

**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**

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**ADDITIONAL PROPOSED FINDINGS OF FACT, BRIEF AND APPENDIX  
OF THE  
BUREAU OF ENFORCEMENT**

**SEPTEMBER 21, 2009**

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BOE hereby submits the following additional proposed findings of fact, appendix and brief.

**ADDITIONAL PROPOSED FINDINGS OF FACT**

59. Dorothy H. Wade is a Commission employee assigned to the Bureau of Enforcement. (BOE App. 36, ¶ 1).

60. As part of her duties in the Bureau of Enforcement, Ms. runs queries on a database called Consolidated Lead and Evaluation Reporting ("CLEAR"). CLEAR is a next generation public records search platform operated by Thompson Reuters. CLEAR is designed specifically for government and law enforcement use and provides access to public records data. (BOE App. 36, ¶ 1).

61. On September 14, 2009, Mrs. Wade ran a CLEAR search for Tober using two former addresses: 185 Randolph Street, Brooklyn, NY 11237 and 38 Pulaski Street, Bayonne, NJ 07002. In the "Possible Bankruptcies, Liens and Judgments" section of each search, both address returned the same information with regard to federal tax liens and state tax warrants. (BOE App. 36, ¶2).

62. The CLEAR searches showed that three federal tax liens have been filed in the Hudson County, New Jersey Register of Deeds against Tober since July 2008. The largest, filed on July 18, 2008, by the Internal Revenue Service, is in the amount of \$435,000.00. On September 15, 2008, the Internal Revenue Service filed a federal tax

lien in the amount of \$60,857.00. Finally, on October 27, 2008, the Internal Revenue Service filed a federal tax lien in the amount of \$251,995.00. (BOE App. 36, ¶3).

63. With regard to state tax warrants, the CLEAR searches showed that four state tax warrants have been filed with the Albany New York County Clerk against Tober since January 2008. The largest, filed on January 1, 2008, is in the amount of \$197,648.00. Three other state tax warrants totaling less than \$5,000 were filed in 2008. (BOE App. 36, ¶ 4).

64. Martin W. Wilson is a Commission employee currently assigned to the Bureau of Certification and Licensing. (BOE App. 37, ¶1).

65. During the first week of September 2009, Mr. Wilson contacted Avalon Risk Management, Inc., the managing agent for Aegis Security Insurance Company (“Aegis”), which is the bond company holding the non-vessel-operating common carrier (“NVOCC”) and freight forwarder (“FF”) bonds for Tober and asked them to provide him with their most recent information regarding claims made against the bonds. Tober maintained a bond in the amount of \$75,000.00 with Aegis to cover their NVOCC activities and a bond in the amount of \$50,000.00 to cover their FF activities. (BOE App. 37, ¶2).

66. On September 4, 2009, Mr. Wilson received an e-mail from the claim representative of Avalon Risk Management, Inc. detailing the claim status of Tober’s NVOCC and FF bonds. The representative provided a spreadsheet detailing the pro-rata distribution of Tober’s NVOCC bond. As detailed in the spreadsheet, Avalon Risk Management, Inc. received \$793,954.57 in claims from shippers and other transportation related entities against Tober’s \$75,000.00 NVOCC bond. Avalon Risk Management,

Inc. determined the claims were for Tober's NVOCC activities, pro-rated the claims and paid out the available amount of Tober's bond, \$75,000.00. (It also paid \$6,285.00 on a claim against the FF bond.)(BOE App. 37, ¶ 3).

### **ABILITY TO PAY AND IMPOSITION OF CIVIL PENALTY**

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).

Federal tax liens filed against Tober total close to \$700,000.00. (PFF 62). New York State tax warrants total over \$200,000.00. (PFF 63). Tober's liabilities for taxes to the federal government and New York State total close to \$900,000.00, a significant liability for a company that is no longer in business. (PFF 62 and 63). Tober also has over \$700,000.00 in outstanding claims for its NVOCC activities. (PFF 66). It is unclear whether the claimants will take other legal action against Tober.

Based on the evidence of federal and state tax liens as well as outstanding claims by shippers and other transportation related entities and admissions by its president that Tober is no longer in business, it is reasonable to conclude that Tober has limited, if any, ability to pay a civil penalty. Ability to pay, however, is only one factor in determining the appropriate amount of a civil penalty. See Portman Square Ltd., 28 SRR 80, 86 (1998, ALJ); Ever Freight Int'l Ltd. et al., 28 SRR 329, 335 (1998, ALJ); Refrigerated Container Carriers Pty. Limited – Possible Violations

of Section 10(a)(1) of the Shipping Act of 1984, 28 SRR 799, 805 (Footnote 5) (1999, ALJ).

BOE believes the record supports imposition of the maximum civil penalty of \$30,000 for each violation; accordingly, assessment of a substantial civil penalty against Tober is appropriate.

Tober knowingly and willfully provided service on more than 250 shipments to fifteen unbonded and untariffed entities from 2004 to 2007. Tober's behavior continued even after the initiation of this proceeding. Additionally, since its licensing as an NVOCC close to ten years ago, Tober never charged the rates contained in its published tariff, a consistent and persistent disregard for its statutory responsibilities. Regardless of Tober's 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. 46 C.F.R. § 502.603(b). 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 Tober's present status.

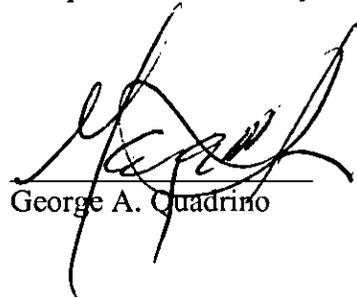
### **CONCLUSION**

BOE respectfully requests that the Administrative Law Judge: 1) issue an initial decision finding that Respondent violated section 10(b)(2)(a) and 10(b)(11); (2) assess an appropriate civil penalty against Respondent; and 3) issue an appropriate cease and desist order directed to Respondent.

  
George A. Quadrino, Deputy Director  
Elisa P. Holland, Trial Attorney  
Bureau of Enforcement  
Federal Maritime Commission  
September 21, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on this **21st** day of September, 2009, a copy of the foregoing **ADDITIONAL PROPOSED FINDINGS OF FACT, BRIEF AND APPENDIX OF THE BUREAU OF ENFORCEMENT** has been served upon all the parties of record by first class mail or e-mail.



George A. Quadrino

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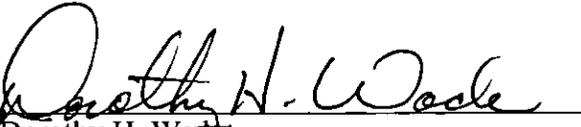
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BOE App. 36

## 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 run queries on a database called Consolidated Lead and Evaluation Reporting ("CLEAR"). CLEAR is a next generation public records search platform operated by Thompson Reuters. CLEAR is designed specifically for government and law enforcement use and provides access to public records data.
2. On September 14, 2009, I ran a CLEAR search for Tober Group, Inc. ("Tober") using two possible addresses: 185 Randolph Street, Brooklyn, NY 11237 and 38 Pulaski Street, Bayonne, NJ 07002. In the "Possible Bankruptcies, Liens and Judgments" section of each search, both address returned the same information with regard to federal tax liens and state tax warrants. That information is described below.
3. With regard to federal tax liens, the CLEAR searches showed that three federal tax liens have been filed in the Hudson County, New Jersey Register of Deeds against Tober since July 2008. The largest, filed on July 18, 2008, is in the amount of \$435,000.00 (Case Number 1900296, Book 190, Page 296), filed by the Internal Revenue Service. On September 15, 2008, the Internal Revenue Service filed a federal tax lien in the amount of \$60,857.00 (Case Number 1910348, Book 191, Page 348). Finally, on October 27, 2008, the Internal Revenue Service filed a federal tax lien in the amount of \$251,995.00 (Case Number 1930070, Book 1193, Page 70).
4. With regard to state tax warrants, the CLEAR searches showed that four state tax warrants have been filed with the Albany New York County Clerk against Tober since January 2008. The largest, filed on January 1, 2008, is in the amount of \$197,648.00 (Case Number 10102857, Page 36910). Three other state tax warrants totaling less than \$5,000 were filed in 2008.

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

September 18, 2009

BOE App. 37

## STATEMENT OF MARTIN W. WILSON

1. My name is Martin W. Wilson. I have been an employee of the Federal Maritime Commission for 25 years. I am currently assigned to the Bureau of Certification and Licensing. As part of my duties in the Bureau of Certification and Licensing, I am a senior transportation specialist and team leader of the ocean transportation intermediary (“OTI”) bonding program. I receive and process all OTI bonds, riders, and terminations filed with the Federal Maritime Commission.
2. During the first week of September 2009, I contacted Avalon Risk Management, Inc., the managing general agent for Aegis Security Insurance Company (“Aegis”), which is the bond company holding the non-vessel-operating common carrier (“NVOCC”) and freight forwarder (“FF”) bonds for Tober Group, Inc. (“Tober”), and asked them to provide me with their most recent information regarding claims made against the Aegis bonds. Tober maintained an Aegis bond in the amount of \$75,000.00 to cover their NVOCC activities and an Aegis bond in the amount of \$50,000 to cover their FF activities.
3. On September 4, 2009, I received an e-mail from the claim representative of Avalon Risk Management, Inc. detailing the claim status of Tober’s NVOCC and FF bonds. The representative provided a spreadsheet detailing the pro-rata distribution of Tober’s NVOCC bond. (See Exhibit 1). As detailed in the spreadsheet, Avalon Risk Management, Inc. received \$793,954.57 in claims against Tober’s \$75,000.00 NVOCC bond.<sup>1</sup> Avalon Risk Management, Inc.,

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<sup>1</sup> As a matter of information, the representative also advised that \$6,285 was paid for a claim against the FF bond.

determined the claims were for Tober's NVOCC activities, pro-rated the claims and paid out the available amount of Tober's bond, \$75,000.00.

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

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Martin W. Wilson

September 21, 2009

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EXHIBIT 1

Claimant Number	Claimant Name	Claimant Address	Violation Date	Claim Amt	% of total Claims	Pro-Rata Share
91298A	Christine Swenson	19/1 Bayside Terrace, Cabanta, NSW 2137 AU	12/7/2008	7,060.01	0.89%	666.9
91298B	Metro Group Agent for Zim	61 Broadway Suite 1410, New York, NY 10006	5/3/2008	337,478.31	42.51%	31879.5
91298C	Metro Group Agent for OOCL	61 Broadway Suite 1410, New York, NY 10006	6/4/2008	12,684.26	1.60%	1198.2
91298D	Metro Group Agent for COSCO	61 Broadway Suite 1410, New York, NY 10006	5/10/2008	9,752.00	1.23%	921.2
91298E	Neeraj Manik	BW 6D, Shalimar Bagh, Delhi, IN	9/24/2008	6,150.00	0.77%	581.0
91298F	Seamates International	PO Box 436, East Rutherford, NJ 07073	6/27/2008	24,592.00	3.10%	2323.1
91298G	World Cargo Transport	505 Thornall St Suite 420, Edison, NJ 08837	6/17/2008	1,925.00	0.24%	181.8
91298H	Carotrans International	2401 Morris Ave, Union, NJ 07083	10/4/2008	865.46	0.11%	81.8
91298I	Dijkshoorn Euromovers	PO Box 74, 3130 AB Vlaardingen, Netherlands	3/5/2008	393,447.53	49.56%	37166.6
Total Claims				793,954.57	100.00%	75000.0

Input amount of bcd 75000.0

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