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FEDERAL MARITIME COMMISSION

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DOCKET NO. 07-02

**ANDERSON INTERNATIONAL TRANSPORT AND OWEN ANDERSON –
POSSIBLE VIOLATIONS OF SECTIONS 8(a) AND 19 OF THE
SHIPPING ACT OF 1984**

**MEMORANDUM AND ORDER ON
REMAND FOR DETERMINATION OF CIVIL PENALTY**

BACKGROUND

On August 28, 2009, I issued an Initial Decision in this proceeding. *Anderson International Transport and Owen Anderson – Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984*, FMC No. 07-02 (ALJ Aug. 28, 2009) (Initial Decision of Clay G. Guthridge, Administrative Law Judge) (*Anderson International Transport – Possible Violations I.D.*). I found that Respondents had committed twenty-two violations of the Shipping Act of 1984 by operating as an ocean freight forwarder in the United States foreign trades without obtaining a license from the Commission and without providing proof of financial responsibility in the form of surety bonds in violation of sections 19(a) and (b) of the Act and the Commission's regulations at 46 C.F.R. 515. *Id.* at 47-54.

With regard to the sanctions to be imposed, I stated:

[The Bureau of Enforcement (BOE)] seeks the assessment of a civil penalty; therefore, it has the burden of persuasion to demonstrate by a preponderance of the evidence that Respondents violated the Shipping Act and are liable to the United States for a civil penalty. As set forth above and in the findings of fact and conclusions of law below, BOE has met its burden of persuasion and demonstrated that Respondents committed twenty-two violations of the Shipping Act. Therefore, Respondents may be liable to the United States for a civil penalty for each of the twenty-two violations. Furthermore, in order for Respondents to be liable for a civil penalty not to exceed \$30,000, BOE has [the] burden of persuasion to demonstrate

by a preponderance of the evidence that Respondents willfully and knowingly committed the violations. BOE has met its burden of persuasion and demonstrated that Respondents willfully and knowingly committed each violation; therefore, the amount of the penalty may not exceed \$30,000 for each violation.

Since BOE is the party seeking an order assessing . . . a civil penalty, it has the burden of persuasion to demonstrate the amount of the civil penalty to be imposed. With regard to the . . . factors [set forth in 46 U.S.C. § 41109(b) (section 13 factors)] for which there is evidence in the record, BOE does not set forth any argument about how those factors should be balanced “to ensure that the penalty is tailored to the particular facts of the case . . . and does not impose unduly harsh or extreme sanctions while at the same time deters violations and achieves the objectives of the law.” [*Cari-Cargo, Int., Inc.*, 23 S.R.R. 1007, 1018 (I.D., F.M.C. administratively final, 1986)]. With regard to Respondents’ ability to pay a civil penalty, BOE has neither provided evidence nor taken advantage of the Commission’s rules to obtain an inference based on Respondents’ failure to respond to discovery seeking this information. Therefore, even if BOE had provided argument regarding the other factors, the Second Circuit’s decision in [*Merritt v. United States*, 960 F.2d 15, 17 (2d Cir. 1992)] would preclude entry of a civil penalty.

I find that respondents Owen Anderson and Anderson International Transport have committed twenty-two violations of the Shipping Act. Respondents willfully and knowingly committed each violation; therefore, assessment of a civil penalty that may not exceed \$30,000 is appropriate for each violation. BOE has not met its burden of persuasion to establish the amount of the civil penalty to be imposed. For the section 13 factors for which there is evidence in the record, BOE has not established how the Commission should take into account to ensure that the penalty is tailored to the particular facts of the case. There is no evidence in the record regarding Respondents’ ability to pay a civil penalty. Since I am not able to “take[] into account the [Respondents] ability to pay,” I cannot make a “specific finding[] with respect to each of the factors set forth in section 13(c).” *Merritt v. United States*, 960 F.2d at 17. Therefore, I am unable to assess a civil penalty against Respondents.

Anderson International Transport – Possible Violations I.D. at 83-84.

On October 9, 2009, BOE filed a Petition to Reopen the Proceeding for the Purpose of Taking Further Evidence, to Remand the Proceeding to the Administrative Law Judge and to Stay the Due Date for Filing Exceptions with the Commission. BOE stated that:

while preparing its exceptions, BOE learned that in October 2008, Respondent Owen Anderson filed a Chapter 7 bankruptcy petition in the United States Bankruptcy

Court, Southern District of Texas. The Chapter 7 bankruptcy case was converted to a Chapter 13 proceeding in December 2008 and subsequently was dismissed in April 2009 for failure to comply with an earlier court order. BOE argues that the pleadings filed during the pendency of Owen Anderson's bankruptcy petition, including a statement of financial affairs, schedules of assets and liabilities, and a Chapter 13 statement of current monthly and disposable income dated April 2, 2009, as well as pleadings filed by claimants, provide new information regarding Respondents' ability to pay a civil penalty. BOE further contends that the new information will permit the Commission to complete consideration of the statutory factors governing imposition of a civil penalty.

Anderson International Transport – Possible Violations, FMC No. 07-02, Order at 3 (Dec. 4, 2009) (Order Granting Petition to Reopen the Proceeding and for Remand). BOE asked the Commission to take official notice of the papers filed in the bankruptcy proceeding. *Id.* The Commission granted

BOE's petition to reopen the record and to remand the proceeding to the ALJ for consideration of admitting new evidence and for further determination on the imposition of a civil penalty. BOE's petition requesting the Commission to take official notice of this additional evidence is denied, as this matter is more appropriately addressed in the first instance by the ALJ.

Id. at 7-8.

I granted BOE's request to take official notice of the papers filed in Anderson's bankruptcy case included in BOE's appendix filed with the Commission on October 9, 2009. *Anderson International Transport – Possible Violations*, FMC No. 07-02, Order at 4 (ALJ Dec. 7, 2009) (Memorandum and Procedural Order on Remand for Determination of Civil Penalty). I noted that BOE had filed additional argument with its October 9, 2009, filing, and I established a schedule for additional briefing by the parties. *Id.* On December 22, 2009, BOE submitted a document entitled Additional Briefing of the Bureau of Enforcement. Respondents have not submitted any additional briefing. Despite Respondents' failure to participate, "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.*, 29 S.R.R. 119, 163 n.34 (F.M.C. 2001).

This Memorandum and Order on Remand is intended to supplement the Initial Decision entered August 28, 2009, and assumes familiarity with and should be read in conjunction with the Initial Decision.

DISCUSSION

I. STATUTORY AND REGULATORY CONSIDERATIONS.

As currently worded, section 13(a) of the Shipping 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).¹ Section 13(c) of the Act provides “[i]n 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.”).

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).

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

¹ The Act originally provided for maximums of \$5,000 and \$25,000. In 2000, before Respondents 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) (2008)).

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). 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.

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. To assess a civil penalty in the higher range, the evidence must establish that the violation was willful and knowing. In the Initial Decision, based on the evidence in the record, I found that:

BOE has established by a preponderance of the evidence that Respondents knowingly and willfully violated section 19 of the Shipping Act by operating as an OTI without a license or surety on twenty-two shipments for which BOE seeks a civil penalty. Therefore, Respondents may be liable to the United States Government for an enhanced civil penalty that may not exceed \$30,000 for each proven violation. 46 U.S.C. § 41107(a).

Anderson International Transport – Possible Violations I.D. at 80.

Once the first question – whether the “violation was willfully and knowingly committed.” *Stallion Cargo, Inc. – Possible Violations*, 29 S.R.R. at 678 – has been answered, the eight factors set forth in section 13(c) must be weighed and balanced, bearing in mind the maximum penalty that may be assessed for the violation. *See Universal Logistic Forwarding Co., Ltd., supra* (determining a civil penalty “requires the weighing and balancing of eight factors set forth in law”).

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) (*Merritt*).

II. BURDEN OF PERSUASION TO ESTABLISH A CIVIL PENALTY AND ITS AMOUNT.

In its Revised Proposed Findings of Fact filed November 21, 2008, BOE relied on *Merritt* to support a contention that Respondents “fail[ed] to meet [their] ultimate ‘burden of persuasion’ in justifying a reduction of the civil penalties otherwise applicable.” (BOE Revised Proposed Findings of Fact at 45-46 (footnote omitted).) In the Initial Decision, I held that:

Merritt’s holding that the Shipping Act does not contain a provision shifting the burden to a respondent to persuade the Commission that a civil penalty should be mitigated is still valid. *Merritt*’s holding that under the APA, “burden of proof” refers only to the burden of going forward with evidence, not the burden of persuasion, has been overruled by the Supreme Court in [*Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 276 (1994)]. Therefore, BOE has the burden of establishing that a civil penalty should be imposed, and if so, the amount of the civil penalty that should be assessed. Respondents did not “fail[] to meet [their] ultimate ‘burden of persuasion’ in justifying a reduction of the civil penalties otherwise applicable” as BOE contends because Respondents do not bear this burden.

Anderson International Transport – Possible Violations I.D. at 78.

In its Additional Briefing, BOE states: “To the extent that BOE may have stated otherwise in its pleadings filed in this proceeding, BOE acknowledges that under *Merritt*, it bears the burden of proof in assessing a civil penalty under Section 13(c).” (BOE Additional Briefing at 3 n.4.) I assume the BOE was accepting the holding set forth in the Initial Decision that the Administrative Procedure Act places the burden of *persuasion* on BOE to establish the amount assessed for a civil penalty. See *Anderson International Transport – Possible Violations* I.D. at 76-78.

III. BOE’S CONTENTIONS.

BOE included additional proposed findings of fact, a brief, and an appendix with its petition for remand. BOE contends that:

The filings made by Owen Anderson during his bankruptcy proceeding are consistent, albeit not identical, with regard to his income or debts. In various filings, Owen Anderson indicated his monthly income was \$2698.00, \$2808.00, \$2914.00, \$3564.00 or \$3717.00. Taking an average, it is reasonable to conclude that Owen Anderson’s annualized income is between \$37,000.00 and \$44,000.00. Excluding any claim by the Commission and including the suit filed by Monique Wolfe, the bankruptcy filings show that Owen Anderson has claims and debts against him of approximately \$150,000.00 to \$270,000.00, some of which are medical and legal bills. Monique Wolfe has obtained a default judgment against Anderson

International Transport. It also appears that Owen Anderson's main asset, property at 11835 S. Ridgewood Circle, Houston, Texas, is at best the subject of a foreclosure proceeding and may have already been the subject of a foreclosure sale. It is reasonable to conclude that Respondents have a limited ability to pay a civil penalty.

However, ability to pay is only one factor in determining the amount of a civil penalty. BOE believes the record supports imposition of the maximum civil penalty of \$30,000.00 for each violation. As previously recommended in BOE's Revised Proposed Findings of Fact, assessment of a substantial civil penalty, up to and including the maximum, against Respondents is appropriate. Owen Anderson, through Anderson International Transport, originated twenty-three² ocean export shipments during the period January 5, 2005 through May, 2007, with three of those shipments occurring after the issuance of an Order of Investigation and Hearing in this case. Many of his customers suffered delivery delays and monetary losses. With regard to his history of prior offenses, Mr. Anderson was counseled personally by representatives of the Commission regarding the requirements of the 1984 Act in 1997 and again in 2006. Mr. Anderson has indicated on several occasions that he is aware of the requirements of the Shipping Act, yet continues to knowingly and willfully provide ocean transportation services in violation of the Shipping Act. Most recently, Mr. Anderson has participated in ocean transportation activities resulting in substantial harm to the shipping public and other shipping companies. Regardless of Respondents' ability or inability to pay, a substantial civil penalty will send a strong message to other common carriers and serve as a deterrent to similar conduct. 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. In the circumstances of this case, the deterrent effect on others who might be inclined to violate the law clearly justifies assessment of a significant civil penalty notwithstanding Respondents' present status.

² In a footnote, BOE states: "In his initial decision, the ALJ held that a shipment which BOE characterized as one shipment was two separate shipments for the same proprietary shipper and found that Respondents violated the Shipping Act on twenty-three vs. twenty-two occasions." (BOE Additional Proposed Findings at 8 n.1.) This statement is only partially correct. I determined that "what BOE describes as two 'sub-shipments' of the 'Clifton Watts Shipment' was actually two shipments on two dates from two shippers [not from the same proprietary shipper] consigned to Clifton Watts in Jamaica." *Anderson International Transport – Possible Violations* I.D. at 28 (citations omitted). I also found that there was no evidence that the Like New Auto Salvage shipment for which BOE sought a civil penalty shipment ever left the United States; therefore, the evidence did not support a conclusion that Respondents violated the Act on the shipment. *Id.* at 28. I found that Respondents committed twenty-two, not twenty-three, violations. *Id.* at 74-75. In its additional briefing, BOE states that "the ALJ found that Respondents . . . committed twenty-two violations." (BOE Additional Briefing at 2.)

(BOE Additional Proposed Findings of Fact, Brief and Appendix (BOE Additional Proposed Findings) at 7-9 (footnote and citations omitted).)

After the Commission remanded this proceeding, I ordered the parties to submit any additional briefing they believed was necessary. BOE took advantage of this opportunity and submitted additional briefing. BOE contends:

The ALJ determined that Respondents acted in a manner that was knowing and willful. This determination was based on the evidence in the record that Mr. Anderson was counseled personally by representatives of the Commission regarding the requirements of the 1984 Act in 1997 and again in 2006 and that Mr. Anderson indicated on several occasions that he was aware of the requirements of the Act. Respondents knew that their conduct was in violation of the Shipping Act – a fact that makes the violations more egregious.

The shipper customers of Respondents were generally inexperienced and vulnerable. Not only were Respondents operating in violation of the Shipping Act but they were the subject of multiple complaints. The record shows that three of the shipments which the ALJ found were violations generated complaints to the Commission, the Better Business Bureau and the Texas Attorney General. Vanessa Server, an employee of Two Trees Products Company, filed a complaint with the Better Business Bureau on June 2, 2005, alleging that after paying Respondent Anderson International Transport, Owen Anderson failed to provide the appropriate paperwork to allow the shipment to be released from the port. On February 23, 2005, Dirk Manuel filed a complaint with the Better Business Bureau of Metropolitan Houston, detailing the additional charges he incurred to transport his household goods from Antwerp to his home in Belgium, after already paying Respondents for this service. Lynn and Alex Watts filed complaints against Respondents with the Consumer Protection Division of the Texas Attorney General and the Better Business Bureau of Houston, Texas, detailing the problems with their shipment. In their complaint with the Texas Attorney General, Alex and Lynn Watts state that respondent Owen Anderson increased the freight charges three days before their goods were to leave the country, their goods incurred additional storage charges in Brisbane because respondent Owen Anderson avoided telephone calls seeking to resolve the situation, and various other actions by Respondents that resulted in an increase of the Watts' costs from the original quote of \$1,650.00 to \$8,800.00. The nature, circumstances, extent and gravity of the violations justify imposition of the maximum civil penalty against Respondents.

(BOE Additional Briefing at 4-5 (citations and footnotes omitted).)

BOE contends that "Respondents have a high degree of culpability." (BOE Additional Briefing at 6.) To support this contention, BOE relies on findings made in the Initial Decision

regarding shipments involving Anderson International, LLC – not a respondent in this proceeding, see *Anderson International Transport – Possible Violations* I.D. at 51, 124-125 – that occurred after the last shipment found to be a violation for which BOE seeks a civil penalty. BOE refers to “two complaints about Owen Anderson’s newly established company, AIT International, LLC” filed by Mediterranean Shipping Company (USA) Inc., citing FF 375-379,³ and the complaint against Owen Anderson operating as AIT International, LLC by Angela and Jason Temple, citing FF 380-387. (BOE Additional Briefing at 6.)

BOE also relies on allegations regarding Respondents’ handling of a shipment for Monique Wolfe. (*Id.*) BOE did not submit any evidence in this proceeding regarding Monique Wolfe’s claim prior to issuance of the Initial Decision. BOE included Wolfe’s Texas state court original petition (*Wolfe v. Anderson International Transport, AIT International, and Owen “Andy” Anderson*, Cause No. 2007-69981 (Harris Cty. (Tex.) 269th Jud. Dist. Nov. 13, 2007) (filed)), an index of the matters filed in that case, and Wolfe’s Notice of Removal filed in Anderson’s bankruptcy proceeding with the petition for remand filed in this proceeding. (BOE1105-BOE1115.) The state court petition alleges that Wolfe contracted with “Anderson International Transport”⁴ to ship household items from Texas to Aruba in January 2007. Wolfe alleges that the shipment was delayed, and that when the shipment was delivered, items were missing. She also alleges that Anderson did not purchase insurance for the shipment as he agreed he would do. (BOE1113-BOE1114.) Owen Anderson filed an answer to the state court petition. On August 12, 2008, the Harris County court entered default judgment against Anderson International Transport and AIT International. (BOE1109.)

BOE states that “Respondents have no history of prior Shipping Act violations.” (BOE Additional Briefing at 7 (footnote omitted).)

The Commission remanded this proceeding to consider admission of the evidence about Respondents’ “ability to pay” attached to BOE’s petition for remand and further consideration of a civil penalty. *Anderson International Transport – Possible Violations*, FMC No. 07-02, Order at 7-8 (Dec. 4, 2009) (Order Granting Petition to Reopen the Proceeding and for Remand). BOE summarizes the information about Respondents’ financial situation as follows:

As discussed in greater detail in BOE’s October 9, 2009 pleading, it is reasonable to conclude that Owen Anderson’s annualized income is between \$37,000.00 and

³ “FF” followed by a number or numbers refers to findings of fact set forth in the Initial Decision. *Anderson International Transport – Possible Violations* I.D.

⁴ It is not clear that this is the same “Anderson International Transport” as the respondent in this proceeding. Anderson International Transport in this proceeding “has no separate corporate identity and is an assumed name for a sole proprietorship.” FF 8. Wolfe alleges that the Anderson International Transport in her case is a corporation. (BOE1111-BOE1112.) Given the lack of relevance of the Wolfe shipment to this proceeding, it is not necessary to resolve this issue.

\$44,000.00. Excluding any claim by the Commission and including the suit filed by Monique Wolfe, the bankruptcy filings show that Owen Anderson has claims and debts against him of approximately \$150,000.00 to \$270,000.00, some of which are medical and legal bills. Monique Wolfe has obtained a default judgment against Anderson International Transport in excess of \$36,000.00. Based on the evidence in the record, it is reasonable to conclude that Respondents have a limited ability to pay a civil penalty.

A lack of ability to pay, however, does not preclude imposition of a civil penalty based on the other factors enumerated in section 13. Ability to pay is only one factor in determining the appropriate amount of a civil penalty. “[N]o one statutory factor has to be elevated above any other, especially the ability-to-pay factor, and recognition must be taken of Congress’ efforts to augment the Commission’s authority to assess penalties so as to deter future violations.”

(BOE Additional Briefing at 7-8 (citations omitted).)

BOE contends that:

The record in this proceeding does not present any evidence to support mitigating the civil penalty against Respondents.⁵ 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. Indeed, the Commission has held that the main Congressional purpose of imposing civil penalties is to deter future violations of the Act. The deterrent effect on both Respondents and others who, as Respondents did, might be inclined to establish a company and operate without obtaining a license and providing proof of financial responsibility justifies assessment of the maximum civil penalty.

(*Id.* at 8 (citations omitted).) BOE seeks assessment of the maximum civil penalty of \$30,000 for each of the twenty-two violations – a total civil penalty of \$660,000. *Id.*

IV. POLICIES FOR DETERRENCE AND FUTURE COMPLIANCE.

BOE contends that:

The policies for deterrence and future compliance with the Commission’s regulations are substantial factors to be considered contemporaneously 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

⁵ The evidence on which BOE based its statement that “it is reasonable conclude that Respondents have a limited ability to pay” is “evidence to support mitigating the civil penalty.”

penalties is to deter future violations of the 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). The deterrent effect on both Respondents and others who, as Respondents did, might be inclined to establish a company and operate without obtaining a license and providing proof of financial responsibility justifies assessment of the maximum civil penalty.

(BOE Additional Briefing at 8.) BOE concludes that: “As discussed above and as previously recommended, Respondents’ actions merit imposition of the maximum civil penalty of \$30,000.00 for each violation. Imposition of the maximum civil penalty will also send a strong message to other common carriers and serve as a deterrent to similar conduct.” *Id.*

BOE’s position assumes that only the maximum civil penalty permitted by statute would act as a deterrent. Assuming that only a maximum civil penalty imposed on one respondent would have a deterrent effect on other companies, the potential for causing a deterrent effect would be present every time the Commission assesses a civil penalty. If the Commission were to follow BOE’s argument, it would assess the maximum civil penalty for every violation no matter what the particular facts of a violation or situation of the violator might be, thereby nullifying the Congressional mandate to determine the amount of the civil penalty by “tak[ing] 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 such other matters as justice may require” by elevating consideration of the deterrent effect of a penalty (a factor not found in section 13(c)) over the factors that Congress set forth in section 13(c).

Congress created the enhanced penalty for willful and knowing violations in the Shipping Act of 1984. The Shipping Act, 1916, 46 U.S.C.A. §§ 801-842 (1975) (repealed), the predecessor of the Shipping Act of 1984, required ocean freight forwarders to be licensed by the Commission. 46 U.S.C.A. § 841b (1975) (repealed 1984). The 1916 Act provided that “[w]hoever violates . . . section 841b of this title . . . shall be subject to a civil penalty not to exceed \$5,000 for each such violation.” 46 U.S.C.A. § 831(a) (1975) (repealed 1995).

In the Legislative Background section of the House Report accompanying H.R. 1878, the bill that was enacted as the Shipping Act of 1984, it was recognized that:

Experience with the penalties imposed by the 1916 Shipping Act led the Committee to conclude that they provided no apparent deterrent to the commission of prohibited acts. Civil penalties of the type and amount available under the current law could be absorbed as part of the cost of doing business. . . . The Committee included in H.R. 1878 sanctions and penalties designed to deter the commission of prohibited acts.

H.R. Rep. No. 53, (Part. 1), 98th Cong., 1st Sess. 19 (1983), 1984 U.S. Code Cong. and Admin. News 167, 184. *See Martyn Merritt – Possible Violations of Sections 10(a)(1) and 10(b)(1) of the*

Shipping Act of 1984, 26 S.R.R. 663, 664 n.4 (1992) (quoting House report). In the section-by-section analysis of the bill, the Report provides an analysis of the bill's civil penalty provision:

This section provides civil penalties not to exceed \$5,000 for each violation, unless the violation is willful and knowing, in which case the penalty may not exceed \$25,000 for each violation. The amount of the penalty is to be determined by the Commission. . . .

The section also provides the manner in which a civil penalty will be assessed and the things that must be considered in arriving at the amount of penalty.

H.R. Rep. No. 53, (Part 1), 98th Cong., 1st Sess. 19 (1983), 1984 U.S. Code Cong. and Admin. News 167, 202-203.

As enacted, the Shipping Act stated:

(a) ASSESSMENT OF PENALTY. – Whoever violates a provision of this Act, a regulation issued thereunder, or a Commission order is liable to the United States for a civil penalty. The amount of the civil penalty, unless otherwise provided in this Act, may not exceed \$5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$25,000 for each violation.

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(c) ASSESSMENT PROCEDURES. . . . In determining the amount of the 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 such other matters as justice may require.

Shipping Act of 1984, Pub. L. 98-237, § 13, 98 Stat. 67, 82-83 (1984). It appears, then, that to “deter the commission of prohibited acts,” Congress designed the enhanced civil penalty for violations that were willfully and knowingly committed. Section 13(a) is now codified with non-substantive changes in language at 46 U.S.C. § 41107(a). Section 13(c), setting forth “the things that must be considered in arriving at the amount of penalty,” is now codified with identical language at 46 U.S.C. § 41109(b).

To implement the Act, the Commission promulgated regulations establishing criteria and procedures for handling civil penalty claims. 49 Fed. Reg. 44362 (Nov. 6, 1984) (final rule). In the preamble of the notice of proposed rulemaking, the Commission stated:

Proposed paragraph (b) of § 505.3 . . . uses the specific language of section 13 of the Shipping Act of 1984, in establishing the criteria to be used by the Commission in

determining the amount of the penalty to be assessed. When determining the amount of a civil penalty, therefore, the Commission would 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.” With respect to the person against who[m] the claim is made, the Commission would consider the degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

49 Fed. Reg. 18874 (May 3, 1984) (notice of proposed rulemaking). The proposed rule stated:

Criteria for determining amount of penalty. 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.

49 Fed. Reg. 18875-18876. The Commission did not make any changes in the proposed rule when it promulgated the final rule. 49 Fed. Reg. 44362 and 44418 (Nov. 6, 1984) (final rule) (codified at 46 C.F.R. § 505.3(b) (1984)). This unchanged provision is currently codified at 46 C.F.R. § 502.603(b) (2009).

Although the Commission stated that it “use[d] the specific language of section 13 of the Shipping Act of 1984” when it drafted what is now section 502.603(b), the phrase “the policies for deterrence and future compliance with the Commission’s rules and regulations and the applicable statutes” that the Commission quoted at 49 Fed. Reg. 18874, *supra*, is not found in section 13(c) or anywhere else in the Shipping Act. The Commission did not cite a source for the quotation in the preamble to the notice of proposed rulemaking.

It is not clear to me how the Commission intends to take the policies for deterrence and future compliance into account when assessing a civil penalty:

- As a background component when considering the factors set forth in section 13(c), *compare Cari-Cargo, Int., Inc.*, 23 S.R.R. at 1018 (the section 13 factors should be balanced “to ensure that the penalty is tailored to the particular facts of the case . . . and does not impose unduly harsh or extreme sanctions while at the same time deters violations and achieves the objectives of the law”);
- As a factor to be considered after taking into account the section 13(c) factors to increase whatever amount is determined based on those factors as BOE seems to argue; or
- In some other manner.

In determining the amount of the civil penalty imposed on respondents Anderson International Transport and Owen Anderson, I have “tak[en] 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 such other matters as justice may require” while bearing in mind the need “to ensure that the penalty is tailored to the particular facts of the case . . . and does not impose unduly harsh or extreme sanctions while at the same time deters violations and achieves the objectives of the law.” The Commission may want to consider providing additional guidance on how it intends to take into account the Commission’s policies for deterrence and future compliance with the Commission’s rules and regulations and the applicable statutes in determining the amount of a civil penalty.

V. A CIVIL PENALTY IS ASSESSED AGAINST RESPONDENTS.

A. Section 13(c) Factors.

1. Degree of Culpability.

To an extent, this factor seems to overlap with the “willful and knowing” consideration. The evidence supports a finding that Commission employees advised respondent Owen Anderson of the Act’s requirements on more than one occasion. *Anderson International Transport – Possible Violations* I.D. at 80. Respondents’ degree of culpability can fairly be characterized as high.

BOE’s contentions about Mediterranean Shipping Company, Angela and Jason Temple, and Monique Wolfe, (BOE Additional Briefing at 6), are not relevant to this proceeding. As the Commission stated in another proceeding in which BOE wanted the administrative law judge to consider alleged Shipping Act violations that occurred after the violations subject to the proceeding when assessing a civil penalty:

The use of the words “such other matters as justice may require” in section 13(c) of the Shipping Act and 46 C.F.R. § 502.603(b) does not provide authority to the Commission to consider subsequent violations by a respondent – proven or unproven – in determining civil penalties, and we believe that reading such an intent would hinder rather than facilitate the resolution of adjudicative proceedings. . . .

Finally, because section 13(c) only allows for consideration of a respondent’s prior, rather than subsequent, history of violations, we agree with the ALJ that the paragraphs BOE seeks to enter into evidence – which represent subsequent violations allegedly committed by Respondents – are irrelevant, since they are of no probative value to the ALJ in assessing penalties. We therefore affirm the ALJ’s decision to exclude those paragraphs.

World Line Shipping, Inc. and Saeid B. Maralan (a/k/a Sam Bustani) – Order to Show Cause, 29 S.R.R. 808, 811 (2002). Furthermore, the actions of AIT International, LLC, cannot be attributed to Respondents. See *Anderson International Transport – Possible Violations* I.D. at 51, 124-125. Therefore, I do not consider the allegations of Shipping Act violations regarding the Mediterranean Shipping Company claims and the Temple and Wolfe shipments in assessing the civil penalty.

2. History of Prior Offenses.

Respondents have no history of prior Shipping Act violations. (See BOE Additional Briefing at 7.)

3. Ability to Pay.

BOE states that the evidence from Anderson's bankruptcy proceeding shows that he has an "annualized income between \$37,000.00 and \$44,000.00," "claims and debts against him of approximately \$150,000.00 to \$270,000.00," and that "Monique Wolfe has obtained a default judgment against Anderson International Transport in excess of \$36,000.00." BOE accurately states that "[b]ased on the evidence [from Anderson's bankruptcy proceeding] in the record, it is reasonable to conclude that Respondents have a limited ability to pay a civil penalty." (BOE Additional Briefing at 7.) BOE accurately states that "[a] lack of ability to pay, however, does not preclude imposition of a civil penalty based on the other factors enumerated in section 13," ability to pay is only "one factor" in determining the appropriate amount of a civil penalty, and that no one fact should be "elevated above any other." (*Id.*)

Anderson's most recent statement of his ability to pay appears to be set forth in the "Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income" dated April 2, 2009, submitted in Anderson's bankruptcy proceeding. (BOE1096-BOE1102.)⁶ The Statement indicates an annualized income (including his wife's income⁷) for bankruptcy purposes of \$89,230.32. (BOE1097.) After certain deductions are made, the Monthly Disposable Income is \$1,228.96. (BOE1102.) The schedule of creditors and amounts of claims filed in the bankruptcy proceeding February 11, 2009, lists an unsecured priority claim of \$36,238.89 for child support (creditor Texas Attorney General). (BOE1065.) The most significant unsecured nonpriority claims are for debts owed to AT&T Advertising (\$4,100.00), Cintas Corporation (\$4,585.28 for credit card), Direct Container Line (\$3,358.10), Monique Wolfe (\$36,238.69), and Southwestern Bell Yellow Pages, Inc. (\$53,629.95). (BOE1066-BOE1068.) Unsecured nonpriority claims total \$102,133.22. (BOE1068.)

⁶ These documents are attached to BOE's Petition to Reopen the Proceeding.

⁷ Apparently, Anderson's wife was not a party in the bankruptcy proceeding. (BOE1096.) She is not a party in this proceeding.

BOE contends that the maximum civil penalty of \$30,000 should be imposed for each of the twenty-two violations for a total of \$660,000. Assuming Owen Anderson's "annualized income" is \$40,000, approximately half way between the "\$37,000.00 to \$44,000.00" determined by BOE, (BOE Additional Briefing at 7), if all of Anderson's annualized income were used to pay the civil penalty BOE seeks, it would take 16.5 years to pay the civil penalty. As stated above, the most recent Chapter 13 Statement of Current Monthly Income submitted in Anderson's bankruptcy proceeding indicates that as of April 2, 2009, Anderson had a Monthly Disposable Income (including his wife's income) of \$1,228.96. (BOE1102.) If all of this disposable income were used to pay the civil penalty BOE seeks, it would take approximately 44.75 years to pay the civil penalty. In either of these situations, none of Anderson's annualized income (or disposable income) would be used to pay the other debtors.⁸

While it is true that no one section 13(c) factor should be elevated above any other, no section 13(c) factor can be devalued to the point of irrelevance. Imposition of the maximum civil penalty that BOE seeks would devalue the statutorily mandated section 13(c) factor of "ability to pay" to the point of irrelevance. I agree with BOE's statement that "[b]ased on the evidence in the record, it is reasonable to conclude that Respondents have a limited ability to pay a civil penalty." (BOE Additional Briefing at 7.) This factor must be taken into account in assessing a civil penalty.

4. Nature, Circumstances, Extent, and Gravity of the Violations.

Nine of the twenty-two violations involved less than container load shipments, six violations involved twenty-foot full container load shipments, and seven involved forty-foot full container load shipments.

LESS THAN CONTAINER LOAD SHIPMENTS

TWO TREES PRODUCTS SHIPMENT – FF 34-54

The common carrier bill of lading describes the goods as "FAK Pallet SLAC: 2 ctns petroleum distallates [*sic*] NOS NOS UN# 1268, Pkg III 65 Kgs and 200 lbs saw dust" and states ocean freight and other charges totaling \$299.18 for a shipment from Houston, Texas, to China. Anderson charged \$769.00 for inland freight, ocean freight, dangerous cargo certificate, and documentation and service charge. A representative of the shipper filed a complaint with the Better Business Bureau on June 2, 2005, alleging that after paying Anderson International, Anderson failed to provide the appropriate paperwork to allow the shipment to be released from the port.

⁸ On December 30, 2008, the court converted Anderson's bankruptcy proceeding from chapter 7 to chapter 13. (BOE1051.) On April 15, 2009, the court dismissed the bankruptcy proceeding. (BOE1007, docket entry 51.) On this record, it appears that Anderson's creditors have not been satisfied and the debts have not been discharged.

CLIFTON WATTS SHIPMENT NO. 2 (Clifton Watts) – FF 73-81

The common carrier bill of lading describes the goods as “plywood box with 12 UN 4G fiberboard boxes-total net 336 Kg UN 2794 batteries, wet filled with acid class 8 net qty 28 Kgs each 51.5X43X28” for a shipment from Houston, Texas, to Kingston, Jamaica.

BARBARA DOWNIE SHIPMENT – FF 200-211

The common carrier bill of lading describes the goods as “one crate 2 pieces household effects” and states freight and other charges totaling \$229.17 for a shipment from Houston to Glasgow.

DR. SARIPALLI SHIPMENT – FF 212-220

The common carrier bill of lading describes the goods as “2 pieces 1 crate and 1 skid household effects” and states freight and other charges totaling \$787.55 for a shipment from New York to Mumbai.

ALEX & LYNN WATTS SHIPMENT – FF 221-235

The common carrier bill of lading describes the goods as “2 pieces one crate and one skid household effects” and states ocean freight charges totaling \$1,433.89 for a shipment from Houston to Brisbane, Australia.

Lynn and Alex Watts filed complaints against Respondents with the Consumer Protection Division of the Texas Attorney General and the Better Business Bureau of Houston, Texas, detailing the problems with their shipment. In their complaint with the Texas Attorney General, Alex and Lynn Watts state that Anderson increased the freight charges three days before their goods were to leave the country, their goods incurred additional storage charges in Brisbane because Respondents did not pay charges in Brisbane, Anderson avoided telephone calls seeking to resolve the situation, and various other actions by Respondents that resulted in an increase of the Watts’s costs from original quote of \$1,650.00 to \$8,800.00.

RICHARD NEWMAN SHIPMENT – FF 259-275

The common carrier bill of lading describes the goods as “3 pieces household effects (one crate, two cartons)” and states freight and other charges totaling \$491.19 for a shipment from Houston to Montego Bay, Jamaica. Anderson International charged \$900.00 for the shipment.

CLAUDETTE DILLON SHIPMENT – FF 276-287

The common carrier bill of lading describes the goods as “1 drms. S.T.C. (1 barrel) household goods/personal effects” and states freight and other charges totaling \$235.00 for a shipment from Houston to Kingston, Jamaica.

JULIA HUXTABLE SHIPMENT – FF 288-301

The common carrier bill of lading describes the goods as “1 crts S.T.C. used TV (household effects)” and states ocean freight and other charges of \$288.51 for a shipment from Houston, TX to Kingston, Jamaica. Anderson International charged \$400.00 for the shipment.

GEORGE HUGHES SHIPMENT – FF 359-374

The common carrier bill of lading describes the goods as “crate SLAC: 1944 Crushman [*sic*]” and states ocean freight and other charges totaling \$93.00 for a shipment from Houston, TX to Rotterdam, The Netherlands.

FULL CONTAINER LOAD SHIPMENTS

CLIFTON WATTS SHIPMENT NO. 1 (Mike European) – FF 55-72

The common carrier bill of lading describes the goods as a 40' container carrying an automobile and household effects for a shipment from Houston, Texas, to Manchester, Jamaica. Ocean freight charges were \$2,028.95. Anderson International charged \$3,720.00, including a charge of \$3,200 for freight, packing, and service.

REPAIRER OF THE BREACH SHIPMENT – FF 82-95

The common carrier bill of lading describes the goods as “40' container S.T.C. 500 CTMS [*sic*] relief supplies” for a shipment from Houston, Texas, to Jamaica. Anderson International Transport issued an invoice to Repairer of the Breach in the amount of \$3,190.00 for the shipment.

DIRK MANUEL SHIPMENT – FF 96-111

The common carrier bill of lading describes the goods as “1x40' container(s) SLAC: 250 pieces household effects” for a shipment from Katy, Texas to Brussels, Belgium. Dirk Manuel filed a complaint with the Better Business Bureau of Metropolitan Houston, stating that he was required to pay \$2,462 plus \$313 in demurrage charges to secure delivery of the container from the port of discharge to its ultimate destination.

KATHLEEN DAVIDSON SHIPMENT – FF 112-118

There is no common carrier bill of lading for this shipment in the record. Anderson International Transport issued a dock receipt for a 40' container describing the cargo as "40' contr STC household effects, one 2004 Toyt . . . one 2004 Ford" for a shipment from Houston to Kingston, Jamaica.

ASEKUNLE OSULE SHIPMENT – FF 119-136

The common carrier bill of lading describes the goods as "20' contr STC one 2005 Lincoln Navigator ID #5LMFU27535LJ11183 and four tires" and states ocean freight and other charges of \$951.76 for a shipment from Houston to Tilbury. Anderson International issued an invoice for a cost totaling \$2,392.50.

MARGRET DELEON SHIPMENT – FF 137-155

The common carrier bill of lading describes the goods as "20' standard container stc 75 pcs 'household effects'" and states freight and other charges of \$3,495.50 for a shipment from Houston, Texas, to Reykjavik, Iceland. Anderson International issued an invoice in the amount of \$5,600.

RAY COOPER SHIPMENT NO. 2 (Outbound Shipment) – FF 170-182

The common carrier bill of lading describes the goods as "X 20' std container STC 180 packages 'used household effects' return cargo" and states freight and other charges of \$1,245.50 for a shipment from Houston to Felixstowe. Anderson invoiced Cooper \$3,350.00 for the shipment.

DAVID ZINNAH SHIPMENT – FF 236-258

The common carrier bill of lading describes the goods as "1 x 40 dry cargo 86 unit(s) SLAC: 40' container - STC contains 85 pieces of household effects 1 used 2001 Jeep Cherokee" and states ocean freight charges of \$5,452.40 for a shipment from Houston, Texas to Monrovia, Liberia. Anderson International issued one invoice in the amount of \$5,850.00 and a second invoice in the amount of \$7,560.00 to Zinnah.

MICHAEL ROSE SHIPMENT – FF 302-311

The common carrier bill of lading describes the goods as "1 X 40' shipper owned std container STC 120 boxes household goods" for a shipment from Houston, Texas to Kingston, Jamaica. The booking confirmation states freight and other charges totaling \$2,500.00.

ABDELNASAR ALBALBISI SHIPMENT – FF 312-321

The common carrier issued an invoice to Anderson International in the amount of \$2,833.94 for a bill of lading describing the goods as “40' contr STC 60 pcs household effects 1 auto” for a shipment from Houston to Ad Dammam.

NICK MANIOTES SHIPMENT – FF 322-334

The common carrier bill of lading describes the goods as “20' contr stc 60 pcs household effects” for a shipment from Houston, TX to Pireaus, Greece. The common carrier invoiced Maniotes for freight and charges totaling \$1,456.00. Anderson International issued a domestic straight bill of lading for shipment of a 20' container with shipping and other charges totaling \$2,913.75.

JUSTINA LICRISH SHIPMENT – FF 335-346

The common carrier bill of lading describes the goods as “20' standard SLAC: 193 pcs of used household goods & personal effects” and states \$1,730.94 in freight and other charges for a shipment from Houston, Texas, to Trinidad.

LIBBY COKER SHIPMENT – FF 347-358

The common carrier bill of lading describes the goods as “67 unit(s) of (pieces) used household goods & personal effects” in a 20' container for shipment from Houston, Texas, to Italy.

With regard to the nature, circumstances, extent, and gravity of the violations, BOE argues that “Respondents were the subject of multiple complaints” and summarizes the evidence in the record demonstrating problems with the Two Trees Products shipment, the Dirk Manuel shipment, and the Alex and Lynn Watts shipment. (BOE Additional Briefing at 4-5.) Information about the problems with the Two Trees Products shipment comes from a complaint Two Trees filed with the Better Business Bureau. BOE obtained affidavits from Dirk Manuel and Lynn Watts describing the problems with their shipments. BOE did not submit affidavits from the shippers or consignees of the other nineteen shipments indicating problems with their shipments. BOE does not state whether it contacted the shippers and consignees for the nineteen shipments and learned that there were no problems or that BOE did not contact the shippers or the consignees to learn of problems. In any event, there is no evidence in the record demonstrating problems with the other nineteen shipments, and problems with the Two Trees, Manuel, and Watts shipments do not provide evidence on which a finding of problems with the other shipments could be based. Therefore, with no evidence to the contrary, it must be assumed that there were no problems with the other nineteen shipments and that they were delivered to the consignees without additional payments.⁹

⁹ The record suggests that there was a delay in payment for the David Zinnah shipment, but this appears to have been a delay in Zinnah’s payment to Respondents, not Respondents’

BOE seeks the maximum civil penalty of \$30,000 for each violation, whether for a small shipment for which there is no evidence of problems with the shipment (*e.g.*, a used TV shipped for \$288.51 in ocean freight and other charges (Julia Huxtable) or a motor scooter shipped for \$93.00 (George Hughes shipment)), a small shipment for which there is evidence of problems with the shipment (*e.g.*, one pallet where Respondents failed to provide the appropriate paperwork to allow the shipment to be released from the port (Two Trees Products) or one crate and one skid for which Respondents increased the freight charges three days before their goods were to leave the country, then failed to pay charges at the destination (Alex and Lynn Watts)), a large shipment for which there is no evidence of problems with the shipment (*e.g.*, a 40' container of household goods (Michael Rose)), or a large shipment for which there is evidence of problems with the shipment (*e.g.*, a 40' container for which the shipper was required to pay extra charges to secure delivery (Dirk Manuel)). I find that these matters – size of the shipment, whether there were problems with the shipment – are evidence of the nature, circumstances, extent, and gravity of the violations that Congress intended for the Commission to take into account in assessing a civil penalty. Assessing the same civil penalty for a small shipment as for a large shipment and for a shipment on which there were no problems as for a shipment on which there were problems would nullify the mandate set forth in section 13(c) that the Commission consider the nature, circumstances, extent, and gravity of the violations when assessing a civil penalty. Therefore, I have taken these factors into account in assessing a civil penalty.

5. Other Matters as Justice May Require.

Anderson's bankruptcy filings indicate that as of April 2, 2009, Anderson owed creditors an unsecured priority claim of \$36,238.89 for child support and unsecured nonpriority claims of \$102,133.22, a total of \$138,372.11. A civil penalty assessed by the Commission would be an unsecured priority claim that could impact recovery of those claims.

B. Balancing the Section 13(c) Factors.

Balancing the relevant evidence of the section 13(c) factors – the nature, circumstances, extent, and gravity of each violation, Respondents' degree of culpability, Respondents' lack of history of prior offenses, Respondents' limited ability to pay a civil penalty, and other matters as justice may require – in light of the obligation to ensure that the penalty be tailored to the particular facts of the case and not imposing unduly harsh or extreme sanctions while at the same time deterring violations and achieving the objectives of the law, I assess a civil penalty against respondents Owen Anderson and Anderson International Transport in the amounts set forth below in the Table of Civil Penalties Assessed:

delay in paying the common carrier. FF 236-258. BOE does not claim that Respondents caused any problems with the Zinnah shipment.

TABLE OF CIVIL PENALTIES ASSESSED

SHIPMENT	PENALTY
Two Trees Products	\$1,200.00*
Clifton Watts shipment No. 2 (Clifton Watts)	\$750.00
Barbara Downie	\$750.00
Dr. Saripalli	\$750.00
Alex & Lynn Watts	\$2,500.00*
Richard Newman	\$750.00
Claudette Dillon	\$750.00
Julia Huxtable	\$750.00
George Hughes	\$750.00
Clifton Watts shipment No. 1 (Mike European)	\$1,750.00
Repairer of the Breach	\$1,750.00
Subtotal	\$12,450.00

SHIPMENT	PENALTY
Subtotal	\$12,450.00
Dirk Manuel	\$4,000.00*
Kathleen Davidson	\$1,750.00
Asekunle Osule	\$1,750.00
Margret DeLeon	\$1,750.00
Ray Cooper shipment No. 2 (Outbound Shipment)	\$1,750.00
David Zinnah	\$1,750.00
Michael Rose	\$1,750.00
Abdelnasar Alalbisi	\$1,750.00
Nick Maniotes	\$1,750.00
Justina Licrish	\$1,750.00
Libby Coker	\$1,750.00
TOTAL	\$33,950.00

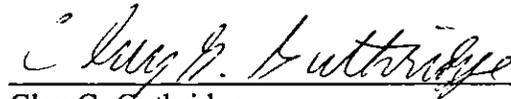
* Shipments for which the record contains evidence of problems.

O R D E R

Upon consideration of the findings and conclusions set forth in the Initial Decision entered August 28, 2009, *Anderson International Transport and Owen Anderson – Possible Violations*, FMC No. 07-02 (ALJ Aug. 28, 2009) (Initial Decision of Clay G. Guthridge, Administrative Law Judge), the Commission's Order Granting Petition to Reopen the Proceeding and for Remand, *Anderson International Transport – Possible Violations*, FMC No. 07-02 (Dec. 4, 2009), the additional evidence admitted after the Commission's remand, *Anderson International Transport – Possible Violations*, FMC No. 07-02, Order at 4 (ALJ Dec. 7, 2009) (Memorandum and Procedural Order on Remand for Determination of Civil Penalty), the reasons stated above, and the determination that on twenty-two shipments, respondents Owen Anderson and Anderson International Transport violated section 19 of the 1984 Act and the Commission's regulations at

46 C.F.R. part 515 by operating as an ocean transportation intermediary in the United States trades without obtaining a license from the Commission and without providing proof of financial responsibility, it is hereby

ORDERED that respondents Owen Anderson and Anderson International Transport remit to the United States the sum of \$33,950.00 as a civil penalty for twenty-two willful and knowing violations of the Shipping Act of 1984.



Clay G. Guthridge
Administrative Law Judge