

**ORIGINAL**

(S E R V E D)  
( August 13, 1999 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

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DOCKET NO. 99-15  
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David P. Kelly and West Indies Shipping & Trading, Inc. -  
Possible Violations of the Shipping Act of 1984

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**ORDER OF INVESTIGATION AND HEARING**  
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West Indies Shipping and Trading, Inc. ("West Indies Shipping") is a company incorporated under the laws of the State of Florida and located at 9300 NW 58th Street, Suite 207, Miami, FL 33178. West Indies Shipping has affiliates in Castries, St. Lucia and Bridgetown, Barbados.\* The Miami office is managed by David P. Kelly ("Kelly") who is president and sole shareholder of the company. West Indies Shipping maintained a non-vessel-operating common carrier ("NVOCC") bond, No. 9-54-83-17, from May 29, 1998 to December 31, 1998 and from February 22, 1999 until May 13, 1999, with American National Fire Insurance Company, in the amount of \$50,000.

Based on information obtained by the Commission, it appears that since at least May 1998,

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\*The Castries, St. Lucia office, known as West Indies Shipping and Trading Co., Ltd. is managed by Eddie Hazell. The Bridgetown, Barbados office, managed by Dennis Sobers, changed its name from West Indies Shipping and Trading Company to A. America Cargo (Barbados), Inc. in January 1999.

West Indies Shipping has held itself out to the public to provide ocean transportation services for shipments from the Miami area to ports in the Caribbean. It appears that for at least fifty (50) shipments during 1998, West Indies Shipping collected goods and ocean freight from individual shippers, and then, in the capacity of a shipper, contracted with ocean common carriers for the ocean transportation. Recent information indicates that, despite several warnings, West Indies Shipping continues to operate as an NVOCC without a license, a publicly available tariff, a bond, or other form of surety.<sup>2</sup>

It further appears that West Indies Shipping provided inaccurate descriptions of cargo to the ocean common carriers in order to obtain lower rates. West Indies Shipping consolidated individual shipments comprised of various commodities into the same container, but declared only one commodity to the ocean common carriers, who in turn rated the commodities in accordance with the inaccurate description provided by West Indies Shipping. West Indies Shipping's house bills of lading and cargo container manifests indicate that West Indies Shipping and its principals were fully aware that the shipments actually consisted of commodities different from those listed on the ocean carrier bills of lading.

Section 8(a)(1) of the 1984 Act, 46 U.S.C. app. § 1707(a)(1) (1998), provides that each common carrier shall keep open to public inspection in an automated tariff system, tariffs showing all rates, charges, classifications, rules and practices between all ports or points on its route and on any through transportation routes. According to a review of records maintained by the

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<sup>2</sup>Commission records indicate that West Indies Shipping did have a \$50,000 bond on file with the Commission between May 29, 1998 and December 31, 1998, and between February 22, 1999 and May 13, 1999.

Commission's Bureau of Tariffs, Certification and Licensing, West Indies Shipping did not have an effective tariff on file prior to February 27, 1999 and the tariff effective on that date contained only Cargo NOS rates. After May 1, 1999, West Indies Shipping has not maintained a publicly available tariff in an automated tariff system. Therefore, it would appear that West Indies Shipping and David P. Kelly, by providing and holding out to the public to provide transportation by water of cargo for compensation and by contracting as a shipper in relation to an ocean common carrier for the carriage of cargo of other persons, have acted as a NVOCC without a tariff on file with the Commission or publicly available, in violation of sections 8(a)(1) of the 1984 Act.

Section 10(a)(1) of the 1984 Act, 46 U.S.C. app. § 1709(a)(1) (1998), prohibits any person from knowingly and willfully, directly or indirectly, by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust **or** unfair device or means, obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 19(a) of the 1984 Act, 46 U.S.C. § 1718(a) (1998), prohibits any person from acting as an Ocean Transportation Intermediary ("OTI") unless that person holds a license issued by the Commission. Section 19(b)(1) of the 1984 Act, 46 U.S.C. § 1718(b)(1) (1998), prohibits any person from acting as an OTI without furnishing a bond, proof of insurance or other surety, to insure the financial responsibility of the OTI to pay any judgment for damages arising from its transportation-related activities. Prior to May 1, 1999, former section 23(a) of the 1984 Act, 46 U.S.C. app. § 1721(a), prohibited any person from acting as a NVOCC without furnishing an appropriate bond, proof of insurance, or other surety to the Commission. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than \$25,000 for each violation knowingly and willfully committed, and not more than \$5,000 for

other violations.<sup>3</sup>

NOW THEREFORE, IT IS ORDERED, That pursuant to section 8, 10, 11, 13, and 19 of the 1984 Act, 46 U.S.C. app. §§ 1707, 1709, 1710, 1712 and 1718, an investigation is instituted to determine:

1) whether David P. Kelly and West Indies Shipping have violated section 8(a)(1) of the 1984 Act by failing to file a tariff with the Commission prior to May 1, 1999 and thereafter failing to maintain a publicly available tariff in an automated tariff system;

2) whether David P. Kelly and West Indies Shipping have violated section 10(a)(1) of the 1984 Act by obtaining or attempting to obtain transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means;

3) whether David P. Kelly and West Indies Shipping have violated section 19(a) of the 1984 Act by acting as an Ocean Transportation Intermediary without holding a license issued by the Commission;

4) whether David P. Kelly and West Indies Shipping have violated section 19(b)(1) of the 1984 Act by acting as an Ocean Transportation Intermediary without obtaining a bond, insurance or other surety;

5) whether David P. Kelly and West Indies Shipping violated former section 23(a) of the 1984 Act during certain periods prior to May 1, 1999, by acting as a NVOCC without obtaining a bond, insurance or other surety;

6) whether, in the event violations of sections 8(a)(1), 10(a)(1), 19(a) or 19(b)(1) of the 1984

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<sup>3</sup>These penalties are increased 10 percent for any violations occurring after November 7, 1996. See, Civil Monetary Penalty Inflation Adjustment, 46 C.F.R. 506.

Act are found, civil penalties should be assessed against David P. Kelly and West Indies Shipping and, if so, the amount of penalties to be assessed; and

7) whether, in the event violations are found, an appropriate cease and desist order should be issued.

IT IS FURTHER ORDERED, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

IT IS FURTHER ORDERED, That David P. Kelly and West Indies Shipping are designated Respondents in this proceeding;

IT IS FURTHER ORDERED, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

IT IS FURTHER ORDERED, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

IT IS FURTHER ORDERED, That other persons having an interest in participating in this

proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72;

IT IS FURTHER ORDERED, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

IT IS FURTHER ORDERED, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.118, and shall be served on parties of record; and

IT IS FURTHER ORDERED, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by August 14, 2000 and the final decision of the Commission shall be issued by December 12, 2000.

By the Commission.



Ronald D. Murphy  
Assistant Secretary