Inc. at 62.

SRR 872, 889 (2006); Exclusive Tug Franchises – Marine Terminal Operators Serving the Lower Mississippi River, 29 SRR 718, 718-719 (ALJ 2001).

“The preponderance of the evidence standard, which is also the usual standard applying in civil cases before courts, is a qualitative, not merely a quantitative standard, and means that the evidence makes the existence of a fact more probable than not.” Adair at 15. Findings of fact which are supported by “substantial evidence on the entire record” are sufficient. Capital Transit Co. v. U.S., 97 F. Supp. 614, 621 (D.C. 1951) (the ICC’s determination should be upheld if the Commission’s finding of facts are supported by substantial evidence on the record.) “Substantial evidence” is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Consolo v. Federal Maritime Commission, 383 U.S. 607, 620 (1966); Richardson v. Perales, 402 U.S. 389 (1971); United States v. Federal Maritime Commission, 655 F.2d 247 (D.C. Cir. 1980). Moreover, “the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.” Kent Freight Lines, Inc. v. U.S., 341 F.Supp. 787, 789 (D.C. Md. 1972), citing Consolo at 620.

Direct evidence is not the only evidence available to support a finding that Respondent violated section 10(b)(11) of the Act. The case law also recognizes that in a proceeding there may not be direct evidence on all points and that an agency is entitled to draw inferences based on the evidence available. In FMC v. Svenska, 390 US 238 (1968), the Supreme Court, upholding a decision by this Commission, held:

Having correctly noted that positive proof on many aspects of the case was simply not available one way or the other, the Commission was fully entitled to draw inferences on these points from the incomplete evidence that was available. Conjecture of this kind, when based on inferences that are reasonable in light of human experience generally or when based on the Commission’s special

familiarity with the shipping industry, is fully within the competence of this administrative agency and should be respected by the reviewing courts. Id. at 249. See also, DeWitt v. Department of the Navy, 747 F.2d 1442, 1444 (Fed. Cir. 1984).

In the Adair case, the Commission cited Svenska and noted that:

In many instances, direct evidence is not available and courts or agencies have to rely on inferences. In other words, a 'smoking gun' cannot be found in all or most cases. In such instances, reasonable inferences are permitted from circumstantial evidence, and if the finder of fact is an expert agency which is presumed to have special familiarity with the industry in question, the courts will respect the finding of the agency. Adair at 15.

In this proceeding, BOE, as the proponent of the rule or order, has the burden to prove by a preponderance of the evidence that Respondent acted knowingly and willfully by accepting cargo from or transporting cargo for Mateo Shipping and Julio Mateo, an NVOCC that did not have a tariff and a bond as required by sections 8 and 19. BOE also has the burden to prove by a preponderance of the evidence that a civil penalty should be imposed. BOE's preponderance of the evidence burden can be satisfied using direct evidence, inferences drawn from the direct evidence available and inferences drawn against Respondent due to its failure to abide by the ALJ's November 22, 2006, Order.

Knowingly and Willfully

The Commission has defined the phrase "knowingly and willfully" to mean "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." Trans-Pacific Forwarding, Inc. – Possible Violations of Section 10(b)(1) of the Shipping Act of 1984,

27 SRR 409, 412 (1995), *citing* United States v. Illinois Central R. Co., 303 U.S. 239 (1938).⁵

The Commission went on to say:

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). *Id.* at 412.

The Commission elaborated further in Pacific Champion Express Co., Ltd. – Possible Violations of §10(b)(1) of the Shipping Act of 1984, 28 SRR 1397, (FMC 2000), stating that :

In determining whether a person has violated the 1984 Act “knowingly and willfully,” the evidence must show that the person has knowledge of the facts of the violation and intentionally violates or acts with reckless disregard or plain indifference to the 1984 Act. Portman Square Ltd.-Possible Violations of 10(a)(1) of the Shipping Act of 1984, 28 SRR 80, 84-85 (I.D.), finalized March 16, 1998. The Commission has further held that “persistent failure to inform or even to attempt to inform himself by means of normal business resources might mean that a [person] is acting knowingly and willfully in violation of the Act. Diligent inquiry must be exercised by [persons] in order to measure up to the standards set by the Act. Indifference on the part of such persons is tantamount to outright and active violation.” *Id.* at 84 (quoting Misclassification of Tissue Paper as Newsprint Paper, 4 FMB 483, 486 (1954)); Pacific Champion at 1403.

In the case of Stallion Cargo, Inc.—Possible Violations of Section 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 29 SRR 665 (2001), the Commission reiterated the requirement that an entity or individual inform themselves through normal business resources and stated, “An

5. Knowingly and willfully have two different meanings. “Knowingly” typically refers only to one’s knowledge of the facts that make his conduct unlawful, not to one’s knowledge of the law. See Bryan v. United States, 524 U.S. 184, 193, (1995); United States v. Bailey, 444 U.S. 394, 404, (1980) (finding that a prison escapee acted “knowingly” because he “knew his actions would result in his leaving physical confinement”). Willfully was discussed in the case of U.S. v. Ill. Cent. R.R. Co. The court quoted approvingly from St. Louis & S.F.R. Co. v. United States, 169 F. 69, discussing a case where cattle were kept in railroad cars beyond the regulated period and finding that: “‘Willfully’ means something not expressed by ‘knowingly,’ else both would not be used conjunctively. * * * But it does not mean with intent to injure the cattle or to inflict loss upon their owner because such intent on the part of a carrier is hardly within the pale of actual experience or reasonable supposition. * * * So, giving effect to these considerations, we are persuaded that it 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.” 303 U.S. 239 (1938).

NVOCC must educate itself through normal business resources, and repeated failure to do so may indicate that it is acting 'willfully and knowingly' within the meaning of the statute." Id. at 677.

As discussed above, under the "knowingly and willfully" standard followed by the Commission, an entity or individual need not have knowledge of the law to be found to be acting "knowingly" but must have knowledge of the facts of the violation. An entity or individual can be held to be acting "willfully" if their conduct is marked by reckless or careless disregard for the matter of whether their conduct is prohibited, they act with plain indifference, they do not use diligent inquiry or they persistently fail to inform themselves by means of normal business resources as to whether their conduct is a violation of the Act. The evidence in this proceeding shows that Respondent acted knowingly and willfully.

Direct Evidence

There is direct evidence that Respondent acted knowingly and willfully in accepting cargo from Mateo Shipping and Julio Mateo. With regard to acting “knowingly”, although knowledge of the law is not required, here Respondent did have knowledge of the prohibitions of the Act. Respondent received a letter from AR Mingione in 2002, that not only warned it of the prohibitions of section 10(b)(11) and 46 C.F.R. 515.27 but cited verbatim the statute and the regulation. (PFF 3). Respondent had knowledge of the facts of the violation, that is, it knew it was accepting cargo from Mateo Shipping and Julio Mateo since Respondent issued bills of lading in their name as shipper and consignee. (PFF 5 and 6).

Respondent’s acceptance of thirteen shipments from Mateo Shipping and Julio Mateo was willful as Respondent acted with reckless or careless disregard for the matter of whether their conduct was prohibited and did not use diligent inquiry to determine the bonding and tariff status of Mateo Shipping and Julio Mateo. The “description of package and goods” section of each bill of lading for the thirteen shipments carried by Respondent for Mateo Shipping and Julio Mateo noted that each container was loaded with household goods, personal effects, and “Cargo, NOS” (not otherwise specified). (PFF 7). Respondent issued a bill of lading to Julio Mateo as shipper for each of those thirteen containers. (PFF 5). The containers were transported by Respondent for Mateo Shipping and Julio Mateo over a six month period. (PFF 4). In accepting thirteen containers of household goods and personal effects from the same individual, Respondent 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 Respondent 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 Respondent acted knowingly and willfully.

Inferences

As argued earlier, because Respondent failed to comply with the ALJ's November 22, 2006, order and refused to answer BOE's First Request or participate further in this proceeding, all reasonable inferences should be drawn against Respondent. The Commission's regulations state that "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). The rule goes on to provide common carriers protection from possible violations of section 10(b)(11). A common carrier can obtain proof of an NVOCC's compliance with the tariff and financial responsibility requirements by reviewing a copy of the tariff published by the NVOCC and by consulting with the Commission to verify that the NVOCC has filed evidence of its financial responsibility. 46 C.F.R. § 515.27(b)(1) and (2). A common carrier that has employed the procedure prescribed in either paragraphs (b)(1) of (b)(2) shall be deemed to have met its obligations under section 10(b)(11) of the Act. 46 C.F.R. § 515.27(c).

Based on the quantity and type of cargo transported by Respondent for Mateo Shipping and Julio Mateo as shipper, Respondent knew or should have known that they were an NVOCC. There is no evidence that Respondent employed the procedure set forth in 46 C.F.R. § 515(b)(1) and (2) and an inference should be drawn that Respondent did not do so, providing further evidence that Respondent did not use diligent inquiry and persistently failed to inform itself by means of normal business resources as to whether their conduct was a violation of the Act, thereby acting willfully.

Respondent's failure to respond to discovery, particularly BOE's Request for Production of Documents No. 4, undermined BOE's efforts to determine what efforts or procedures, if any, Respondent used to determine the bonding and tariff status of the entities with whom it did business. Since BOE was unable to provide any discovery, inferences should be drawn that Respondent 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. These inferences are further evidence that Respondent did not use diligent inquiry and persistently failed to inform itself by means of normal business resources as to whether their conduct was a violation of the Act, thereby acting willfully.

The direct evidence in the record as well as the inferences that should be drawn against Respondent satisfy BOE's burden of showing by a preponderance of the evidence that Respondent acted knowingly and willfully in accepting cargo from or transporting cargo for the account of Mateo Shipping and Julio Mateo, an NVOCC that did not have a tariff and a bond as required by sections 8 and 19. The ALJ has already determined that

the other elements of a violation of section 10(b)(11) have been proven by BOE by a preponderance of the evidence. Therefore, BOE has proven all of the elements of a section 10(b)(11) violation for the thirteen shipments accepted by Respondent from Julio Mateo and Mateo Shipping by a preponderance of the evidence. The ALJ should find that Respondent violated section 10(b)(11) of the Act on thirteen occasions between October 5, 2005 and March 29, 2006.

A Civil Penalty Should be Assessed against Respondents

A person is subject to a civil penalty of not more than \$30,000 for each violation knowingly and willfully committed. 46 U.S.C. § 41107(a). Section 13(c) of the Shipping Act requires that in assessing civil penalties, the Commission take into account the nature, circumstances, extent and gravity of a violation, as well as the degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require. 46 U.S.C. § 41109. In taking the foregoing into account, the Commission must make specific findings with regard to each factor. However, the Commission may use its discretion to determine how much weight to place on each factor. Merritt v. United States, 960 F.2d 15, 17 (1992).

Establishing the Appropriate Civil Penalty

There is no one correct answer to the question of what level of civil penalty is appropriate to impose upon Respondent. As noted by the Commission, "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." Universal Logistic Forwarding Co., Ltd – Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 29 SRR 323, 333 (ALJ 2001), *adopted in relevant part*, 29 SRR 474, (2002). However, as discussed

further below, in this case, a weighing and balancing of the eight factors outlined in Section 13 supports a conclusion that imposition of the maximum civil penalty, \$390,000.00 (13 shipments X \$30,000.00), is appropriate.

Nature, circumstances, extent and gravity of the violations

Respondent knowingly and willfully accepted thirteen shipments of full containers of household goods from Mateo Shipping and Julio Mateo in violation of the Act over a six month period between October 2005 and March 2006. (See argument regarding knowingly and willfully above and PFF 4). Respondent's violations were ongoing over a six month period and not just a one-time occurrence. (PFF 4). Mateo Shipping and Julio Mateo were the subject of at least six complaints to the Commission by its shipper customers during the period while Respondent was accepting shipments from them. (PFF 10) Respondent's acceptance of shipments from Mateo Shipping and Julio Mateo facilitated the unlawful NVOCC operation and put at risk as many as six hundred-fifty shipments. (Mateo Shipping and Julio Mateo consolidated the shipments of at least fifty or more proprietary shippers in each container and Respondent provided transportation for thirteen containers, by providing service to Mateo Shipping and Julio Mateo. (PFF4 and 9)). None of those six hundred-fifty shippers were protected by the bonding and tariff provisions of the Act. Respondent's continuing acceptance of the shipments of Julio Mateo and Mateo Shipping allowed them to operate without a license, bond or tariff. The nature, circumstances, extent, and gravity of the violations committed by Respondent supports the imposition of the maximum civil penalty.

Degree of Culpability

Respondent's degree of culpability is high. Respondent was a licensed NVOCC for seven years at the time of the violations and had been previously notified by Commission staff of

its responsibilities under the Act, the prohibitions of section 10(b)(11) and the consequences of violating the Act. (PFF 3). On November 19, 2002, New York Area Representative Emanuel J. Mingione (“AR Mingione”) issued a warning letter to Container Innovations, Inc. (PFF 2). In that letter, AR Mingione recited the text of Section 10(b)(11) of the Act and 46 C.F.R. § 515.27. (PFF 3). The letter warned that failure to cooperate could result in additional investigation, citation of violation and the assessment of civil penalties. (PFF 3). Respondent acted knowingly and willfully in transporting cargo for Mateo Shipping and Julio Mateo. The inferences drawn against Respondent show Respondent did not avail itself of the provisions of 46 C.F.R. § 515.27 or in any other way ascertain the status of Mateo Shipping and Julio Mateo. The thirteen containers transported by Respondent for Mateo Shipping and Julio Mateo contained the cargo of hundreds of proprietary shippers, all of whose cargo was unprotected by the licensing, bonding and tariff requirements of the Act. (PFF 9). Respondent’s culpability supports imposition of the maximum civil penalty.

History of Prior Offenses

Respondent has no history of prior offenses.

Ability to Pay

The ALJ granted BOE’s motion for sanctions in part and found that since Respondent had failed to comply with the ALJ’s order compelling it to respond to discovery seeking financial information, an inference could be drawn that Respondent has the ability to pay a civil penalty up to and including the maximum amount that could be imposed for violations of the Act. (October 9, 2009, Memorandum and Order, p. 3 and 4). Therefore, Respondent has the ability to pay the maximum civil penalty.

Such Other Matters as Justice May Require

The policies for deterrence and future compliance with the Commission's regulations are substantial factors to be considered with the other factors in assessing the amount of a civil penalty. 46 C.F.R. § 502.603(b). Indeed, the Commission has held that the main Congressional purpose of imposing civil penalties is to deter future violations of the Act. Stallion at 681. In the circumstances of this case, the deterrent effect on other common carriers who might be inclined to violate the Act in order to generate additional business by accepting cargo from unbonded and untariffed NVOCCs justifies assessment of the maximum civil penalty. Additionally, a significant penalty sends a message to the regulated community that enforcement action cannot be avoided by refusing to participate in formal proceedings.⁶

Other Relief against Respondent

Respondent's FMC Non-Vessel-Operating Common Carrier ("NVOCC") License No. 006062N, was revoked pursuant to 46 C.F.R. § 515.26 on June 14, 2006. (PFF 2). Therefore, a suspension of Respondent's license is not appropriate. Respondent is no longer an active New Jersey corporation. (PFF 1). BOE does not believe a cease and desist order is necessary since it appears that Respondent is no longer in business.

CONCLUSION

BOE respectfully requests that the Administrative Law Judge: 1) issue an order sanctioning Respondent for failure to comply with the Administrative Law Judge's Order dated November 22, 2006, by barring Respondent from presenting evidence as to whether it knowingly and willfully accepted cargo from or transported cargo for Mateo Shipping and Julio Mateo; 2)

6. In Refrigerated Containers Carriers Pty Ltd., the ALJ noted "Should the Commission fail to exercise its discretion to assess meaningful civil penalties, including the maximum allowed by law when there are few or no mitigating factors, on account of limited ability to obtain evidence on one of the factors set forth in section 13(c) of the Act, the message would go out to the regulated industry that it need not cooperate with BOE in the pre-docketed "compromise" discussions because no significant civil penalty would likely result if the matter moved into formal Commission proceedings and respondents decided to boycott the formal proceedings. 28 SRR 799, 805 (I.D., administratively final May 21, 1999).

issue an initial decision finding that Respondent violated section 10(b)(11) of the Act on thirteen separate occasions; and 3) assess a civil penalty against Respondent in the amount of \$390,000.00.

A handwritten signature in black ink, appearing to read "G. A. Quadrino", is written over a horizontal line.

George A. Quadrino, Deputy Director
Elisa P. Holland, Trial Attorney
Bureau of Enforcement
Federal Maritime Commission
October 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October 2009, a copy of the foregoing **BUREAU OF ENFORCEMENT'S BRIEF AND APPENDIX** has been served upon all the parties of record by Federal Express with regard to Container Innovations, Inc. or e-mail.


Elisa P. Holland

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FEDERAL MARITIME COMMISSION

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**

APPENDIX

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Exhibit 2-BOE's First Interrogatories and Request for Production of Documents Directed to Container Innovations, Inc.	BOE0003

EXHIBIT 1

FEDERAL MARITIME COMMISSION

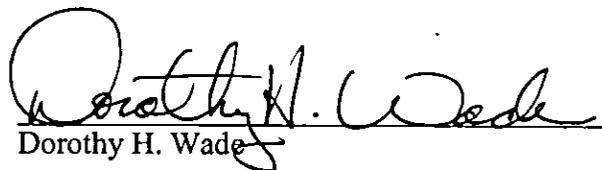
DOCKET NO. 06-06

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

STATEMENT OF DOROTHY H. WADE

1. My name is Dorothy H. Wade. I have been an employee of the Federal Maritime Commission for 35 years. I am currently assigned to the Bureau of Enforcement. As part of my duties in the Bureau of Enforcement, I obtain corporate information from a variety of databases as well as directly from the state agencies responsible for registration of business entities. On October 30, 2009, I obtained a short form certificate of standing from the State of New Jersey, Department of Treasury for Container Innovations, Inc.
2. The certificate of standing showed that Container Innovations, Inc. was registered as a New Jersey domestic profit corporation on March 27, 1985. On October 16, 2007, the business was revoked for failure to pay annual reports. As of October 30, 2009, the business had not been reinstated. A copy of the certificate of standing is attached to this statement.

I certify, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.


Dorothy H. Wade

October 30, 2009

STATE OF NEW JERSEY
DEPARTMENT OF TREASURY
SHORT FORM STANDING

CONTAINER INNOVATIONS INC.

0100255744

I, the Treasurer of the State of New Jersey, do hereby certify that the above-named New Jersey Domestic Profit Corporation was registered by this office on March 27, 1985.

Said business was Revoked For Failure To Pay Annual Reports on October 16, 2007, and as of the date of this certificate, has not been reinstated

I further certify that the last registered agent and registered office of record were:

*Angelo J Carrera
123 Pennsylvania Ave.
S. Kearny, NJ 07032 0000*



Certification# 115642089

*IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed my
Official Seal at Trenton, this
30th day of October, 2009*

*R. David Rousseau
State Treasurer*

Verify this certificate at
https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

EXHIBIT 2

05 JUN 12 11 31 AM '81

FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COMMISSION

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

**BUREAU OF ENFORCEMENT
FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO CONTAINER INNOVATIONS, INC.**

The Bureau of Enforcement requests the above-named Respondent to answer separately and fully in writing, under oath, the interrogatories set forth below in accordance with Rules 201 and 205 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.201 and §502.205; and to produce and permit the Bureau of Enforcement to inspect and copy the documents identified below in accordance with Rule 206, 46 C.F.R. § 502.206.

A. INSTRUCTIONS AND DEFINITIONS

The following general instructions and definitions shall apply to the interrogatories and requests for production herein:

1. As to those interrogatories consisting of a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion with the same effect as if it were propounded as a separate interrogatory. Should an objection to an interrogatory be interposed, it should clearly indicate to which part or portion of the interrogatory it is directed.

2. Except as otherwise noted, discovery responses may be limited to the time period from January 1, 2003 to the present.
3. The term "Respondent" means Container Innovations, Inc. Respondent also shall be deemed to include any officers, directors, agents, managers, employees, attorneys, consultants or representatives of any kind of such parties.
4. The term "documents or documentation" is to be construed broadly and includes but is not limited to all forms of typewritten, handwritten, computer-generated, or reproduced hard copy and electronic records, notes, minutes, letters, facsimile transmissions, telexes, memos, notices, electronic mail, ledgers, invoices, correspondence, and proposals.
5. The term "correspondence" means Respondent's internal and external communications, including but not limited to all forms of letters, notes, records of telephone conversations, electronic mail, facsimile transmission, telexes, and memos.
6. If any document which is requested to be described or produced hereunder is no longer in Respondent's possession because such document has been destroyed or transferred to another person beyond Respondent's custody or control, Respondent shall state what disposition was made of such document, to whom such document was transferred for retention or destruction, and the date on which such document was transferred and/or destroyed.
7. The term "identify," when used with respect to a document or written communication, means: (a) state the date of the document; (b) state the name of the person to whom such document was addressed and the name of each person to whom such document or copy thereof was sent; (c) state the general nature or

description of such document (e.g. letter, memorandum, minutes of meeting, etc.) and a summary of the contents thereof; and (d) identify the location of the document at the present time and the person having possession or custody thereof.

8. The term "identify," when used to refer to a natural person, means: (a) the person's present or last-known title and employer or other business affiliation; (b) the person's business address, business telephone number, business fax number, and business e-mail address at the time of the actions to which each interrogatory is directed; and (c) the person's title and employer or other business affiliation at the time of the actions to which each interrogatory is directed.
9. The term "identify," when used to refer to a corporation or other business entity, means: (a) the corporation or other business entity's name; and (b) the corporation or other business entity's address, telephone number, fax number and e-mail address at the time of the actions to which each interrogatory is directed.
10. All discovery responses are continuing in character. If further or different information is obtained after initial responses are filed (but prior to hearing in this docket), a supplementary response must be filed by Respondent.
11. Should you claim privilege for any information or documents requested by any of the following Interrogatories or Requests for Production of Documents, such documents or information shall be described in a manner sufficient for identification for subsequent discovery. In addition to supplying the above-noted information covering such documents or information, you shall indicate that you claim privilege therefore and shall specify in detail all the grounds on which the claim of privilege rests.

12. All responses shall be due within thirty (30) days of service thereof.

B. INTERROGATORIES

1. Identify all entities that made ocean transportation bookings with Respondent between January 1, 2003 and the present.
2. Identify all employees of Respondent responsible for accepting, confirming or canceling ocean transportation bookings from January 1, 2003 to the present.
3. Identify each current or past officer, director, or managing director of Respondent. State the title(s) or position(s) held, the time period applicable to each such position, as well as the office addresses and telephone numbers of every such person.
4. Identify each person or company which currently owns, or previously owned, any stockholding or ownership interest in Respondent. State the name(s) of each such individual and corporation, the percentage of ownership of held by each such individual or corporation, as well as the time period applicable to such ownership interest.
5. Identify any other corporation or business entity, located in either the United States or overseas, that is owned, controlled, and/or operated by any individual previously or currently occupying the position(s) of officer, director, and/or stockholder in Respondent, the percentage of ownership or control held by each such individual, as well as the time period applicable to such ownership interest, control or operation.

6. State all legal, trade, and fictitious business names utilized by Respondent while providing or arranging to provide transportation services in the foreign trades of the United States.
7. Identify any branch offices through which Respondent provided or arranged to provide transportation services in the foreign trades of the United States from January 1, 2003 through the present, and indicate whether these branch offices are separately incorporated.
8. Identify any agents of Respondent and state the title(s) or position(s) held, the time period applicable to each such position, as well as the office addresses and telephone numbers of every such person or entity.

C. REQUESTS FOR PRODUCTION OF DOCUMENTS

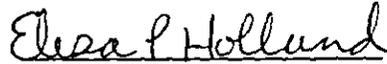
1. Produce copies of Respondent's corporate federal and state tax returns for 2003, 2004 and 2005 as well as copies of all corporate balance sheets and income statements from January 1, 2003 to the present.
2. For the period from January 1, 2003 to the present, produce copies of all of Respondent's monthly cash flow and profit/loss analysis reports. If year end reports are available reflecting this information on a yearly basis, they may be produced in lieu of monthly reports.
3. Produce copies of any agency agreements and any documents evidencing any agency relationship between Respondent and any other individual or entity.
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 Respondent, 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.

Respectfully submitted,



C. Eric Roper



Elisa P. Holland

June 12, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 2th day of June 2006, a copy of the foregoing **Bureau of Enforcement First Interrogatories and Requests for Production of Documents Directed to Container Innovations, Inc.** has been served upon all the parties of record by express mail service.

Elisa Holland
Elisa Holland

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