I. INTRODUCTION AND SUMMARY OF DECISION.

On May 23, 2017, complainant CMI Distribution, Inc. (CMI) commenced this proceeding by filing a Complaint with the Secretary. CMI is a corporation organized and existing under the laws of Illinois with its principal place of business in Wheeling, Illinois. (Complaint ¶ 1.) The Complaint alleges that respondents Service by Air, Inc., Radiant Customs Services, Inc. (formerly known as SBA Consolidators, Inc.), and LAS Freight System Ltd. (LAS Freight) violated the Shipping Act of 1984 (Shipping Act or Act), 46 U.S.C. §§ 40901, 41102(c), 41104(2)(A),2 and 40501, and 46 C.F.R. §§ 515.3 and 520.3 of the Commission’s Regulations, while transporting cargo by water from China to the United States pursuant to a contract between CMI and Service by Air, Inc.

As explained more fully below, Service by Air concedes that it is not licensed by the Commission to operate as an ocean transportation intermediary, either as a non-vessel-operating common carrier (NVOCC) or as an ocean freight forwarder. Service by Air attempted to create a shipping protocol by which it could transport freight by water between a foreign port and a port

1 The initial decision will become the decision of the Commission in the absence of review by the Commission. Any party may file exceptions to this decision within twenty-two days of the date of service of the decision.

2 The Complaint cites to section 41104(2)(c). (Complaint Part V.C.) There is no section 41104(2)(c). The language in the Complaint is consistent with section 41104(2)(A).
in the United States while evading the requirements of the Shipping Act of 1984. As this case illustrates, problems may occur when this is done.

At the time of the transportation, Service by Air controlled SBA Consolidators, Inc. (SBA Consolidators) as its wholly-owned subsidiary. SBA Consolidators was licensed by the Commission as an NVOCC. When Service by Air engaged in the discussions with CMI that resulted in the agreement to transport CMI cargo by water from China to points in the United States, Service by Air chose to enter into the agreement as Service by Air instead of as its NVOCC-licensed subsidiary SBA Consolidators. Although SBA Consolidators performed some functions related to the transportation of the cargo, Service by Air contends that SBA Consolidators only processed customs clearance, but otherwise played no other role in the shipments. (Service by Air, Inc. and Radiant Customs Services Inc. Proposed Findings of Fact 11 (Doc. 42) (SBA Prop. FF 11).) Service by Air does not explain why it entered into the arrangement with CMI instead of having its NVOCC-licensed subsidiary enter into the arrangement. Non-party Radiant Global Logistics, Inc., acquired Service by Air and its subsidiary SBA Consolidators in or about June 2015, approximately the time the last shipment at issue took place. (SBA Prop. FF 2.)

If no problems had developed with the shipments and the cargo had been delivered as planned, it is likely that the parties would have gone on their way without controversy, this proceeding would never have been commenced, and the Commission never would have learned of the CMI-Service by Air agreement or Service by Air’s participation in the transportation of CMI’s cargo. Unfortunately, problems developed with the payment to the sellers of the cargo being transported on many shipments, causing delay in the shipments and additional charges for CMI to secure release of the shipments. CMI filed a complaint with the Commission alleging that Service by Air violated the Shipping Act on the shipments.

Service by Air denies that it operated as an ocean transportation intermediary within the meaning of the Shipping Act on the shipments and asserts that the Commission does not have jurisdiction over its actions. Service by Air suggests that at most it acted in a role similar to that of an ocean freight forwarder, but because the shipments came from outside the United States into the United States, it was not an ocean freight forwarder within the meaning of the Act. See 46 U.S.C. § 41102(19) (ocean freight forwarder dispatches shipments from the United States).

The Commission is now required to sort through the facts related to the shipments to determine: (1) whether Service by Air operated as an NVOCC within the meaning of the Act; (2) whether Service by Air violated the Act; and (3) whether CMI suffered actual injury as a result of the violations.

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3 "Doc." followed by a number refers to a document listed in the Commission’s electronic docket for this proceeding. See https://www2.fmc.gov/readingroom/proceeding/17-05/ (last visited May 20, 2019).
Respondent LAS Freight is a foreign NVOCC that was registered with the Commission. After entering into its agreement with CMI, Service by Air engaged LAS Freight to arrange the transportation of the CMI cargo from China to the United States. LAS Freight issued house through bills of lading from China to a facility in the United States designated by Service by Air and apparently arranged for other NVOCCs to be involved in the transportation. The shipments were then held in the facility in the United States until Service by Air authorized release to CMI or CMI's customer.

LAS Freight has not responded to the Complaint. CMI filed a motion for decision on default that was deferred for consideration with the claims against the other Respondents.

The undersigned concludes that CMI has proved by a preponderance of the evidence that Service by Air operated as an NVOCC on the shipments, that Service by Air violated the Shipping Act by operating as an NVOCC without a Commission license and tariff and by imposing demurrage and detention charges on CMI in excess of that permitted by the Act, and that CMI suffered actual injury because of the unlawful charges.

The undersigned concludes that CMI has not proved that LAS Freight violated the Act.

This decision is divided into nine parts. Part II is a narrative of the factual events. This narrative is based on the findings of fact set forth in Part VII. Part III sets forth the controlling authority. Part IV sets forth the analysis finding that Service by Air operated as an NVOCC on the CMI shipments. Part V sets forth the findings on whether Service by Air violated the Shipping Act. Part VI sets for the findings and holding on whether LAS Freight violated the Shipping Act. Part VIII describes the evidence on which this decision is based and sets forth the findings of fact. The findings are divided into two sections. Section A sets for the findings on the parties and their relationships. Section B sets forth the findings on the twenty-nine shipments at issue. Part VIII sets forth holdings on other outstanding issues. Part IX addresses attorney fees.

II. BACKGROUND.

A. The Parties and Their Relationships.

1. Parties and significant non-parties.

Complainant CMI is in the business of importing packaging manufactured in China for sale and distribution to wholesalers and other distribution companies in the United States. At the time the shipments that are the subject of this Complaint took place, respondent Service by Air was licensed as an indirect air carrier by the Transportation Security Administration (TSA) of

4 "Indirect air carrier (IAC) means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air

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the United States Department of Homeland Security. Service by Air was not and never has been licensed by the Commission as an ocean transportation intermediary, either as an NVOCC or an ocean freight forwarder. SBA Consolidators is a wholly-owned subsidiary of Service by Air. At the time the shipments took place, SBA Consolidators was licensed by the Commission as an NVOCC. “In or about June 2015, non-party Radiant Global Logistics, Inc. acquired [Service by Air, Inc.], and by extension, SBA Consolidators. [Service by Air, Inc.] still exists as a separate corporate entity wholly owned by Radiant Global Logistics, Inc.” (SBA Prop. FF 1.) On May 12, 2017, the Commission approved Radiant Customs Services, Inc.’s request to transfer SBA Consolidators’s NVOCC License Number 009688 to Radiant Customs Services, Inc. (Answer ¶ 3; Official notice of Commission records.)

In filings and orders prior to this decision, the parties and the undersigned have referred to respondent Service by Air, Inc., as “SBA.” Because of the similarity of the abbreviation “SBA” to the name of Service by Air’s subsidiary SBA Consolidators, to reduce the possibility of confusion this decision refers to Service by Air, Inc., as “Service by Air,” not SBA, and SBA Consolidators, Inc., as “SBA Consolidators.” The decision refers to Radiant Global Logistics, Inc., as Radiant Global and Radiant Customs Services, Inc., as Radiant Customs.

In 2013-2014, CMI used the services of UTi, United States, Inc. (UTi), an NVOCC licensed by the Commission, to transport shipments from China to the United States pursuant to a negotiated rate agreement (NRA). UTi is not a party in this proceeding.

In 2014, CMI and Service by Air entered into a relationship for Service by Air to arrange the transportation by water of CMI cargo from China to the United States. Service by Air in turn arranged with respondent LAS Freight to be involved in the shipments. The shipments at issue were transported by water from China to the United States pursuant to the agreement between CMI and Service by Air. Service by Air based the rate structure in its agreement with CMI on the CMI-UTi NRA.

2. Relationships among the parties.

In 2014, CMI and Service by Air began negotiation for Service by Air to transport the cargo then being transported by UTi. During their negotiations, CMI gave Service by Air a copy of the UTi NRA with the comment that Service by Air’s rates would have to match or better UTi’s rates. Service by Air, licensed by the TSA as an indirect air carrier, does not explain why it entered into these negotiations and the resulting agreement with CMI instead of it wholly-owned subsidiary, SBA Consolidators, which was licensed by the Commission as an NVOCC.

Service by Air responded by creating an “SBA Global Logistics” document similar to the UTi-CMI NRA. The Service by Air document sets forth charges for Service by Air’s ocean transportation of property, and uses for all or any part of such transportation the services of an air carrier.” 49 C.F.R. § 1540.5.
freight, AMS (Automated Manifest System), port fee, ISF/ACI fee, destination handling, customs, delivery, and total ocean freight for full container load shipments from three ports in China to five destinations in the United States. The document notes that “[c]hassis usage fee of $25 per day will apply at US origin/destination, when applicable” and “[a]ll FCL rates are subject to change without notice.” The document states:

Carrier’s Rules Tariff, provided free of charge at www.go2uti.com [sic], contains the terms and conditions which are further applicable to this shipment. During the term of this NRA, transportation is subject to applicable surcharges, accessorial charges and/or GRIs published in Carrier’s rules tariff and effective at the time of shipment, unless otherwise specified in this NRA.

(CMI’s Notice of Filing, June 5, 2018 (document marked Plaintiff’s Exhibit 3).)

CMI and Service by Air entered into an agreement and Service by Air began to arrange the transportation of CMI’s cargo. Service by Air then engaged LAS Freight to transport the cargo. (Motion to Dismiss at 2.) CMI did not have a direct relationship with LAS Freight.

B. Shipments at Issue.

The Complaint alleges that “[b]etween April 2014 and June 2015, CMI engaged Respondents to provide transportation of more than 60 shipments . . . with Respondents from China to Illinois.” (Complaint ¶ 6.) CMI attached Complaint Exhibit 1 to the Complaint listing the shipments it contended were at issue. The line numbering in the left column of Complaint Exhibit 1 ends with FLDR (Folder) 62. FLDR numbers 31, 32, 35, 37, 38, 40, 41, 47, and 48 were not used on Complaint Exhibit 1; therefore, Complaint Exhibit 1 listed fifty-three shipments.

Documents filed by Service by Air in connection with its motion to dismiss suggested that some of the shipments listed in Complaint Exhibit 1 were not transported by water between China and the United States, but were transported by water to Vancouver, Canada, and entered the United States by train, or for one shipment, was transported by air to San Francisco International Airport. A stipulation filed by CMI and Service by Air resulted in dismissal without prejudice of claims regarding the shipments identified in Complaint Exhibit 1 as FLDR numbers 4, 12, 14, 15, 18, 20, 22, 23, 24, 26, 28, 30, 34, 39, 45, 55, 56, and 57 because they were not transported by water from a foreign port to a port in the United States and hence not subject

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to Commission subject matter jurisdiction. CMI did not make claims for FLDR numbers 1, 5, 6, 7, 8, and 11. CMI v. Radiant/SBA, FMC No. 17-05 (ALJ Sept. 21, 2017) (Notice to the Parties and Order to Schedule Conference). The twenty-nine shipments identified in FLDR numbers 2, 3, 9, 10, 13, 16, 17, 19, 21, 25, 27, 29, 33, 36, 42, 43, 44, 46, 49, 50, 51, 52, 53, 54, 58, 59, 60, 61, and 62 remain at issue, id., and are addressed in this decision.

CMI developed cash flow problems related to a number of the shipments and did not pay its suppliers. (FF 61.) Consequently, shipments were not delivered to CMI or its customers, but were held at a storage facility designated by Service by Air after delivery from the carrier pending release to CMI or its customer. The containers at issue incurred charges described in the documents as detention, demurrage, stripping, or storage while being held. Service by Air invoiced CMI for these charges. Toward the end of their relationship, Service by Air refused to deliver some cargo unless CMI also paid charges related to some cargo that had already been delivered. CMI contends that the detention and demurrage charges were imposed in violation of the Shipping Act. CMI also contends that Service by Air’s refusal to deliver new shipments until CMI paid outstanding charges on other shipments violated the Act.

III. CONTROLLING AUTHORITY.

A. Relevant Statutes and Regulations.

CMI filed its Complaint pursuant to section 41301 of the Act, which provides:

A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.


The Act defines two types of ocean transportation intermediaries. “The term ‘ocean transportation intermediary’ means an ocean freight forwarder or a non-vessel-operating common carrier.” 46 U.S.C. § 40102(20).

The term “ocean freight forwarder” means a person that – (A) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments.

6 “FF” followed by a number refers to a finding of fact in Part VII.B.1 of this decision.
The Complaint alleges that Respondents are NVOCCs. The Act defines NVOCC: “The term ‘non-vessel-operating common carrier’ means a common carrier that – (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier.” 46 U.S.C. § 40102(16).

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


The term “shipper” means – (A) a cargo owner; (B) the person for whose account the ocean transportation of cargo is provided; (C) the person to whom delivery is to be made; (D) a shippers’ association; or (E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

CMI alleges that Respondents violated these four sections of the Shipping Act and related regulations. Section 40901 provides that “[a] person in the United States may not advertise, hold oneself out, or act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary’s license issued by the Federal Maritime Commission.” 46 U.S.C. § 40901(a). See also 46 C.F.R. § 515.3 (2015) (“Except as otherwise provided in this part, no person in the United States may act as an ocean transportation intermediary unless that person holds a valid license issued by the Commission. A separate license is required for each branch office that is separately incorporated. For purposes of this part, a person is considered to be ‘in the United States’ if such person is resident in, or incorporated or established under, the laws of the United States. Only persons licensed under this part may furnish or contract to furnish ocean transportation intermediary services in the United States on behalf of an unlicensed ocean transportation intermediary.”).

The Commission amended sections 515.2 (NVOCC services) and 515.3 in 2015 after the shipments at issue. 80 Fed. Reg. 68731 (Nov. 5, 2015). The regulations that were in effect when the shipments were transported control this case.
Section 40501(a)(1) provides that "[e]ach common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established." 46 U.S.C. § 40501(a)(1). See also 46 C.F.R. § 520.3(a) ("Unless otherwise exempted by Sec. 520.13, all common carriers and conferences shall keep open for public inspection, in automated tariff systems, tariffs showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established.").

Section 41102(c) provides "[a] common carrier ... or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property." 46 U.S.C. § 41102(c).

Section 41104(2)(A) provides:

A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not—(2) provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title.


Section 515.2(/) of the Commission's regulations provided:

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

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

46 C.F.R. § 515.2(/) (2015).
Section 532.3(a) of the Commission’s regulations provides:

“NVOCC Negotiated Rate Arrangement” or “NRA” means a written and binding arrangement between an NRA shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after receipt of the cargo by the NVOCC. For purposes of this part, “receipt of cargo by the NVOCC” includes receipt by the NVOCC’s agent, or the originating carrier in the case of through transportation.

46 C.F.R. § 532.3(a) (emphasis added). Only duly licensed NVOCCs may use NRAs. 46 C.F.R. § 532.2.

The Complaint seeks a reparation award for alleged actual injury resulting from unlawful demurrage and detention charges and an award of attorney fees. The Act defines actual injury.

(a) Definition. – In this section, the term “actual injury” includes the loss of interest at commercial rates compounded from the date of injury.

(b) Basic amount. – If the complaint was filed within the period specified in section 41301(a) of this title, the . . . Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part.

(e) Attorney Fees. – In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.


B. Evidence and Burden of Persuasion.

Under the Administrative Procedure Act (APA), an administrative law judge may not issue an order “except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.” 5 U.S.C. § 556(d). See also Steadman v. SEC, 450 U.S. 91, 102 (1981). All documents provided by the parties in support of their arguments are admitted as evidence. This initial decision is based on the Complaint and Answer, the motions, the parties’ briefs, the appendices filed with the briefs, and the supplemental evidence filed by the parties.

This initial decision addresses only material issues of fact and law. It is not necessary to resolve disagreements on matters not material to the outcome of this proceeding. Administrative adjudicators are “not required to make subordinate findings on every collateral contention.
advanced, but only upon those issues of fact, law, or discretion which are ‘material.’”


A complainant alleging a violation of the Shipping Act “has the initial burden of proof to establish the violation[]. The applicable standard of proof is one of substantial evidence, an amount of information that would persuade a reasonable person that the necessary premise is more likely to be true than to be not true.” *AHL Shipping Company v. Kinder Morgan Liquids Terminals, LLC*, FMC No. 04-05, 2005 WL 1596715, at *3 (ALJ June 13, 2005). See 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”); 46 C.F.R. § 502.155. “[A]s of 1946 the ordinary meaning of burden of proof [in section 556(d)] was burden of persuasion, and we understand the APA’s unadorned reference to ‘burden of proof’ to refer to the burden of persuasion.” *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The party with the burden of persuasion must prove its case by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. at 102. “[W]hen the evidence is evenly balanced, the [party with the burden of persuasion] must lose.” *Greenwich Collieries*, 512 U.S. at 281. It is appropriate to draw inferences from certain facts when direct evidence is not available, and circumstantial evidence alone may even be sufficient; however, such findings may not be drawn from mere speculation. *Waterman Steamship Corp. v. General Foundries, Inc.*, 26 S.R.R. 1173, 1180 (ALJ 1993), adopted in relevant part, 26 S.R.R. 1424 (FMC 1994).

C. Actual Injury Claimed.

As actual injury, CMI alleges that “[a]s a result of Respondents’ violations of the Shipping Act, the Complainant has sustained injuries and damages to the extent it paid fees not reflected in a valid tariff and in excess of remittances for lawful third party demurrage.” (Complaint ¶ 43.) CMI has the burden of proving entitlement to reparations. See *James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal Dist.*, 30 S.R.R. 8, 13 (FMC 2003) (“As the Federal Maritime Board explained long ago: ‘(a) damages must be the proximate result of violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation.’”).

IV. SERVICE BY AIR OPERATED AS AN NVOCC ON THE CMI SHIPMENTS.

CMI alleges that Respondents are NVOCCs. (Complaint at 1-2) An NVOCC is a common carrier; that is, it

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

46 U.S.C. § 40102(6). “To determine whether an entity is operating as an NVOCC, the Commission must assess whether the entity’s operations meet the three elements of common carriage set out in the Act.” Anderson Int’l Transport – Possible Violations of Shipping Act of 1984, 2013 FMC LEXIS 19 at *22 (FMC 2013) (Anderson Int’l) (quoting Worldwide Relocations, Inc. – Possible Violations of Shipping Act, 2012 FMC LEXIS 23 at *25 (FMC 2012) (Worldwide Relocations (FMC) (footnote omitted)).

Service by Air contends that the evidence “demonstrates Service by Air . . . did not operate, or ‘hold itself out to the general public,’ as an NVOCC in the shipments at issue,” thus is not subject to the Shipping Act and the Commission therefore lacks subject matter jurisdiction over CMI’s complaint. (SBA Brief at 1.) Service by Air argues:

(A) The Shipping Act does not apply if [Service by Air] operated as an ocean freight forwarder for inbound cargo; (B) The statutory definition of “NVOCC” does not encompass [Service by Air]; (C) [Service by Air] did not “hold itself out to the General Public” as an NVOCC; and (D) [Service by Air] did not perform tasks delineated in 46 C.F.R. § 515.2(k) of the Commission’s regulations as the tasks performed by an NVOCC.

(SBA Brief at 22-25.)

The Commission has stated:

[While the question of whether certain conduct violates the Shipping Act is necessarily a fact-intensive inquiry, a finder of fact may draw reasonable evidentiary inferences and employ permissive presumptions in some circumstances in determining where an entity operated as an NVOCC.

Worldwide Relocations (FMC), 2012 FMC LEXIS 23 at *3. In affirming the methodology used by an administrative law judge to determine whether a respondent acted as an NVOCC, the Commission stated:

In the Initial Decision, the ALJ correctly stated the well-established methodology for determining whether an entity is operating as an NVOCC:
To determine if an entity is a common carrier, it ‘is important to consider all the factors present in each case and to determine their combined effect.’ [Activities, Tariff Filing Practices and Carrier Status of] Containerships [Inc.], 9 F.M.C. [56] at 65 [F.M.C. 1965]). The Commission has indicated that it will ‘look beyond documentary labels.’ [Id.] at 66. For example, ‘it is the status of the carrier, common or otherwise, that dictates the ingredients of shipping documents, it not the documentation that determines the carrier status.’ [Id.] at 66. To determine whether an entity meets this standard, it is necessary to examine the entity’s conduct on that shipment. Bonding of Non-Vessel-Operating Common Carriers, 25 S.R.R. [1679] at 1684 (F.M.C. 1991)); see also Low Cost Shipping, Inc., 27 S.R.R. 686, 687 ([F.M.C.] 1996) (entity found to be operating as an NVOCC on some shipments and as an [Ocean Freight Forwarder] on other shipments. This is a fact intensive inquiry.

... Resolution of that factual question requires an examination of each entity’s conduct on a particular shipment to determine whether it operated as either an NVOCC or an [Ocean Freight Forwarder] on that shipment. Accordingly, after explaining how the evidence was weighed, each shipment alleged will be reviewed individually. 31 S.R.R. at 1519.

We expressly affirm the ALJ’s articulation of the Commission’s approach to determining NVOCC status.


The pertinent Commission holding in Worldwide Relocations concerns the methodology for determining whether an entity operated as an ocean freight forwarder or NVOCC on identified shipments. To determine whether an entity is operating as an NVOCC, the Commission must assess whether the entity’s operations meet the three elements of common carriage set out in the Act: (1) holding out to the general public to provide transportation by water between the United States and a foreign country for compensation; (2) assuming responsibility for the transportation from the port or point of receipt to the port or point of destination; and (3) using for all or part of the transportation a vessel operating on the high seas or the Great Lakes, between a port in the United States and a port in a foreign country.
Additionally, the Commission stated in *Worldwide Relocations, Inc.*:

> [O]nce the presiding officer has made a finding that (1) the entity has ‘held itself out to the general public,’ and (2) that vessels on the high seas or Great Lakes were utilized for part or all of the transportation, then that finding may apply to any and all shipments during the relevant time period. The opposing party would have the right to offer evidence, for example, that a vessel was not involved in a particular shipment. Second, the party with the ultimate burden of proof and persuasion must present evidence on each shipment concerning the ‘assumed responsibility’ element; however, such party may have the benefit of the above-described permissive presumption. As one example, for a Bill of Lading and invoices with ambiguous identification of the party shippers, with one interpretation being the respondent entity did assume responsibility for the transportation, the operation of the presumption may result in a finding of NVOCC status. As an opposite example, a Bill of Lading with clear and unambiguous identification of the proprietary shipper could possibly result in a finding of no assumption of responsibility by the respondent entity for the shipment in question. The opposing party may then have the duty to produce credible evidence to rebut the presumption concerning the ‘assumed responsibility’ element on each shipment.


It is acknowledged that the respondent in *Worldwide Relocations* was involved in shipments originating in the United States, not shipments coming to the United States, so clearly could have been within the statutory definition of ocean freight forwarder, while Service by Air was handling shipments coming into the United States and could not have been an ocean freight forwarder within the meaning of the Act. Nevertheless, because Service by Air claims it was operating as an ocean freight forwarder on the shipments, it is appropriate to use the *Worldwide Relocations* test to determine whether or not it was operating as an NVOCC.

Applying the *Worldwide Relocations (FMC)* methodology, I conclude that Service by Air operated as an NVOCC on the shipments at issue.

A. The Shipments at Issue Were Transported by Water Between Ports in China and Ports in the United States.

Addressing the third and easiest factor, the parties agree and the documents submitted by the parties in Joint Appendix filed June 1, 2018, at the request for the undersigned substantiate that each of the shipments at issue except FLD8R 2 were transported by a vessel operating on the high seas between a port in China and discharged in a port in the United States, either Long Beach, CA (FF3/2, FF9/2, FF10/2, FF13/2, FF16/2, FF17/2, FF19/2, FF21/2, FF29/2, FF36/2,
B. Service by Air Held Itself Out as a Common Carrier.

Before CMI and Service by Air entered into their relationship, UTi transported cargo for CMI pursuant to an NRA. During their negotiations, CMI gave Service by Air a copy of the UTi NRA. Service by Air used the UTi NRA as a model to create its own rates that it used to secure CMI’s business. Bryan Tincher, Service by Air’s Import/Export Manager, described the document as a “tariff.” FF 21-27. The “tariff” sets forth Service by Air’s ocean freight rate, AMS, port fee, ISF/ACI fee, destination handling, customs, delivery, and total ocean freight for full container load shipments from three ports in China to five destinations in the United States. Service by Air was not passing on ocean freight charges imposed by a common carrier, but offering freight charges to CMI through its self-described “tariffs.” Over time, Service by Air revised the ocean freight rates in additional documents it described as “CMI Packaging and Distribution FOB Tariffs” as the relationship continued, in each case imposing rates that it established, not rates established by other common carriers. FF 33-40. These documents contain the following provision:

COST IS BASED FOB INCOTERMS. ALL ORIGIN FEES PAID BY SHIPPER. QUOTE INCLUDES CUSTOMS CLEARANCE AND DRAYAGE AT DESTINATION ALL RATES ARE SUBJECT TO SBA GLOBAL TERMS AND CONDITIONS BAF, CAF, IFC ARE SUBJECT TO CHANGE WITHOUT NOTICE. COST DOES NOT INCLUDE DUTIES OR TAXES. QUOTE DOES NOT INCLUDE US CUSTOMS INSPECTION EXAM FEES IF APPLICABLE. QUOTE DOES NOT INCLUDE DEMURRAGE AND/OR DETENTION.

(CMI App. Ex. A-3.)

The Commission has considered the establishment of ocean freight rates an important indicator of whether an entity operated as an NVOCC.

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9 “FF3/2” refers to finding of fact number 2 on the shipment in FLDR 3 in Part VII.B.2. Similarly formatted references refer to findings of fact on other individual shipments in Part VII.B.2. “FF” followed by a number without the slash refers to a finding of fact in Part VII.B.1. “CMI App.” refers to the appendix filed by CMI with its opening brief.
For that shipment, the invoice submitted by Worldwide Shipping to the proprietary shipper charged a separate, higher freight rate than the downstream NVOCC charged. The charge appears as an ocean freight charge, not as a “fee” that an agent (or Ocean Freight Forwarder) would charge. Pursuant to Commission regulations and caselaw, this indicates that Worldwide Shipping was acting as a carrier rather than an agent, despite the occasional listing of a proprietary shipper as the shipper on a bill of lading.

*Worldwide Relocations (FMC)*, 2012 FMC LEXIS 23 at *25 (FMC 2012) (footnote omitted). In the omitted footnote, the Commission stated:

*Compare* 46 C.F.R. § 515.2[(i)](11) [2011] (“Freight forwarding services . . . may include . . . [h]andling freight or other monies advanced by shippers”) with 46 C.F.R. § 515.2[(f)](3) [2011] (“[NVOCC] services . . . may include . . . [e]ntering into affreightment agreements with underlying shippers,” which includes charging a freight rate different than what the VOCC charges). [Ocean freight forwarders] pass along, or “handle” freight charges imposed by carriers, whereas NVOCCs (and VOCCs) determine what those freight charges are.

*Worldwide Relocations (FMC)*, *25 n.3.10

The fact that Service by Air determined the ocean freight charges paid by CMI is confirmed by other evidence, including its actual practice on the shipments at issue. Service by Air’s corporate department required Service by Air to charge at least a twenty percent mark up of the charges by the drayage companies and ocean freight charges based on the company’s guideline. (FF 70.) On every shipment for which the relevant documents are in the record, Service by Air charged CMI an amount for ocean freight that was greater than what the ocean common carrier charged Service by Air.

<table>
<thead>
<tr>
<th>FLDR</th>
<th>Ocean freight charged to Service by Air by carrier</th>
<th>Ocean freight Service by Air charged CMI or its customer</th>
<th>Evidentiary support</th>
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<tbody>
<tr>
<td>9</td>
<td>$3,393.00</td>
<td>$4,688.00</td>
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<tr>
<td>10</td>
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<td>$5,537.00</td>
<td>FF10/4, 6, 8</td>
</tr>
<tr>
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<td>$5,280.00</td>
<td>FF13/3, 4, 8</td>
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<table>
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<tr>
<th>No.</th>
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<th>Amount 2</th>
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</table>

On each of these shipments, Service by Air did not pass along, or “handle” the freight charges imposed by a carrier, but determined what those freight charges would be for CMI through its self-described “tariffs.”

### C. Service by Air Assumed Responsibility for Transportation of the Cargo.

The Commission has held that evidence of an entity’s routine practice is relevant to a determination of whether that entity assumed responsibility for a shipment. See *Worldwide Relocations (FMC)*, 2012 FMC LEXIS at *21, 26; *Anderson Int’l*, 2013 FMC LEXIS at *27. To determine the routine practices of the respondents in *Worldwide Relocations (FMC)* and *Anderson Int’l*, the Commission reviewed the shipping documents for the shipments, including the bills of lading issued by the downstream carriers and the invoices for the shipments. The Commission “indicated that it will look beyond documentary labels” in such reviews. *Anderson Int’l*, 2013 FMC LEXIS at *45 n.7. See also *GIC Services, L.L.C. v. FreightPlus USA, Inc.*, 866 F.3d 1817, 1827 (5th Cir. 2017) (“[A]n entity’s status as an NVOCC (and as a shipper) depends on its function, not the labels ascribed to it by third parties.” (Internal citations omitted)). Thus the shipping documents for the shipments in this case were reviewed to determine whether Service by Air assumed responsibility for the shipments. Such review revealed that while Service by Air denies that it acted as the NVOCC for the shipments, in actuality, Service by Air was listed either as shipper, consignee, notify party, the entity to be billed for the charges, or the entity to contact for their delivery in the shipping documents. Further, the documents showed ambiguity in the identification of the actual shippers as different entities were described as the
“shipper” for the same shipment. As an example, for container number “TCKU1771451” (Service by Air invoice to CMI for “Air Bill Number N771018”), Service by Air described the “Shipper” as “Yantai FoodPack” and the “Receiver” as Ultra Dist Center (JA00150). However, for the same shipment, USA Logistic Services Inc., the downstream carrier, describes Service by Air as the “Shipper” and Ultra Dist. Center as the “Consignee.” (JA00151-JA00152). Again, for the same shipment, Jewels Transportation, Inc., the drayage company utilized by Service by Air for the shipment, issued its invoice to “SBA Global Logistic Service” (JA00147). For that same shipment, LAS Freight issued a bill of lading (No. QINCHH1411001) describing CMI Distribution LLC as the “shipper” and Ultra Distribution Center as the “consignee.” The LAS Freight bill of lading is annotated: “For Delivery of Goods Please Apply To: SBA (Service By Air) Global Logistics/Ord, 811 Thorndale Ave Bensenville, IL 60106, USA.” (JA00148-JA00149.). The record for this shipment contains an email from Service by Air to CMI dated October 29, 2014, “FW: Arrival Notice/Freight Invoice (HBL#QD14100115).” In the email, Service by Air Representative, Bryan Tincher, states to CMI: “Can yu [sic] send a check for the attached by US Post? SBA N771018” (JA00146). This identification of different entities as shippers for the same shipment serves to obfuscate the role of Service by Air as the shipper of the shipment in relation to these downstream carriers. “Ambiguous identification of party shippers in [the shipping] documents may lead to a finding of NVOCC status.” Anderson Int’, 2013 FMC LEXIS at *28.

Moreover, Tincher, the primary contact person for Service by Air in the interactions between CMI and Service by Air, testified that Service by Air assumed responsibility for the delivery of CMI’s cargo and that this responsibility continued until the cargo was delivered to the ultimate destination. (FF 53.) UTi, the previous transportation provider whom Service by Air was replacing and on whose NRA Service by Air based its charges, assumed responsibility for the transportation it provided to CMI. Once CMI chose to have Service by Air transport CMI’s goods from China to the United States, CMI ceased having any control over the goods or their transportation. (FF 54.) Service by Air, rather than CMI, chose what steamship line would transport CMI’s goods. (FF 55.) CMI had no contacts with the steamship lines who transported its goods, LAS Freight, or any other downstream carriers, and solely looked to Service by Air for the provision of services. (FF 56.) Service by Air issued its own bills of lading to CMI for the shipments along with separate invoices. (FF 50.) The bills of lading were annotated: “issued by Service by Air, Inc., 811 Thorndale Ave., Bensenville, IL 60106” (FF 51.) According to Tincher, Service by Air assumed responsibility for the delivery of the cargo until delivered to the ultimate destination. (FF 53.) Tincher testified that Service by Air did not inform CMI that Service by Air would not be assuming responsibility for the transportation of CMI’s goods. (FF 64.) Tincher stated that if there was damage to CMI’s cargo, he would tell CMI to submit a claim to Service by Air to get credit for its damages. (FF 60.)

Further, despite Service by Air’s contention that “Service by Air was never in physical possession of the cargo” (SBA Prop FF 12), the record shows that Service by Air had physical control of the shipments and assumed responsibility for holding the shipments until it received payment for them. On occasion, when CMI had paid all charges on the containers, Service by
Air refused to release the containers until CMI paid them for past due charges owed on other containers. (FF 66.) The instructions to hold the containers came from SBA’s corporate department. (FF 67.) Zasada, SBA’s representative, asked SBA’s Chief Operating Officer: “Can you do that? I mean you’re going to hold onto these containers that are released until we get payment on these? And he said yes.” (FF 68.) The evidence thus amply demonstrates that Service by Air assumed responsibility for the transportation of the CMI shipments.


Service by Air denies that it performed any tasks delineated in the Commission’s regulations (46 C.F.R. § 512.2(l)) as NVOCC tasks. The record shows that Service by Air performed the following duties listed in the Commission’s regulations at 46 C.F.R. § 515.2(l) (2015) as NVOCC duties.

1. Service by Air purchased transportation services from common carriers and resold them to CMI.

Service By Air paid all carriers who transported the shipments in question, including some ocean common carriers. (See findings of fact for shipments in Part VII.B.2.) Service by Air’s corporate department required Service by Air to charge at least a twenty percent mark up of the charges by the drayage companies and ocean freight charges based on the company’s guideline. (FF 70.) CMI made payments directly to Service by Air for all charges including their ocean transportation for the shipments. (See findings of fact for shipments in Part VII.B.2.)

2. Service by Air paid port-to-port multimodal transportation charges.

Service by Air directly paid the carriers hired for the transportation of the shipments. Freight Tech and Jewels, the companies that Service by Air primarily used for drayage of the shipments billed Service by Air for their services. (FF 71.)

3. Service by Air entered into affreightment agreements with the underlying shippers.

Service by Air contracted with CMI to transport the shipments from China into the United States. (FFs 19-35, 81; Ex. A.)

4. Service by Air issued bills of lading or other shipping documents.

Service by Air issued tariffs, bills of lading and separate invoices to CMI for the shipments at issue. (See findings of fact for shipments in Part VII.B.2; FF 35-42.)
5. Service by Air arranged for inland transportation and paid the inland freight charges on the through transportation movements.

When one of CMI’s shipments would arrive at the port, Service by Air would be responsible for transporting the goods to the ultimate destination and would have one of its drayage companies recover them from the terminal. (See findings of fact for shipments in Part VII.B.2; Tincher Dep. at 33:19-34:1; 35:7-13.) Service by Air primarily used Freight Tech for drayage of the shipments but also used a company in New Jersey called Jewels and the drayage companies billed Service by Air for their services. (See findings of fact for shipments in Part VII.B.2.)

6. Service by Air entered into arrangements with the origin and destination agents with regard to the delivery of CMI’s shipments.

Once CMI chose to have Service by Air transport CMI’s goods from China to the United States, CMI ceased having any control over the goods or their transportation. Service by Air, rather than CMI, chose what steamship line would transport CMI’s goods. CMI had no contacts with the steamship lines who transported its goods, LAS Freight, or any other downstream carriers and solely looked to Service by Air for the provision of services. (FFs 62-65.) Service by Air assumed responsibility for the shipments from the port or rail terminal to CMI’s door. (FF 53.)

V. SERVICE BY AIR VIOLATED THE SHIPPING ACT.

A. Service by Air Operated as an NVOCC Without a License Issued by the Commission and Operated as a Common Carrier Without a Published Tariff.

Service by Air is not licensed by the Commission as an ocean transportation intermediary/NVOCC. Nevertheless, as found above, it operated as an NVOCC on the CMI shipments. Therefore, Service by Air violated section 40901 of the Act by operating as an ocean transportation intermediary without a license issued by the Commission.

Service by Air does not claim that it published a tariff. Only an NVOCC licensed by the Commission may provide service pursuant to a negotiated rate agreement. Therefore, Service by Air violated section 41104(2)(A) by providing service in the liner trade that is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of the Act.

[T]he remedy of a cease and desist order is available to a complainant who is able to prove a violation of the Act and show that unlawful conduct is ongoing or likely to resume. If [a complainant] is able to prove a violation of the Act and
show that unlawful conduct is ongoing or likely to resume, relief in the form of a cease and desist order could be available.

_Maher Terminals, LLC v. Port Authority of New York and New Jersey_, FMC No. 08-03, Order at 16-17 (FMC Jan. 31, 2013) (Order granting in part and denying in part Respondent’s Motion for Summary Judgment). Despite the evidence to the contrary, Service by Air argues that it did not operate as an NVOCC. I find that without a cease and desist order, it is likely that Service by Air will continue to operate as an NVOCC without a Commission license and as a common carrier without a published tariff. Therefore, entry of a cease and desist order is appropriate in this case.

_B. Service by Air Imposed Unlawful Detention and Demurrage Charges on CMI in Violation of Section 41104(2)(A)._

1. **Liability.**

   Service by Air could legally pass through detention and demurrage charges that were imposed by downstream carriers. Service by Air added its own charges that were not set forth in a public tariff, however. When Service by Air added its own charges to the detention and demurrage charges imposed on it by other carriers and then invoiced CMI for its charges, Service by Air imposed rates and charges not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. I find that SBA violated section 41104(2)(A) of the Act by charging rates and demurrage that were not in accordance with the rates, charges, classifications, rules, and practices contained in a published tariff.

2. **Reparations.**

   CMI suffered an actual injury when it paid the unlawful charges. The overcharges are found by subtracting the detention or demurrage imposed by another carrier from the amount Service by Air charged CMI.\(^\text{11}\) There is insufficient information in the Joint Appendix to determine a reparation award for the shipments in FLDR 3, 9, 10, 13, 16, 17, 21, 51, 53, 54, and 59.

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\(^\text{11}\) CMI submitted the report of an expert witness with its brief as evidence of its injury from the overcharges. The report has been admitted into the record. Because the “expert’s scientific, technical, or other specialized knowledge,” Fed. R. Evid. 702(a), is not necessary to help the Commission understand the evidence or to determine the amount of the unlawful charge, I have relied on the shipping documents in the Joint Appendix (which should include all documents on each shipment on which the expert relied), not the expert’s report, to determine the amount of the overpayments.
FLDR 19 – container number CLHU8658659.

Freight Tech Cartage, Inc. charged Service by Air $15,980.00 for demurrage for container number CLHU8658659. Service by Air charged CMI $27,100.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $11,120.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF19/7, 9, 10.)

FLDR 25 – container number TCLU4015624.

Freight Tech Cartage, Inc. charged Service by Air $7,300.00 for demurrage for container number TCLU4015624. Service by Air charged CMI $21,900.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $14,600.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF25/7, 8, 9.)

FLDR 27 – container number NYKU3251483.

Freight Tech Cartage, Inc. charged Service by Air $5,200.00 for demurrage for container number NYKU3251483. Service by Air charged CMI $14,300.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $9,100.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF27/7, 9, 10.)

FLDR 29 – container number TGHU1013740.

There is no documentary evidence that Service by Air was charged demurrage for container number TGHU1013740. Service by Air charged CMI $6,650.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $6,650.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF29/8, 9.)

FLDR 33 – container number BMOU2709846.

Holt Logistics charged Service by Air $500.00 for demurrage for container number BMOU2709846. Service by Air charged CMI $9,600.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $9,100.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF33/7, 9, 10.)

FLDR 36 – containers number GLDU9630402 and TEMU5582928.

Freight Tech Cartage, Inc. charged Service by Air $1,000.00 for demurrage for containers number GLDU9630402 and TEMU5582928. Service by Air charged CMI $6,325.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $5,325.00
not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF36/6, 8, 9.)

**FLDR 42** – container number TTNU5206116.

Freight Tech Cartage, Inc. charged Service by Air $3,600.00 for demurrage for container number TTNU5206116. Service by Air charged CMI $9,900.00 for demurrage on the container of which CMI paid $9,000.00. Service by Air imposed a charge for demurrage of $5,400.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF42/8, 9, 11.)

**FLDR 43** – container number TRIU5347886.

Freight Tech Cartage, Inc. charged Service by Air $575.00 for demurrage for container number TRIU5347886. Service by Air charged CMI $2,700.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $2,125.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF43/7, 9, 10.)

**FLDR 44** – container number CAXU4049893.

There is no documentary evidence that Service by Air was charged demurrage for container number CAXU4049893. Service by Air charged CMI $6,650.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $6,650.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF44/8, 9.)

**FLDR 46** – containers number MSCU4807147 and MSCU4832324.

Freight Tech Cartage, Inc. charged Service by Air $2,480.00 for demurrage for containers number MSCU4807147 and MSCU4832324. Service by Air charged CMI $8,400.00 for demurrage on the containers. Service by Air imposed a charge for demurrage of $5,920.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF46/7, 9, 10.)

**FLDR 49** – container number MSCU5881621.

There is no documentary evidence that Service by Air was charged demurrage for container number MSCU5881621. Service by Air charged CMI $2,700.00 for demurrage on the container. Service by Air imposed a charge for demurrage of $2,700.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF49/9, 10.)
**FLDR 50** – container number MSCU4271080.

Freight Tech Cartage, Inc. charged Service by Air $8,330.00 for demurrage for container number MSCU4271080. Service by Air charged CMI $12,250.00 for demurrage on the containers. Service by Air imposed a charge for demurrage of $3,920.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF50/6, 7, 8.)

**FLDR 52** – container number TRHU3313918.

Freight Tech Cartage, Inc. charged Service by Air $6,125.00 for demurrage for container number TRHU3313918. Service by Air charged CMI $14,100.00 for demurrage on the containers. Service by Air imposed a charge for demurrage of $7,975.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF52/7, 9, 10.)

**FLDR 58** – container number MSCU5670932.

Freight Tech Cartage, Inc. charged Service by Air $6,800.00 for demurrage for container number MSCU5670932. Service by Air charged CMI $12,000.00 for demurrage on the containers. Service by Air imposed a charge for demurrage of $5,200.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF58/6, 8, 9.)

**FLDR 59** – container number KKFU1167644.

The evidence in the Joint Appendix indicates payments by CMI, but it is not clear what amount, if any, CMI paid for demurrage.

**FLDR 60-61** – containers number KKFU1363499 and KKFU1614383.

There is no documentary evidence that Service by Air was charged demurrage for containers number KKFU1363499 and KKFU1614383. Service by Air charged CMI $24,800.00 for demurrage on the containers. Service by Air imposed a charge for demurrage of $24,800.00 not contained in a published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF60-61/14, 15.)

**FLDR 62** – container number MSCU5915505.

Freight Tech Cartage, Inc. charged Service by Air $7,000.00 for demurrage for container number MSCU5915505. Service by Air charged CMI $12,600.00 for demurrage on the containers. Service by Air imposed a charge for demurrage of $5,600.00 not contained in a
published tariff or service contract in violation of section 41104(2)(A) of the Act. (FF62/6, 8, 9.)

The amounts awarded total $126,185.00.

**C. Service by Air Violated Section 41102(c) of the Act.**

CMI alleges that Service by Air violated section 41102(c) of the Act. Section 41102(c) provides that an NVOCC “may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c).

The Complaint alleges:

33. [Service by Air] failed to establish, observe, and enforce just and reasonable practices in violation of [section] 41102(c) assessing charges against CMI not in compliance with the charges, rates, charges, classifications, rules and practices contained in a tariff published with the Commission.

34. [Service by Air] violated 46 U.S.C. § 41102(c) by charging Complainant for storage and demurrage on the Shipments without providing notice of such charges on shipping documentation, bills of lading or published tariff.

35. [Service by Air] violated 46 U.S.C. § 41102(c) by improperly adding fees to storage and demurrage fees assessed by third parties while indicating to Complainant that the storage and demurrage fees were pass-throughs charged solely by those third parties.

36. [Service by Air] violated 46 U.S.C. § 41102(c) by assessing demurrage charges during free time when no such demurrage were owed.

37. [Service by Air] violated 46 U.S.C. § 41102(c) by assessing demurrage charges for time periods in excess of the time allowed under applicable tariffs.

38. [Service by Air] violated 46 U.S.C. § 41102(c) by failing to provide Complainant with: (1) proper and lawful ownership documentation (bills of lading); (2) proper shipping invoices; (3) the terms and conditions of transport even though Complainant paid [Service by Air]; and (4) clean and accurate statements of costs incurred and amounts properly payable for transportation services and related costs.
39. [Service by Air] violated 46 U.S.C. § 41102(c) by refusing to release cargo even after receiving full payment for transportation and related charges until [SBA] received payment for demurrage and other costs associated with the cargo, which charges being assessed were not in compliance with the Shipping Act.

40. [Service by Air] violated 46 U.S.C. § 41102(c) by failing to obtain or maintain an OTI license with the Federal Maritime Commission while holding itself out and providing OTI services to Complainant.

(CMI Complaint ¶¶ 33-40.)

On December 17, 2018, after the parties had filed their briefs, the Commission issued a new rule regarding the interpretation of section 41102(c). This interpretive rule states:

Interpretation of Shipping Act of 1984 - Unjust and unreasonable practices. 46 U.S.C. 41102(c) is interpreted to require the following elements in order to establish a successful claim for reparations:
(a) The respondent is an ocean common carrier, marine terminal operator, or ocean transportation intermediary;
(b) The claimed acts or omissions of the regulated entity are occurring on a normal, customary, and continuous basis;
(c) The practice or regulation relates to or is connected with receiving, handling, storing, or delivering property;
(d) The practice or regulation is unjust or unreasonable; and
(e) The practice or regulation is the proximate cause of the claimed loss.

Interpretive Rule, Shipping Act of 1984, 83 Fed. Reg. 64480 (Dec. 17, 2018), codified at 46 C.F.R. § 545.4. Both parties filed memoranda addressing the new rule. (Supplementary Memorandum of Respondents Service by Air, Inc. and Radiant Customs Services Inc. Regarding New Legal Development (filed February 5, 2019); CMI Distribution, Inc.’s Reply to SBA’s Supplementary Memorandum (filed February 8, 2019).)

As the Act states and the Commission echoes, section 41102(c) governs receiving, handling, storing, or delivering property. Complaint paragraphs 33-38 concern the requirement that a common carrier impose rates, charges, classifications, rules and practices contained in a tariff rate and is governed by section 40501(a)(1). Complaint paragraph 40 concerns the requirement imposed by section 40901(a) that an NVOCC be licensed by the Commission. Section 41102(c) is not intended to incorporate violations of other sections of the Act as failures “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.”
Complaint paragraph 39 alleges that Service by Air refused to release cargo after CMI had paid in full in order to coerce other payments not related to the transportation of that cargo. The Commission has found that this violates section 41102(c). William J. Brewer v. Saeid Maralan (aka Sam Bustani) and World Line Shipping, Inc., 29 S.R.R. 6 at 6 (FMC 2001) (NVOCC violated section 10(d)(1) (41102(c)) for refusing to release the cargo at destination port unless additional money was paid, and instructing its agent to place the shipment on hold). There were instances when CMI had paid all charges on the containers but Service by Air refused to release the containers until CMI paid them for past due charges owed on other containers. The instructions to hold the containers came from SBA’s corporate department. Zasada, SBA’s representative, asked SBA’s Chief Operating Officer: “Can you do that? I mean you’re going to hold onto these containers that are released until we get payment on these? And he said yes.” (FF 67-69.)

Consistent with section 545.4 and Commission case law, Service by Air is an NVOCC that articulated a normal, customary, and continuous practice of refusing to deliver cargo on which all transportation charges had been paid on order to coerce payment of charges due on cargo that had been delivered.

The burden is on CMI to establish damages. James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal Dist., 30 S.R.R. at 13. CMI does not clearly articulate any actual injury it suffered from section 41102(c) violations in addition to the overpayments of detention and demurrage resulting from the violations of section 40501(a)(1).

VI. CLAIMS AGAINST LAS FREIGHT ARE DISMISSED WITH PREJUDICE.

A. LAS Freight Is in Default.

LAS Freight received notice of this proceeding, but did not file an answer or otherwise respond to the Complaint. On July 10, 2017, CMI filed a motion for default against LAS Freight. LAS Freight sent an email to the Secretary, but did not respond to the Complaint or the motion for default. On August 16, 2017, the undersigned entered an order requiring LAS Freight to serve and file its answer to the Complaint and to show cause why an initial decision on default should not be entered against it. CMI v. Radiant/SBA, FMC No. 17-05 (ALJ Aug. 16, 2017) (Notice of Default and Order for LAS Freight Systems Ltd. to Show Cause). LAS Freight did not file an answer or respond to the show cause order. On October 30, 2017, the undersigned issued an order deferring consideration of the motion for default. CMI v. Radiant/SBA, FMC No. 17-05 (ALJ Oct. 30, 2017) (Order Deferring Consideration of Motion for Default).

LAS Freight has not answered or otherwise responded to the Complaint and has not appeared to litigate a defense. Therefore, an initial decision on default will be entered on CMI’s claims against LAS Freight.
B. CMI Has Not Proved by a Preponderance of the Evidence that LAS Freight Violated the Shipping Act.

A complainant does not necessarily prevail against a respondent who is in default.

When a defendant is in default, the well pleaded factual allegations in the Complaint, except those relating to damages, are taken as true. *Thomson v. Wooster*, 114 U.S. 104, 5 S. Ct. 788, 29 L. Ed. 105, 1885 Dec. Comm’r Pat. 279 (1885); *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 110-11 (6th Cir. 1995). Fed. R. Civ. P. 55 does not require a presentation of evidence as a prerequisite to the entry of a default judgment, although it empowers the court to conduct such hearings as it deems necessary and proper to enable it to enter judgment or carry it into effect. *See: Wright, Miller & Kane, Federal Practice and Procedure, Civil 3rd § 2688.


Although a defaulting defendant generally admits to the factual allegations in a complaint, the court may make an investigation into any matter including whether “to determine the amount of damages or to establish the truth of any averment by evidence.” Fed. R. Civ. Pro. 55(b)(2)[C]. Such determinations necessarily include whether there are sound legal and factual bases for entry of default judgment for the counts asserted in the plaintiff’s complaint. *See, AOL, Inc. v. Hawke*, No. 1:04cv259 (E.D. Va. May 2, 2005) (Ellis, J.) (unpublished disposition).


As discussed above, CMI alleges that “CMI contracted with [Service by Air] to transport more than 60 containers of plastic bags and vinyl gloves from China into the United States.” (CMI Prop. FF v. SBA 1.) CMI claims that Service by Air operated as an NVOCC on the shipments. (CMI Brief v. Service by Air at 5-17.) CMI concedes that “CMI had no contacts with LAS Freight and solely looked to SBA for the provision of services.” (CMI Prop. FF SBA 35.) Service by Air then “engaged LAS Freight to arrange the subject ocean transports from China.” (SBA/Radiant Prop. FF 8.) Service by Air argued that it did not operate as an NVOCC, but as an agent of sorts for CMI.

The Complaint makes the following specific factual allegations about LAS Freight.
17. LAS Freight is listed as a registered OTI and has a tariff on file with the FMC. LAS Freight’s tariff on file with the FMC contains no rules pertaining to demurrage.

18. LAS Freight issued bills of lading for the Shipments.

19. LAS Freight was acting as an NVOC.

20. In issuing bills of lading for the Shipments, LAS Freight was holding itself out as an NVOC.

(Complaint.) Complaint paragraphs 17 and 18 are allegations of fact. Complaint paragraphs 19 and 20 are mixed questions of fact and law.

CMI recognizes that LAS Freight is registered as an OTI and that it has a published tariff. Therefore, it is not alleging that LAS Freight violated section 40901 or section 40501(a)(1). LAS Freight operated as an NVOC on the CMI shipments. The folder for each shipment except FLDR 3 has a bill of lading issued by LAS Freight System Ltd. for transportation of the container or containers.\(^{12}\)

There is no evidence that any problem occurred with LAS Freight receiving, handling, storing, or delivering CMI’s property to Service by Air, the primary NVOC for CMI’s shipments. Although LAS Freight is an NVOC, CMI has not proven by a preponderance of the evidence that LAS Freight engaged in a normal, customary, and continuous practice of refusing to deliver cargo in violation of section 41102(c).

Regarding the claim that LAS Freight violated section 41104(2)(A) by imposing detention and demurrage charges not set forth in a tariff, as held above, CMI has established that Service by Air operated as an NVOC on CMI’s shipments and assumed responsibility for the transportation of the shipments. Service by Air then arranged with LAS Freight and other NVOCs and entities for the actual transportation. LAS Freight accomplished the transportation that Service by Air required of it. Service by Air was the primary NVOC on the shipments and was responsible to CMI. CMI has not offered any evidence that LAS Freight imposed any detention or demurrage charges of its own on Service by Air or CMI or that CMI paid any detention or demurrage charges to LAS Freight. CMI’s argument is that Service by Air was the agent of LAS Freight and LAS Freight is liable for the detention and demurrage imposed by its agent Service by Air. Because Service by Air was the primary NVOC on the shipments, Service by Air was not operating as the agent for LAS Freight when it invoiced CMI for detention and demurrage.

\(^{12}\) I note that Pan Star Express (Chicago) Corp., an NVOC licensed by the Commission, identifies LAS-SWEG Logistics (Shanghai) Ltd., Shanghai, China, as the shipper of the container in FLDR 3. (FF3/1.) LAS-SWEG Logistics (Shanghai) Ltd. is identified as a shipper on all of the other shipments also. I do not find where CMI explains whether LAS-SWEG Logistics (Shanghai) Ltd. and respondent LAS Freight System Ltd., Taipei, Taiwan, are related.
If the Commission were to determine that Service by Air did not operate as an NVOCC, but as CMI's agent — as Service by Air contends, the equivalent of an ocean freight forwarder on a shipment into the United States — then on each of these shipments, LAS Freight delivered the cargo and fulfilled its transportation obligations by delivering the maritime containers to CMI's agent Service by Air as instructed by Service by Air.

CMI has not proved that LAS Freight violated the Shipping Act and the claims against it are dismissed with prejudice.

VII. FINDINGS OF FACT.

A. Evidence.

The parties submitted appendices containing documents relevant to the claims in this proceeding and additional documents as ordered by the undersigned. All documents are admitted as evidence and are given appropriate weight.

It is quite helpful for a party to direct the Commission to a particular page of an appendix rather than require the Commission to search through a number of pages to find the evidence on which a party relies. For this reason, the Scheduling Order instructed the parties to support their proposed finding of fact "by an exact citation to evidence that the party contends will support the proposed finding of fact; e.g., a page number in the appendix," CMI v. Radiant/SBA, FMC No. 17-05, Order at 3 (ALJ Oct. 30, 2017) (Scheduling Order), and to put their documentary evidence into an appendix with the "pages ... numbered sequentially, for example CX 1, CX 2, CX 3 or RX 1, RX 2, RX 3, etc." Id. CMI chose not to comply with this order, did not number its pages, and directs the Commission to its evidence with unwieldy references such as "Deposition of Bryan Tincher (‘Tincher Dep.’) at 18:10-12; 19-22, Exh. B" (CMI Prop. FF SBA 6) instead of "CX [x]." Consequently, finding exhibits to which CMI refers has been a more tedious task than it should be. Service by Air numbered the pages of its appendix as instructed, but then did not use those page numbers in it proposed findings of fact. (See, e.g., SBA Prop. FF 3 and n.3 ("Transcript of Deposition of CMI’s FRCP 30(b)(6) Designee Maria T. Vega (‘Vega Deposition’) at 23-24.”) References by the undersigned to the Service by Air appendix includes the appendix page number (RX [x]).

B. Findings.

1. Findings of fact — the parties and their relationship.

1. Complainant CMI Distribution, Inc. (CMI) is a corporation organized and existing under the laws of Illinois with a principal place of business at 555 Allendale Drive, Wheeling, IL 60090. (Complaint ¶ 1 (Doc. 1).)
2. CMI is in the business of importing packaging for sale and distribution to wholesalers and other distribution companies. (Respondents’ Appendix RX 8.)

3. Respondent Service by Air, Inc. (Service by Air) is a corporation organized and existing under the laws of New York with its principal place of business at 222 Crossways Park Dr., Woodbury, NY 11797. (Answer ¶ 2 (Doc. 27).)

4. At the time the shipments that are the subject of this proceeding took place, Service by Air provided ocean transportation services to CMI. (Respondents’ Resp. to CMI Prop FF 6 (Doc. 43); CMI App. Ex. B – Tincher Dep. at 18:3-12; at 16-22.)

5. Service by Air is certified by the Transportation Security Administration to operate as an indirect air carrier. (Radiant/SBA Motion to Dismiss (Doc. 7) at 1.)

6. Service by Air has never been licensed as a non-vessel-operating common carrier (NVOCC). (Answer ¶ 32 (Doc. 27); SBA Prop. FF 1 (Doc. 42).)

7. SBA Consolidators, Inc. (SBA Consolidators) was a wholly-owned subsidiary of Service by Air. (SBA Prop. FF 1 (Doc. 42).)

8. SBA Consolidators was licensed by the Commission as a non-vessel-operating common carrier (NVOCC), OTI License Number 009688 by the Commission. (Answer ¶ 3 (Doc. 27); CMI App. Ex. B – Tincher Dep. at 30:15-24.)

9. Respondent Radiant Customs Services, Inc. (Radiant), formed in 2010, is a corporation organized and existing under the laws of New York with its principal place of business at 405 114th Ave. SE, Third Floor, Bellevue, WA 98004. (Answer ¶ 3 (Doc. 27).)

10. On or about June 2015, Radiant non-party Radiant Global Logistics, Inc. acquired Service by Air, and by extension, Service by Air’s subsidiary, SBA Consolidators. (Radiant/SBA Motion to Dismiss (Doc. 7) at 2; SBA Prop FF 1 (Doc. 42).)

11. Service by Air continues to exist as a separate corporate entity wholly owned by Radiant Global Logistics, Inc., not a party to this proceeding. (SBA Prop. FF 1 (Doc. 42).)

12. On May 12, 2017, the Commission approved Radiant Customs Services, Inc.’s request to transfer SBA Consolidators’ NVOCC License Number 009688 to Radiant Customs Services, Inc. (Answer ¶ 3 (Doc. 27); Official notice of Commission records.)

13. Respondent LAS Freight System Ltd. (LAS Freight) is a private limited company with its principal place of business at 10/F1., No. 44 Lane, 11 Kuang Fu N. Road, Taipei, Taiwan. (Complaint ¶ 4 (Doc. 1).)
14. LAS Freight was a foreign NVOCC registered with the Commission, FMC Organization number 13673. (Complaint ¶ 4 (Doc. 1); FMC OTI List, https://www2.fmc.gov/oti/NVOCC.aspx (last visited May 16, 2018).)

15. UTi, United States, Inc. (UTi) was an NVOCC licensed by the Commission, License No. 001792. (Official notice of Commission records; Carlstar Group LLC f/k/a Carlisle Transportation Products, Inc. and CTP Transportation Products, LLC v. UTi, United States, Inc.; UTi United States, LLC; and DSV Air & Sea, Inc., FMC No. 17-08, Decision at 4 (ALJ May 18, 2018) (Initial Decision Partially Dismissing Complaint).)


17. The UTi NRA established rates for transportation by water of plastic deli bags, paper towel, and rubber gloves from ports or points in China through ports in the United States and Canada to points in the United States. (CMI Notice of Filing (Doc. 51) Exh. 2.)

18. The UTi NRA provided “[d]uring the term of this NRA, transportation is subject to applicable surcharges, accessorial charges, and/or GRIs published in Carrier’s rules tariff and effective at the time of shipment, unless otherwise specified in this NRA.” (CMI Notice of Filing (Doc. 51) Exh. 2.)


20. In those discussions, Service by Air represented that it could provide the same type of services that UTi had been providing to CMI. (CMI App. Ex. B – Tincher Dep. at 67:8-11, 67:23-68:8; Exh. B.)

21. At the time the shipments took place, respondent Service by Air was a full-service logistics provider that provides both air and ocean services. (CMI App. Ex. B – Tincher Dep. at 18:10-12; 19-22.)

22. CMI provided a copy of its NRA agreement with UTi and told Service by Air that its rates needed to match or beat UTi’s rates. (CMI App. Ex. A – Vega Dec. ¶ 10; CMI App. Ex. A-1 at 003084.)

24. The document that Service by Air provided to CMI stated that it was effective from August 27, 2014 until September 27, 2014. (CMI App. Ex. A – Vega Dec. ¶ 12; CMI App. Ex. A-2.)

25. The document that Service by Air provided to CMI had a reference at the top to its NRA. (CMI App. Ex. A – Vega Dec. ¶ 14; CMI App. Ex. A-2.)

26. The document that Service by Air provided to CMI sets forth Service by Air’s ocean freight rate, AMS, port fee, ISF/ACI fee, destination handling, customs, delivery, and total ocean freight for full container load shipments from three ports in China to five destinations in the United States. (CMI App. Ex. A-2.)

27. The Service by Air document provided to CMI stated that: “During the term of the NRA, transportation is subject to applicable surcharges, accessorial charges, and/or GRI’s published in Carrier’s tariff and effective at the time of shipment, unless otherwise specified in this NRA (or the originating carrier in the case of through transportation”). (CMI App. Ex. A – Vega Dec. ¶ 14.)

28. Service by Air’s representative stated the following about Service by Air’s document:

   Jay

   You may want to check with UTi. From what I see from the attachment you sent me, it is only good for 30 days and is subject to GRI. It is very unusual for an ocean tariff to be guaranteed for 1 year since the SS Lines constantly publish GRI’s and change their BAF. I highlighted the sections in the attachments. Also, tab# 3 of their spreadsheet shows there was a GRI and BAF increase the day after UTi created the tariff. Also attached is my tariff that includes the recent GRI. Let me know if you have any questions.

   (CMI App. Ex. A-1 (Email dated August 27, 2014, at 7:44 AM from Service by Air representative Bryan Tincher to Jay Jalowiecki of CMI; Michael Miller of Service by Air, titled “RE: FCL TARIFF.”))

29. Service by Air’s representative stated the following about Service by Air’s document and the UTi NRA:

   I’m looking over the spread sheet from UTi. Their spreadsheet has separate tabs for BAF and a GRI that was effective after this was created. Also, please confirm with UTi if this included the recent GRI that went into effect 15-Aug. If
you take this into consideration, I think I am competitive. I will update my spreadsheet and sent [sic] it this morning.

(CMI App. Ex. A-1 (Email dated August 27, 2014, at 8:32 AM from Service by Air Import/Export Manager Bryan Tincher to Jay Jalowiecki of CMI; Michael Miller of Service by Air, titled “RE: FCL TARIFF”.)

30. When providing the document to CMI, Service by Air represented to CMI that it was providing the same type of service as UTi. (CMI App. Ex. B – Tincher Dep. at 67:8-11.)

31. Service by Air did not believe it was necessary to make a distinction between the types of NVOCC services that UTi was providing versus the services Service by Air would be providing. (CMI App. Ex. B – Tincher Dep. at 67:23-68:2.)

32. The document provided to CMI stated that the transportation was subject to applicable surcharges, accessorial charges, and/or GRI’s published in Carrier’s tariff. (CMI App. Ex. B – Tincher Dep. at 61:21-62:7; 64:24-65:11.)

33. Based in part upon the representations made by Service by Air regarding its document and the rates contained therein, CMI chose to have Service by Air provide it with ocean transportation services instead of UTI. (CMI App. Ex. A – Vega Dec. ¶ 19.)

34. CMI contracted with Service by Air to transport by ocean transportation more than 60 maritime containers of plastic bags and vinyl gloves from China into the United States to be delivered to door locations. (CMI App. Ex. A – Vega Dec. ¶ 2.)


36. The CMI October Tariff established rates for transportation by water of 20 foot, 40 foot, and 40 foot high cube containers from ports or points in China through ports in the United States and Canada to points in the United States. (CMI App. Ex. A-3.)

37. The CMI October Tariff included customs clearance and drayage at destination and was subject to Service by Air terms and conditions. (CMI App. Ex. A-3.)

38. The CMI October Tariff did not include demurrage and/or detention. (CMI App. Ex. A-3.)

39. On February 1, 2015, Service by Air sent a document titled “CMI Packaging and Distribution FOB Tariff, effective February 1, 2015” (CMI February Tariff) to CMI. (CMI App. Ex. A-3.)
40. The CMI February Tariff established rates for transportation by water of 20 foot, 40 foot, and 40 foot high cube containers from ports or points in China through ports in the United States and Canada to points in the United States. (CMI App. Ex. A-3.)

41. The CMI February Tariff included customs clearance and drayage at destination and was subject to Service by Air terms and conditions. (CMI App. Ex. A-3.)

42. The CMI February Tariff did not include demurrage and/or detention. (CMI App. Ex. A-3.)

43. Service by Air was involved in the transportation by water between a port or point in China to a port in the United States in the shipment of twenty-eight maritime containers for which CMI alleges that Service by Air violated the Shipping Act. These shipments are identified in modified Complaint Exhibit 1, FLDR numbers 3, 9, 10, 13, 16, 17, 19, 21, 25, 27, 29, 33, 36, 42, 43, 44, 46, 49, 50, 51, 52, 53, 54, 58, 59, 60, 61, and 62. (Stipulation of CMI and Radiant/SBA (filed Sept. 18, 2017). See also CMI v. Radiant/SBA, FMC No. 17-05, Notice ¶4 (ALJ Sept. 21, 2017) (Notice to the Parties and Order to Schedule Conference); Joint Supplemental Appendix (filed June 1, 2018); Part VII.B.2(b) of this Decision.)

44. LAS Freight issued house through bills of lading from China to Service by Air’s facility in Bensenville, IL or other locations for the transports at issue for the vast majority of the shipments. (SBA Prop. FF 9 (Doc. 42).)

45. LAS Freight engaged other Chinese NVOCCs for some shipments, and those other Chinese NVOCCs issued through house bills of lading for the shipments they transported. (SBA Prop. FF 9 (Doc. 42).)

46. LAS Freight and the other Chinese NVOCCs did not issue original bills of lading, thereby protecting the Chinese shippers from CMI obtaining the cargo until the shippers authorized issuance of “telex releases.” Thus, unless and until CMI paid invoice costs to its Chinese suppliers, LAS Freight and the other Chinese NVOCCs would not issue telex releases, and transportation service providers down the chain were precluded from releasing the cargo to CMI. (SBA Prop. FF 10 (Doc. 42).)

47. Service by Air engaged motor carrier Freight Tech to dray most of the cargo from the inland rail yards to Freight Tech’s yard in Naperville, Illinois, where it would await further delivery instructions. CMI’s China-based suppliers instructed LAS Freight, which in turn instructed Service by Air not to release the cargo to CMI unless and until

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13 The September 21, 2017, Notice included the shipment represented by modified Complaint Exhibit 1 FLDR 2. As found in Part VII.B.2(b), documents related to that shipment demonstrate that the container was transported by water from China to Vancouver.
confirmation was received that CMI had paid the suppliers under the commercial invoices for CMI’s purchase of the cargo. This would be accomplished by telex releases. (SBA Prop. FF 12 (Doc. 42)).

48. Tincher testified that he was employed by Service by Air as International Manager. (CMI App. Ex. B – Tincher Dep. at 14:14-15:21.)

49. Email correspondence with CMI indicates that Tincher was Import/Export Manager for Service by Air. (CMI App. Ex. A-5.)


51. The bills of lading were “issued by Service by Air, Inc., 811 Thorndale Ave., Bensenville, IL 60106” and identified CMI as the consignee and CMI’s suppliers as the shipper. (CMI App. Ex. A – Vega Dec. ¶¶ 23-24; CMI App. Ex. A-4.)

52. Most of the bills of lading issued by Service by Air provided that the goods could move by any other means than air and by other carriers. (CMI App. Ex. A – Vega Dec. ¶¶ 23-24; CMI App. Ex. A-4.)

53. Bryan Tincher, Service by Air’s primary contact person with CMI, testified that Service by Air assumed responsibility for the delivery of CMI’s cargo and this responsibility continued until the cargo was delivered to the ultimate destination. (CMI App. Ex. B – Tincher Dep. at 53:22-54:3; 31:15-21; 33:18-22; 35:7-10.)

54. Once CMI chose to have Service by Air transport CMI’s goods from China to the United States, CMI ceased having any control over the goods or their transportation. (CMI App. Ex. A – Vega Dec. ¶ 29.)


56. CMI had no contacts with the steamship lines who transported its goods. (CMI App. Ex. A – Vega Dec. ¶ 31.)

57. CMI had no contacts with LAS Freight and solely looked to Service by Air for the provision of services. (CMI App. Ex. A – Vega Dec. ¶ 32.)

58. Service by Air’s 30(b)(6) witness, Edward Zasada, testified when goods are moving from a port to the ultimate consignee on a through bill of lading, they remain as ocean transportation. (CMI App. Ex. C – Zasada Dep. at 23:13-18.)
59. As a result, any charges that are assessed, whether deemed demurrage or detention, are part of the ocean transportation until the goods are actually delivered to the ultimate destination pursuant to the bill of lading. (CMI App. Ex. C – Zasada Dep. at 23:20-24:2.)

60. Tincher testified that if there was damage to CMI’s cargo, he would tell CMI to submit a claim to Service by Air to get credit for its damages. (CMI App. Ex. B – Tincher Dep. at 28:1-12.)

61. CMI developed cash flow problems related to a number of the shipments and did not pay its suppliers. (RX 26, 34 (Transcript of Deposition of CMI’s FRCP 30(b)(6) Designee Maria T. Vega (‘Vega Deposition’) at 86-89, at 118-121.)

62. When Service by Air invoiced CMI for demurrage imposed by other carriers, Service by Air increased the charges. (CMI App. Ex. B – Tincher Dep. at 119:3-120:4.)

63. Service by Air informed CMI that it was in direct communications with steamship lines regarding the demurrage claims at issue. (CMI App. Ex. A-6.)

64. At no point did Service by Air inform CMI that Service by Air was not assuming responsibility for the transportation at issue. (CMI App. Ex. A – Vega Dec. ¶ 20; CMI App. Ex. B – Tincher Dep. at 66:11-68:8.)

65. Service by Air’s actions and practices were consistent with it assuming responsibility for the transportation at issue. (CMI App. Ex. B – Tincher Dep. at 31:15-21.)

66. At all times CMI believed that if its goods were damaged in transit, Service by Air as CMI’s carrier would be responsible for such damages. (CMI App. Ex. A – Vega Dec. ¶ 38.)

67. On occasion, when CMI had paid all charges on the containers, Service by Air refused to release the containers until CMI paid them for past due charges owed on other containers. (CMI App. Ex. B – Tincher Dep. at 111:10-112:9; CMI App. Ex. C – Zasada Dep. 30:14-31:18.)

68. The instructions to hold the containers came from SBA’s corporate department. (CMI App. Ex. B – Tincher Dep. at 112:10-113:3; 114:7-22.)

69. Zasada, SBA’s representative, asked SBA’s Chief Operating Officer: “Can you do that? I mean you’re going to hold onto these containers that are released until we get payment on these? And he said yes.” (CMI App. Ex. C – Zasada Dep. 30:14-31:18.)
70. Service by Air’s corporate department required Service by Air to charge at least a twenty percent mark up of the charges by the drayage companies and ocean freight charges based on the company’s guideline. (CMI App. Ex. B – Tincher Dep. at 37:22-38:22, 140:13-140:4, 141:23-142:8.)

71. Service by Air directly paid the carriers hired for the transportation of the shipments. Freight Tech and Jewels, the companies that Service by Air primarily used for drayage of the shipments solely billed Service by Air for their services. (CMI App. Ex. B1-B10; Radiant/SBA Motion to Dismiss (Doc. 7), Affidavit of Edward A. Zasada ¶ 12.)

72. CMI made payments directly to Service by Air for all charges including their ocean transportation for the shipments. (Exhs. A8-A12; A14; A16-A17; B1, JA00217; JA00433; JA00591)

2. Findings of facts for each shipment at issue.

a. Background.

CMI’s Complaint alleges that “[b]etween April 2014 and June 2015, CMI engaged Respondents to provide transportation of more than 60 shipments . . . with Respondents from China to Illinois.” (Complaint ¶ 6.) CMI attached a document titled “Demurrage, SBA Payments” as Exhibit 1 to its Complaint. Exhibit 1 identifies containers by “FLDR” (folder) number and lists the container number, freight number, invoice, date of arrival, date received, days of claimed demurrage, and “SBA demurrage actual” for the shipment of each container for which CMI claimed violations.

Respondents Service by Air and Radiant filed a motion to dismiss that was opposed by CMI. The parties filed documents related to the shipment of some of the containers listed in Exhibit 1. Those documents, in particular Customs and Border Protection (CBP) Forms 3461 and bills of lading, suggested that several of the shipments identified on Exhibit 1 had been transported by water from a port or point in China to a port in Canada and others were transported by air to a United States airport, then on to their destinations in the United States. Therefore, on August 16, 2017, the undersigned entered an order requiring the parties to respond to several questions and file additional documents. CMI v. Radiant/SBA, FMC No. 17-05 (ALJ Aug. 16, 2017) (Order to Supplement the Record).

In response to the order, on September 18, 2017, the parties filed a Modified Complaint Exhibit 1 that identified seventeen shipments of eighteen containers for which the parties agreed the shipments were not transported to the United States by water. Based on this stipulation, the undersigned issued a notice to the parties characterizing by FLDR number the shipments identified by Modified Complaint Exhibit 1:
• FLDR numbers 4, 12, 14, 15, 18, 20, 22, 23, 24, 26, 28, 30, 34, 39, 45, 55, 56, and 57 – shipments not transported by water from a foreign port to a port in the United States and hence not subject to Commission subject matter jurisdiction.

• FLDR numbers 1, 5, 6, 7, 8, and 11 – are marked “N/A” on Modified Complaint Exhibit 1. The undersigned understands that CMI does not claim to have paid any demurrage on these shipments.

• FLDR numbers 31, 32, 35, 37, 38, 40, 41, 47, and 48 – numbers not used on Complaint Exhibit 1.

• FLDR numbers 2, 3, 9, 10, 13, 16, 17, 19, 21, 25, 27, 29, 33, 36, 42, 43, 44, 46, 49, 50, 51, 52, 53, 54, 58, 59, 60, 61, and 62 – shipments on which CMI alleges Respondents violated the Shipping Act.

• FLDR numbers 1, 2, 17, 36, 44, and 54 – shipments for which the records stored offsite and not submitted to the Commission.


With the dismissal of the claims regarding nineteen shipments that were not transported by water between China and a port in the United States, this case involves twenty-nine shipments of cargo by water from China to the United States. What happened on one shipment is not necessarily probative of what happened on another shipment. Therefore, proposed findings of fact such as “SBA normally did not provide CMI with copies of the underlying bills of lading on which its invoices were based,” (CMI Prop. Finding 75), are not particularly helpful.

CMI also did not put all documents relating to a particular shipment together to make it easier to understand what occurred on a particular shipment. After CMI filed its opening brief, the undersigned convened a telephone conference to address a number of questions. This conference resulted in an order that required the parties:

[T]o prepare a joint supplemental appendix containing all of the documents related to the shipping of each container for which CMI seeks a reparation award. The documents will be arranged by shipment and reference the FLDR number for the container in Complaint Exhibit 1 and include, but not be limited to, the following documents:

• VOCC and NVOCC bill of lading or other shipping contract
• CBP form
• Dock receipts and chassis contract
• Invoice or other record from VOCC to SBA or CMI for freight charges
• Invoice or other record from LAS Freight to SBA or CMI for freight charges
• Invoice or other record from SBA to CMI for freight charges
• Document issued by VOCC or NVOCC to SBA or CMI tendering container for delivery
• Document showing release of container by VOCC or NVOCC to SBA or any other entity
• Chassis contract and contract for drayage of container from the inland rail yard to Freight Tech’s yard
• Invoice from Freight Tech to SBA for drayage of container from the inland rail yard to Freight Tech’s yard
• Record of payment from SBA to Freight Tech for drayage from the inland rail yard to Freight Tech’s yard
• Invoice or other record from VOCC, LAS Freight, or NVOCC or SBA or CMI for demurrage, detention, or other charges
• Invoice or other record from Freight Tech to LAS Freight, SBA, or CMI for demurrage, detention, or other charges
• Emails related to the shipment of the containers
• Any other shipping records reviewed by the experts

The parties must file the joint supplemental appendix on or before June 1, 2018.


CMI, Service by Air, and Radiant filed the required Joint Supplemental Appendix on June 1, 2018, containing documents for the shipments identified as FLDR numbers 2, 3, 9, 10, 13, 16, 17, 19, 21, 25, 27, 29, 33, 36, 42, 43, 44, 46, 49, 50, 51, 52, 53, 54, 58, 59, 60 and 61 combined, and 62. These are the twenty-nine shipments identified in the September 21, 2017, order on which CMI alleges Respondents violated the Shipping Act. The undersigned assumes that copies of all documents in the record related to the shipments and available to CMI, Service by Air, and Radiant are in the Joint Supplemental Appendix.

Although the Complaint alleges the shipments were from China to Illinois, more than half of the twenty-eight shipments for which CMI seeks relief (excluding FLDR 2 that was transported by water to Canada, not the United States) were to other destinations in the United States: Birmingham, AL (FLDR 10, 13, 16); Chicago, IL (FLDR 3, 9, 19, 25, 27, 36, 42, 43, 46, 50, 52, 58, 62); Edison, NJ (FLDR 44, 54); Las Vegas, NV (FLDR 49, 51, 53, 59, 60, 61); Long Beach, CA, (FLDR 17); Philadelphia, PA (FLDR 21, 33); and Phoenix, AZ (FLDR 29).
When they prepared the Joint Appendix, the parties did not organize the documents concerning each shipment, but merely put all the documents (often with duplicates) concerning a shipment into one section.

The findings of fact set forth below for each shipment are based on the documentation in the Joint Appendix.

b. Shipments at Issue – Joint Appendix.

**FLDR 2 – JA-2-5.**

Joint Appendix FLDR 2 contains documents related to the shipment of container number PCIU8352944 from Shanghai to Chicago.

FF2/1 On 05/07/14, JT Shipping Corporation issued arrival notice/freight notice invoice number LAX-AR068743 for container number PCIU8352944 identifying LAS-SWEG Logistics (Shanghai) Ltd as the shipper, Service by Air as the consignee, and total ocean freight and handling charge of $3,285.00. (JA-2.)

FF2/2 Shanghai, China, was the port of loading, Vancouver the port of discharge, and Chicago, IL as the place of delivery for container number PCIU8352944. (JA-2.)

“[C]ounsel for CMI and Radiant/SBA agree[] that shipments that were transported by water from a foreign port to a port in Canada are not within the subject matter jurisdiction of the Commission.” *CMI v. Radiant/SBA*, FMC No. 17-05 (ALJ Oct. 6, 2017) (Order Granting in Part and Denying in Part Motion to Dismiss). CMI has not established that container number PCIU8352944 was transported by water between a port in a foreign country and a port in the United States. The claims related to the shipment of container number PCIU8352944 are dismissed without prejudice for lack of subject matter jurisdiction. *See CMI v. Radiant/SBA*, FMC No. 17-05, Order at 1-3 (ALJ Oct. 6, 2017) (Order Granting in Part and Denying in Part Motion to Dismiss) (claims for shipments that were not transported by water between a foreign port and a port in the United States should be dismissed without prejudice).

**FLDR 3 – JA-7-11.**

Joint Appendix FLDR 3 contains documents related to the shipment of container number MEDU3113127 from Shanghai to Chicago.

FF3/1 On 05/14/14, Pan Star Express (Chicago) Corp. issued arrival notice/freight notice invoice number 258968, Ref N612525, for container number MEDU3113127 identifying LAS-SWEG Logistics as the shipper, Service by Air as the consignee, and total ocean freight charge of $3,028.00. (JA-7.)
FF3/2 Dairen, China, was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL the place of delivery for container number MEDU3113127. (JA-7.)

FF3/3 On 05/22/14, Service by Air issued a check in the amount of $3,028.00 to vendor Pan Star Express (Chicago) Corp. for invoice number 258968, Ref N612525. (JA-8.)

FF3/4 On May 22, 2014, Service by Air representative Bryan Tincher sent an email to Doreen Anderson and others requesting payment for Ref N612525. (JA-9.)

FF3/4 On June 11, 2014, Freight Tech Cartage, Inc., issued invoice number 17791 to SBA Consolidators, Inc., indicating charges for container number MEDU3113127 including BNSF Harvey to LPC CMI, Wheeling ($350.00), fuel surcharge ($112.00), prepull ($125.00); chassis charges ($325.00), “container demerge” [sic] (total $1,455), total $2,367.00. (JA-11.)

FF3/6 No document indicates that LAS Freight imposed any detention or demurrage charges for container number MEDU3113127.

FF3/7 No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MEDU3113127.


Joint Appendix FLDR 9 contains documents related to the shipment of container number MEDU2212151 from Qingdao to Chicago, IL.

FF9/1 LAS Freight System Ltd. issued bill of lading number QINCH1408008 for container number MEDU2212151 identifying Yantai Foodpack Packaging Products Co., Ltd as the shipper, CMI as the consignee, indicating shipped on board 20140815. (JA-23.)

FF9/2 Qingdao China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL the place of delivery for container number MEDU2212151. (JA-23, 26, 15.)

FF9/3 Weida Freight System Co., Ltd issued bill of lading number TAOWD035226, container number MEDU2212151, identifying LAS-SWEG Logistics as the shipper, Service by Air as the consignee, shipped on board 2014/8/15. (JA-26.)

FF9/4 On September 2, 2014, Weida Freight System, Inc (ORD) issued an arrival notice/freight invoice for Ref No. WDORD0I14090004, HB/L number
TAOWD038228, container number MEDU2212151, identifying LAS-SWEG Logistics as the shipper, Service by Air as the consignee, and total ocean freight charge of $3,393.00. (JA-15.)

FF9/5 On 09/03/14, Service by Air issued a check in the amount of $3393.00 to vendor Weida Freight System, Inc (ORD) for arrival notice/freight invoice WDORDOI14090004 for Ref N770553. (JA-19.)

FF9/6 On September 3, 2014, Service by Air representative Bryan Tincher sent an email to Doreen Anderson and others requesting payment for Ref N770553. (JA-20.)

FF9/7 On 09/04/14, Department of Homeland Security CBP Form 3461, Entry/Immediate Delivery, Entry No. 671-0142225-0, was created for container number MEDU2212151 for delivery to SBA Consolidators, Inc., with ultimate consignee identified as CMI. (JA-17.)

FF9/8 On 9/19/14, Freight Tech Cartage, Inc., issued a document with the notation “drop for Bryan Tincher Import Manager” for container number MEDU2212151 and chassis number MSCZ260650 to consignee CMI indicating time in of 705 and time out as 720. (JA-21.)

FF9/9 On October 1, 2014, Freight Tech Cartage, Inc., issued invoice number 19403 to SBA Consolidators, Inc., indicating delivery charges for container number MEDU2212151, including BNSF Harvey to LPC CMI, Wheeling ($350.00), fuel surcharge ($133.00), chassis charges ($300.00), prepull ($125.00); demurrage (total $1,010.00), total $1,918.00. (JA-22.)

FF9/10 Service by Air issued an invoice to CMI for container number MEDU2212151, reference N770553, including ocean freight ($4,688.00), import duty/tax ($896.28), and detention charge ($1,535.00), total $7,119.28. (JA-25.)

FF9/11 No document indicates that LAS Freight imposed any detention or demurrage charges for container number MEDU2212151.

FF9/12 No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MEDU2212151.

FLDR 10 JA-29-44.

Joint Appendix FLDR 10 contains documents related to the shipment of container number MSCU5926290 from Qingdao to Birmingham, Alabama.
LAS Freight System Ltd. issued bill of lading number QINCH11408007 identifying CMI Distribution LLC as the shipper and Hercules Poly Inc as the consignee for container number MSCU5926290, shipped on board Aug 22, 2014. (JA-43.)

Qingdao, China was the port of loading in China, Long Beach, CA, the port of discharge, and Birmingham, AL the place of delivery of container number MSCU5926290. (JA-31, 43.)

Acme Freight Services Corp. issued bill of lading number QD14080123 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee, of container number MSCU5926290, shipped on board Aug 22, 2014. (JA-31.)

Acme Freight Services Corp. issued arrival notice/freight invoice number 024858 indicating that the ocean freight due for container number MSCU5926290 was $4,500.00. (JA-33.)

Service by Air issued air waybill N770552 identifying [illegible] as the shipper, Hercules Poly as the consignee, Hong Kong as the airport of departure, and [illegible] as the airport of destination of container number MSCU5926290. (JA-32.)

On 09/10/14, Service by Air issued a check to Acme Freight Services Corp. for $4,500.00 for invoice number 024858, reference N770552. (JA-38.)

On 09/26/14, Intermodal Cartage Company issued invoice number 10-112513 to Service by Air for round trip service ($335.00), fuel surcharge ($100.50), yard pull ($75.00), and detention ($187.50), total $698.00, for container number MSCU5926290, reference number N770552. (JA-42.)

Service by Air issued an invoice to CMI for ocean freight ($5,537.00), storage ($250.00), and import duty/tax ($1,399.85), total $7,186.85, for container number MSCU5926290, reference number N770552. (JA-44.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number MSCU5926290.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MSCU5926290.
Joint Appendix FLDR 13 contains documents related to the shipment of container number TTNU5524101 from Qingdao to Birmingham, Alabama.

FF13/1 LAS Freight System Ltd. issued bill of lading number QINCHI1408011 identifying CMI as the shipper, Hercules Poly Inc as the consignee, Qingdao, China as the port of loading, Long Beach, CA, as the port of discharge, and Birmingham, Alabama, as the place of delivery of container number TTNU5524101, shipped on board Aug 29, 2014. (JA-64.)

FF13/2 Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Birmingham, Alabama, the place of delivery of container number TTNU5524101. (JA-64, 49.)

FF13/2 On August 25, 2014, Service by Air issued air waybill N770647 identifying Changle Huakin Plastic as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O'Hare Int'l as the airport of destination of container number TTNU5524101. (JA-47.)

FF13/3 On 9/5/14 Acme Freight Services Corp. issued arrival notice/freight invoice number INV-024873 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TTNU5524101 indicating that the ocean freight due for was $4,680.00. (JA-49.)

FF13/4 On 09/15/14 Service by Air issued a check in the amount of $4,680.00 to Acme Freight Services Corp. for invoice INV-024873 reference number N770647. (JA-51.)

FF13/5 Service by Air representative Bryan Tincher responded by email to a September 12, 2014, email from Richard Sturm, regional vice president for Intermodal Cartage Company, by identifying container number TTNU5524101 and stating: "This container is arriving tomorrow. I need it pulled before the last free day and held in your yard until I get the telex release. For this and the container you already have, I understand that there will be storage and that is not a problem. I just pass it down to my customer." (JA-53.)

FF13/6 On October 13, 2014, Service by Air representative Bryan Tincher approved detention charges totaling $206.25 for container number TTNU5524101. (JA-55.)

FF13/7 On October 18, 2014, Intermodal Cartage Company created invoice 10-112572 for Service by Air listing charges for round trip service ($355.00), fuel surcharge
($106.50), yard pull ($75.00), detention ($206.25), and chassis ($960.00), total $1,702.75 for container number TTNU5524101 reference number N770647. (JA-61.)

FF13/8 On October 22, 2014, Service by Air created an invoice for Hercules Poly Inc listing charges for ocean freight ($5,280.00), import duty/tax ($1,263.97), and storage ($1,781.25), total $8,325.22 for container number TTNU5524101 reference number N770647. (JA-67.)

FF13/9 No document indicates that LAS Freight imposed any detention or demurrage charges for container number TTNU5524101.

FF13/10 No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TTNU5524101.

FLDR 16 JA-72-83.

Joint Appendix FLDR 16 contains documents related to the shipment of container number TTNU4343813 from Qingdao, China, to Birmingham, Alabama.

FF16/1 LAS Freight System Ltd. issued bill of lading number QINCHI1409006 identifying CMI Distribution LLC as the shipper, Hercules Poly Inc as the consignee of container number TTNU4343813, shipped on board September 26, 2014. (JA-82.)

FF16/2 Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Birmingham, Alabama, the place of delivery of container number TTNU4343813. (JA-72, 82.)

FF16/3 Acme Freight Services Corp. issued bill of lading number QD14090117 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TTNU4343813 indicating that the cargo was shipped on board Sep 26, 2014. (JA-72.)

FF16/4 On 10/6/14, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-025200 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TTNU4343813 indicating that the ocean freight due for was $4,900.00. (JA-74.)

FF16/5 On 10/06/14 Service by Air issued a check in the amount of $4,900.00 to Acme Freight Services Corp. for invoice INV-025200 reference number N770856. (JA-77.)
On November 15, 2014, Intermodal Cartage Company created invoice 10-113528 for Acme Freight Services listing charges for round trip service ($355.00), fuel surcharge ($106.50), yard pull ($75.00), per diem charges ($1,100.00), and per diem charges ($206.25), total $1,842.75 for container number TTNU4343813 reference number IMP023051. (JA-80.)

On November 26, 2014, Service by Air created an invoice for CMI for container number TTNU4343813 air bill number N770856 for ocean freight ($5,030.xx), import duty/tax ($1,518.xx), and container demurrage ($2,200.xx) total $8,774.26. (JA-83.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number TTNU4343813.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TTNU4343813.

Joint Appendix FLDR 17 contains documents related to the shipment of container number MATU2315044 from Shanghai, China, to Long Beach, California.

LAS Freight System Ltd. issued bill of lading number SCHCHI1409009 identifying CMI as the shipper and ULTA Distribution Center as the consignee of delivery of container number MATU2315044. (JA-103.)

Shanghai, China was the port of loading, Long Beach, CA, the port of discharge, and Long Beach, CA, the place of delivery of container number MATU2315044. (JA-103, 112-113.)

Sino Crown Transportation Ltd. issued bill of lading number SCCE14A019 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MATU2315044. (JA-112-113.)

On September 29, 2014, Service by Air issued air waybill N770915 identifying Yantai Foodpack as the shipper, ULTA Dist as the consignee, Shanghai as the airport of departure, and Phoenix as the airport of destination of container number MATU2315044. (JA-91.)

On October 8, 2014, Continental Logistics Service, Inc., issued arrival notice/freight invoice number 105468 identifying LAS-SWEG Logistics

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The dollar amount is not completely legible.
(Shanghai) Ltd. as the shipper, Service by Air as the consignee, Shanghai, China as the port of loading, Long Beach, CA, as the port of discharge, and Long Beach, CA, as the place of delivery of container number MATU2315044, stating ocean freight and handling charge of $3,575.00. (JA-93-94.)

On October 8, 2014, Service by Air issued a check for $3,575.00 to Continental Logistics Service, Inc., for arrival notice/freight invoice number 105468, reference number N770915. (JA-96.)

Service by Air issued an invoice for air bill number N770915 to CMI for air freight ($4,050.00), import duty/tax ($2,171.81), cartage ($2,850.00), sort and segregate ($827.25), container stripping ($460.00), and container demurrage ($3,740.00), total $14,099.06 for container number MATU2315044. (JA-107.)

On November 11, 2014, Matson Navigation Company, Inc., issued a notice of private lien sale to Continental Logistics Svc stating that storage charges for container number MATU2315044 totaled $2,900 and stating that unless the charges were paid within twenty days, the goods would be sold to enforce Matson’s carrier lien. (JA-104.)

On November 11, 2014, Service by Air issued a check for $3,140.00 to Matson Navigation for arrival notice/freight invoice number MATU2315044, reference number N770915. (JA-95.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number MATU2315044.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MATU2315044.

Joint Appendix FLDR 19 contains documents related to the shipment of container number CLHU8658659 from Qingdao, China, to Chicago, IL.

LAS Freight System Ltd. issued bill of lading number QINCH1410004 identifying Zibo Hongyeshangqin Plastic and Rubber Co., Ltd as the shipper and CMI as the consignee of container number CLHU8658659, shipped on board 20141009. (JA-130.)

Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL, the place of delivery of container number CLHU8658659. (JA-116, 118, 121, 130.)
Acme Freight Services Corp. issued bill of lading number QD14100110 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number CLHU8658659, shipped on board October 9, 2014. (JA-118.)

On 10/20/14, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-025409 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number CLHU8658659 indicating that the ocean freight due was $4,120.00. (JA-121.)

On 11/6/14, Acme Freight Services Corp. issued a second arrival notice/freight invoice for container number CLHU8658659. (JA-116.)

Service by Air issued air waybill N770924 identifying [illegible] as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O'Hare Int'l as the airport of destination of container number CLHU8658659. (JA-119.)

On February 19, 2015, Freight Tech Cartage, Inc., issued invoice number 21201 to SBA Global indicating charges for container number CLHU8658659, reference number N770924, including CN Harvey to CMI, Wheeling ($350.00), fuel surcharge ($133.00), chassis charges ($2,450.00), demurrage ($15,980.00), and yard storage ($2,425.00), total $21,338.00. (JA-127.)

Service by Air charged CMI $5,350.00 for ocean freight for container number CLHU8658659. (JA-126.)

Service by Air issued an invoice for air bill number B770924 to CMI for container demurrage of $27,100.00 for container number CLHU8658659. (JA-133.)

CMI paid Service by Air the demurrage charges on air bill number B770924. (CMI App. Exh A-17.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number CLHU8658659.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number CLHU8658659.

FLDR 21 JA-137-157.

Joint Appendix FLDR 21 contains documents related to the shipment of container number TCKU1771451 from Qingdao, China, to Philadelphia, Pennsylvania.
LAS Freight System Ltd. issued bill of lading number QINCHI1410001 identifying CMI as the shipper and ULTA Distribution Center as the consignee of container number TCKU1771451, shipped on board 20141019. (JA-149.)

Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Philadelphia, PA, the place of delivery of container number TCKU1771451. (JA-138, 140, 149.)

Acme Freight Services Corp. issued bill of lading number QD14100115 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TCKU1771451 indicating that the cargo was shipped on board October 19, 2014. (JA-138.)

On 10/29/14, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-025454 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TCKU1771451 indicating that the ocean freight due for was $5,000.00. (JA-140.)

Service by Air issued air waybill N771018 identifying Yantai Foodpack Packaging Products Co., Ltd as the shipper, ULTA Dist as the consignee, Shanghai as the airport of departure, and Philadelphia as the airport of destination of container number TCKU1771451. (JA-139.)

On October 29, 2014, Service by Air issued a check for $5,600.00 to Acme Freight Services Corp. for arrival notice/freight invoice number INV-025454, reference number N771018. (JA-145.)

Service by Air issued an invoice for air bill number N771018 to CMI for air freight ($5,400.00), import duty/tax ($1,712.93), container stripping ($1,123.00), and appointment delivery ($950.00), total $9,185.93 for container number TCKU1771451. (JA-150.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number TCKU1771451.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TCKU1771451.

Joint Appendix FLDR 25 contains documents related to the shipment of container number TCLU4015624 from Qingdao, China, to Chicago, IL.
LAS Freight System Ltd. issued bill of lading number QINCHI1410003 identifying Changle Plastics Products Co., Ltd as the shipper, CMI as the consignee of container number TCLU4015624, shipped on board 20141021. (JA-168.)

Qingdao, China was the port of loading, Tacoma, WA, the port of discharge, and Chicago, IL, the final destination of container number TCLU4015624. (JA-162, 168, 169.)

Pacific Star Express (China) Co. Ltd. issued a bill of lading identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TCLU4015624. (JA-169.)

On November 12, 2014, Pan Star Express (Chicago) Corp. issued arrival notice/freight invoice number 281387 for container number TCLU4015624 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee indicating that the ocean freight due for was $3,820.00. (JA-162.)

Service by Air issued air waybill B771043 identifying [illegible] as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O'Hare Int'l as the airport of destination of container number TCLU4015624. (JA-161.)

On December 9, 2014, Pan Star Express (Chicago) Corp. issued a 2nd arrival notice for container number TCLU4015624 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee. (JA-159.)

On March 2, 2015, Freight Tech Cartage, Inc., issued invoice number 21374 to SBA Global indicating charges for container number TCLU4015624, reference number N771043, including CN Harvey to CMI, Wheeling ($350.00), fuel surcharge ($133.00), chassis charges ($2,025.00), demurrage ($7,300.00), and yard storage ($1,950.00), total $11,758.00. (JA-167.)

Service by Air issued an invoice for air bill number B771043 to CMI for container demurrage of $21,900.00 for container number TCLU4015624. (JA-171.)

CMI paid Service by Air the demurrage charges on air bill number B771043. (CMI App. Exh A-17.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number TCLU4015624.
No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TCLU4015624.

Joint Appendix FLDR 27 contains documents related to the shipment of container number NYKU3251483 from Qingdao, China, to Chicago, IL.

LAS Freight System Ltd. issued bill of lading number QINCHI1410013 identifying Yantai Foodpack Packaging Products Co., Ltd as the shipper and CMI as the consignee for container number NYKU3251483. (JA-190.)

Qingdao, China was the port of loading, Tacoma, WA, the port of discharge, and Chicago, IL, the final destination of container number NYKU3251483, shipped on board 20141028. (JA-173, 177, 190, 191.)

Pacific Star Express (China) Co. Ltd. issued a bill of lading identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee number NYKU3251483. (JA-191.)

On November 18, 2014, Pan Star Express (Chicago) Corp. issued arrival notice/freight invoice number 261469 for container number NYKU3251483 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee indicating that the ocean freight due was $4,350.00. (JA-177.)

Service by Air issued air waybill N771104 identifying Yantai Foodpack as the shipper, CMI as the consignee, Shanghai as the airport of departure, and O'Hare Int'l as the airport of destination of container number NYKU3251483. (JA-176.)

On December 22, 2014, Pan Star Express (Chicago) Corp. issued a 2nd arrival notice for container number NYKU3251483 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee. (JA-173.)

On February 20, 2015, Freight Tech Cartage, Inc., issued invoice number 21212 to SBA Global indicating charges for container number NYKU3251483, reference number N771104, including CN Harvey to CMI, Wheeling ($350.00), fuel surcharge ($133.00), chassis charges ($1,475.00), demurrage ($5,200.00), and yard storage ($1,400.00), total $8,558.00. (JA-187.)

Service by Air charged CMI $4,500.00 for ocean freight for container number NYKU3251483. (JA-181.)
Service by Air issued an invoice for air bill number B771044 to CMI for container demurrage of $14,300.00 for container number NYKU3251483. (JA-193.)

CMI paid Service by Air the demurrage charges on air bill number B771104. (CMI App. Exh A-17; JA-180.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number NYKU3251483.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number NYKU3251483.

**FLDR 29 JA-199-221.**

Joint Appendix FLDR 29 contains documents related to the shipment of container number TGHU1013740 from Qingdao, China, to Phoenix, AZ.

LAS Freight System Ltd. issued bill of lading number QINCHI1411001 identifying CMI as the shipper and ULTA Distribution Center as the consignee of container number TGHU1013740. (JA-215.)

Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Phoenix, AZ, the place of delivery of container number TGHU1013740, shipped on board 20141108. (JA-200, 207, 215.)

Acme Freight Services Corp. issued bill of lading number QD14110104 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TGHU1013740. (JA-200.)

On 11/19/14, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-025845 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TGHU1013740 indicating that the ocean freight due for was $3,100.00. (JA-207.)

Service by Air issued air waybill N771189 identifying [illegible] as the shipper, ULTA Dist as the consignee, Shanghai as the airport of departure, and Phoenix as the airport of destination of container number TGHU1013740. (JA-205.)

On November 20, 2014, Service by Air issued a check for $3,100.00 to Acme Freight Services Corp. for arrival notice/freight invoice number INV-025845, reference number N771189. (JA-211.)
On January 14, 2015, Service by Air issued a check for $200.00 to MSCI/Mediterranean Shipping Co. (USA), Inc., for invoice number SMCUQY075882, reference number N771189. (JA-210.)

Service by Air issued an invoice for air bill number N771189 to CMI for air freight ($3,470.00), import duty/tax ($1,634.96), container stripping ($720.00), and container demurrage ($6,650.00), a total of $12,474.96, for container number TGHU1013740. (JA-216.)

CMI paid Service by Air the charges including demurrage on air bill number N771189. (CMI App. Exh B-1; JA00217.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number TGHU1013740.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TGHU1013740.

Joint Appendix FLDR 33 contains documents related to the shipment of container number BMOU2709846 from Qingdao, China, to Philadelphia, PA.

LAS Freight System Ltd. issued bill of lading number QINCHI1411009 identifying CMI as the shipper and ULTA Distribution Center as the consignee of container number BMOU2709846. (JA-237.)

Qingdao, China was the port of loading, Philadelphia, PA, the port of discharge, and Philadelphia, PA, the place of delivery of container number BMOU2709846, shipped on board 20141203. (JA-224, 226, 237.)

Acme Freight Services Corp. issued bill of lading number QD14120102 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number BMOU2709846. (JA-224.)

On 2/2/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-026166 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number BMOU2709846 indicating that the ocean freight due was $3,520.00. (JA-226.)

On March 2, 2015, Service by Air issued air waybill B771383 identifying [illegible] as the shipper, ULTA Dist as the consignee, Shanghai as the airport of
departure, and Philadelphia as the airport of destination of container number BMOU2709846. (JA-225.)

On February 03, 2015, Service by Air issued a check for $7,771.41 to Acme Freight Services Corp., including $3,621.41 for arrival notice/freight invoice number INV-026166, reference number N771383. (JA-230.)

On February 19, 2015, Holt Logistics issued a document for container number BMOU2709846 stating that as of the date of the document, demurrage of $500.00 had accrued on the container. (JA-235.)

Service by Air issued an invoice to CMI for air freight and import duty totaling $6,134.94 due on air bill number N771383. (JA-239.)

Service by Air issued an invoice to CMI for air freight of $9,600.00 due on air bill number B771383. (JA-238.)

CMI paid Service by Air the demurrage charges on air bill number B771383. (CMI Exh. A-17.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number BMOU2709846.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number BMOU2709846.


Joint Appendix FLDR 36 contains documents related to the shipment of containers number GLDU9630402 and TEMU5582928 from Qingdao, China, to Chicago, IL.

LAS Freight System Ltd. issued bill of lading number QINCHI1412006 identifying Yantai Foodpack Packaging Products Co., Ltd as the shipper and CMI as the consignee of containers number GLDU9630402 and TEMU5582928. (JA-261.)

Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL, the place of delivery of containers number GLDU9630402 and TEMU5582928, shipped on board 20141222. (JA-248, 251, 261.)

15 Revised Complaint Exhibit 1 does not list container number TEMU5582928 as being part of this shipment.
Acme Freight Services Corp. issued bill of lading number QD14120134 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number GLDU9630402 and TEMU5582928. (JA-248.)

On 1/5/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-026345 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number GLDU9630402 and TEMU5582928 indicating that the ocean freight due for was $7,700.00. (JA-251.)

On [date illegible], Service by Air issued air waybill B771501 identifying Yantai Foodpack as the shipper, CMI as the consignee, Shanghai as the airport of departure, and O’Hare as the airport of destination of containers number GLDU9630402 and TEMU5582928. (JA-250.)

On February 13, 2015, Freight Tech Cartage, Inc., issued invoice number 21140 to SBA Global indicating charges for container number GLDU9630402, reference number N771501, including CN Harvey to CMI, Wheeling ($350.00), fuel surcharge ($133.00), chassis charges ($425.00), demurrage ($1,000.00), and yard storage ($375.00), total $2,283.00. (JA-257.)

Service by Air issued an invoice to CMI with charges described only as “E” totaling $6,325.00 due on air bill number B771501, containers number GLDU9630402 and TEMU5582928. (JA-265.)

Service by Air issued an invoice to CMI for demurrage of $6,325.00 due on air bill number B771501. (CMI App. Ex. A-10, RADIANTE002593; CMI App. Ex. A-17.)

CMI paid Service by Air the charges due on air bill number B771501. (CMI App. Exh A-17.)

No document indicates that LAS Freight imposed any detention or demurrage charges for containers number GLDU9630402 and TEMU5582928.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for containers number GLDU9630402 and TEMU5582928.
Joint Appendix FLDR 42 contains documents related to the shipment of container number TTNU5206116 from Qingdao, China, to Chicago, IL.

**FF42/1** LAS Freight System Ltd. issued bill of lading number QINCHI1501001 identifying Weifang Chenxi Plastic Products Co., Ltd as the shipper and CMI as the consignee of container number TTNU5206116. (JA-286.)

**FF42/2** Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL, the place of delivery of container number TTNU5206116, shipped on board 20150109. (JA-269, 271, 275, 286.)

**FF42/3** Acme Freight Services Corp. issued bill of lading number QD15010101 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TTNU5206116. (JA-271.)

**FF42/4** On 1/29/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-026479 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TTNU5206116 indicating that the ocean freight due for was $4,150.00. (JA-275.)

**FF42/5** On 2/23/15, Acme Freight Services Corp. issued a 2nd arrival notice identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TTNU5206116. (JA-269.)

**FF42/6** On [date illegible], Service by Air issued air waybill N771584 identifying Weifang Chenxi as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O'Hare as the airport of destination of container number TTNU5206116. (JA-273.)

**FF42/7** On February 03, 2015, Service by Air issued a check for $7,771.41 to Acme Freight Services Corp., including $4,150.00 for arrival notice/freight invoice number INV-026479, reference number N771584. (JA-280.)

**FF42/8** On April 6, 2015, Freight Tech Cartage, Inc., issued invoice number 21779 to SBA Global indicating charges for container number TTNU5206116, reference number N771584, including CN Harvey to CMI, Wheeling ($350.00), fuel surcharge ($133.00), chassis charges ($900.00), demurrage ($3,600.00), and yard storage ($775.00), total $5,758.00. (JA-284.)
FF42/9 Service by Air issued an invoice to CMI for air bill number B771584 with charges for container demurrage of $9,900.00 for container number TTNU5206116. (JA-289.)

FF42/10 CMI paid Service by Air $6,399.96 for the invoice for air bill number N771584. (JA-279.)

FF42/11 CMI paid Service by Air $9,000 for the demurrage charges on air bill number B771584. (CMI App. Exh A-8, CMI00560; CMI App. Exh A-17.)

FF42/12 No document indicates that LAS Freight imposed any detention or demurrage charges for container number TTNU5206116.

FF42/13 No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TTNU5206116.

FLDR 43 JA-293-312.

Joint Appendix FLDR 43 contains documents related to the shipment of container number TRIU5347886 from Qingdao, China, to Chicago, IL.

FF43/1 LAS Freight System Ltd. issued bill of lading number QINCHI1501007 identifying Weifang Chenxi Plastic Products Co., Ltd as the shipper and CMI as the consignee of container number TRIU5347886. (JA-307.)

FF43/2 Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL, the place of delivery of container number TRIU5347886, shipped on board 20150117. (JA-294, 297, 307.)

FF43/3 Acme Freight Services Corp. issued bill of lading number QD15010128 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TRIU5347886. (JA-294.)

FF43/4 On 1/29/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-026660 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TRIU5347886 indicating that the ocean freight due was $4,150.00. (JA-297.)

FF43/5 Service by Air issued air waybill N771645 identifying no shipper, CMI as the consignee, Hong Kong as the airport of departure, and O'Hare as the airport of destination stating "import duty/tax" for container number TRIU5347886. (JA-295.)
Service by Air issued air waybill B771645 identifying Weifang Chenxi as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O'Hare as the airport of destination stating "container demurrage" for container number TRIU5347886. (JA-296.)

On March 31, 2015, Freight Tech Cartage, Inc., issued invoice number 21702 to SBA Global indicating charges for container number TRIU5347886, reference number N771645, including BNSF Logistics Park to CMI, Wheeling ($350.00), fuel surcharge ($133.00), chassis charges ($300.00), demurrage – MSC container ($400.00), demurrage – MSC container ($175.00), and yard storage ($175.00), total $1,658.00. (JA-303.)

Service by Air issued an invoice to CMI for air bill number N771645 with charges for ocean freight ($5,150.00) and import duty/tax ($1,052.95) total of $6,202.95 for container number TRIU5347886. (JA-311.)

Service by Air issued an invoice to CMI for air bill number B771645 with charges of $2,700.00 for container demurrage for container number TRIU5347886. (JA-310.)

CMI paid Service by Air the demurrage charges on air bill number B771645. (CMI App. Exh A-8, CMI00560; CMI App. Exh. A-17.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number TRIU5347886.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TRIU5347886.

Joint Appendix FLDR 44 contains documents related to the shipment of container number CAXU4049893 from Qingdao, China, to Edison, NJ.

LAS Freight System Ltd. issued bill of lading number QINCHI1501008 identifying CMI as the shipper and Josen Paper & Packing as the consignee of container number CAXU4049893. (JA-322.)

Qingdao, China was the port of loading, New York USA, the port of discharge, and Edison, NJ, the place of delivery of container number CAXU4049893, shipped on board 20150126. (JA-318, 321, 322.)
Global Links Express Inc. issued bill of lading number QD15010113 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number CAXU4049893. (JA-321.)

On 3/12/15, Global Links Express Inc. issued arrival notice/freight invoice number 11005252 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number CAXU4049893 indicating that the ocean freight due was $5,030.00. (JA-318.)

Service by Air issued air waybill N771678 identifying CMI as the shipper, Joshen Paper & Packing as the consignee, Shanghai as the airport of departure, and Newark as the airport of destination of a shipment, but did not state a container number. (JA-316.)

On 4/16/15, Service by Air issued air waybill B771678 identifying CMI as the shipper, Joshen Paper & Packing as the consignee, Shanghai as the airport of departure, and Newark as the airport of destination of container number CAXU4049893. (JA-315.)

Service by Air issued an invoice to CMI for air bill number N771678 with air freight charges ($5,815.00) and import duty/tax ($1,878.65), total of $7,693.65. (CMI App. Ex. A-9.)

With no document showing a charge for demurrage, Service by Air issued an invoice to CMI for air bill number B771678 with charges of $6,650.00 for demurrage for container number CAXU4049893. (JA-330; JA-344.)

CMI paid Service by Air the demurrage charges on air bill number B771678. (CMI App. Ex. A-17.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number CAXU4049893.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number CAXU4049893.

Joint Appendix FLDR 46 contains documents related to the shipment of containers number MSCU4807147 and MSCU4832324 from Qingdao, China, to Chicago, IL.
LAS Freight System Ltd. issued bill of lading number QINCHI1502004 identifying Weifang Sunshine Plastic Co., Ltd as the shipper and CMI as the consignee of containers number MSCU4807147 and MSCU4832324. (JA-363.)

Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL, the place of delivery of containers number MSCU4807147 and MSCU4832324, shipped on board 20150201. (JA-351, 354, 363.)

Acme Freight Services Corp. issued bill of lading number QD15020108 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number MSCU4807147 and MSCU4832324. (JA-351.)

On 3/11/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-027241 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number MSCU4807147 and MSCU4832324 indicating that the ocean freight due was $8,300.00. (JA-354.)

Service by Air issued air waybill N771716 identifying [illegible] as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O'Hare as the airport of destination of containers number MSCU4807147 and MSCU4832324. (JA-353.)

Service by Air issued air waybill B771716 identifying Weifang Chenxi as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O’Hare as the airport of destination of containers number MSCU4807147 and MSCU4832324 and stating container demurrage is $8,400.00. (JA-352.)

On April 17, 2015, Freight Tech Cartage, Inc., issued invoice number 21894 to SBA Global indicating charges for container number MSCU4807147, reference number N771716, including CN Harvey to CMI, Wheeling ($350.00), fuel surcharge ($133.00), pre pull ($125.00), demurrage – MSC container ($1,120.00), demurrage – MSC container ($1,360.00), and yard storage ($475.00), total $3,563.00). (JA-361.)

Service by Air issued an invoice to CMI for air bill number N771716 with charges for ocean freight ($9,650.00) and import duty/tax ($2,085.52) totaling of $11,735.52 for storage for containers number MSCU4807147 and MSCU48322324 [sic]. (JA-365.)
Service by Air issued an invoice to CMI for air bill number B771716 with charges for demurrage of $8,400.00 for containers number MSCU4807147 and MSCU4832324. (JA-366.)

CMI paid Service by Air the charges on air bill number B771716. (CMI App. A-8.)

No document indicates that LAS Freight imposed any detention or demurrage charges for containers number MSCU4807147 and MSCU4832324.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for containers number MSCU4807147 and MSCU4832324.

Joint Appendix FLDR 49 contains documents related to the shipment of container number MSCU5881621 from Qingdao, China, to Las Vegas, NV.

LAS Freight System Ltd. issued bill of lading number QINCHI1502002 identifying CMI as the shipper and Dynamex as the consignee of container number MSCU5881621. (JA-380.)

Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Las Vegas, NV, the place of delivery of container number MSCU5881621, shipped on board 20150201. (JA-370, 372, 380.)

Acme Freight Services Corp. issued bill of lading number QD15020112 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU5881621. (JA-370.)

On 3/12/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-027243 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU5881621 indicating that the ocean freight due was $3,780.00. (JA-372.)

Service by Air issued air waybill N771756 identifying Weifang Chenxi as the shipper, Dynamex as the consignee, Shanghai as the airport of departure, and Las Vegas as the airport of destination of container number MSCU5881621. (JA-371.)

Service by Air issued air waybill B771756 identifying Weifang Chenxi as the shipper, Dynamex as the consignee, Shanghai as the airport of departure, and Las
Vegas as the airport of destination of container number MSCU5881621 and stating container demurrage is $2,700.00 and container stripping is $1,500.00. (JA-371.)

FF49/7 On April 1, 2015, Mediterranean Shipping Company (USA) Inc. issued invoice number MSCUQY456082 to Service by Air for rework ($1,200.00), dray ($150.00), and storage ($400.00) totaling $1,750.00 for container number MSCU5881621. (JA-381.)

FF49/8 On April 1, 2015, Mediterranean Shipping Company (USA) Inc. issued pro forma invoice number MSCUQY456082 to Service by Air for logistic and management fee ($1,200.00, $150.00, and $550.00) totaling $1,900.00 for container number MSCU5881621. (JA-382.)

FF49/9 With no document showing a charge for demurrage, Service by Air issued an invoice to CMI for air bill number B771756 with charges for container demurrage ($2,700.00) and container stripping ($1,500.00) total of $4,200.00 for container number MSCU5881621. (JA-383.)

FF49/10 CMI paid Service by Air the demurrage charges on air bill number B771756. (CMI Exh A-8; CMI00554.)

FF49/11 No document indicates that LAS Freight imposed any detention or demurrage charges for container number MSCU5881621.

FF49/12 No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MSCU5881621.

**FLDR 50 JA-387-399.**

Joint Appendix FLDR 50 contains documents related to the shipment of container number MSCU4271080 from Qingdao, China, to Chicago, IL.

FF50/1 LAS Freight System Ltd. issued bill of lading number QINCHIL502006 identifying Weifang Sunshine Plastic Co., Ltd as the shipper and CMI as the consignee of container number MSCU4271080. (JA-396.)

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16 The invoice states “04/01/2014.” Because the pro forma invoice (JA-382) was printed 04/01/2015 and container number MSCU5881621 to which it refers was shipped on board February 1, 2015, I find the correct year to be 2015.
Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL, the place of delivery of container number MSCU4271080, shipped on board 20150208. (JA-388, 391, 396.)

Acme Freight Services Corp. issued bill of lading number QD15020101 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU4271080. (JA-388.)

On 3/4/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-027235 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU4271080 indicating that the ocean freight due was $4,150.00. (JA-391.)

Service by Air issued air waybill N771762 identifying Weifang Chenxi as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O’Hare as the airport of destination of container number MSCU4271080 with charges for import duty/tax. (JA-389.)

Service by Air issued air waybill B771762 identifying Weifang Chenxi as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O’Hare as the airport of destination of container number MSCU4271080 with charges for container demurrage. (JA-390.)

On May 22, 2015, Freight Tech Cartage, Inc., issued invoice number 22280 to SBA Global indicating charges for container number MSCU4271080, reference number N771762, including CN Harvey to CMI, Wheeling ($350.00), fuel surcharge ($133.00), pre pull ($125.00), storage at rail ($100.00), credit card fee for storage at rail ($25.00), demurrage - MSC container ($8,330.00), and yard storage ($1,200.00), total $10,263.00). (JA-394.)

Service by Air issued an invoice to CMI for demurrage of $12,250.00 due on air bill number B771762. (CMI Exh A-10.)

CMI paid Service by Air the demurrage charges on air bill number B771762. (CMI App. A-17.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number MSCU4271080.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MSCU4271080.
Joint Appendix FLDR 51 contains documents related to the shipment of container number MSCU4867660 from Qingdao, China, to Las Vegas, NV.

LAS Freight System Ltd. issued bill of lading number QINCHI1502007 identifying CMI as the shipper and Dynamex as the consignee of container number MSCU4867660. (JA-416.)

Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Las Vegas, NV, the place of delivery of container number MSCU4867660, shipped on board 20150208. (JA-402, 404, 416.)

Acme Freight Services Corp. issued bill of lading number QD15020104 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU4867660. (JA-402.)

On 3/4/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-027237 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU4867660 indicating that the ocean freight due was $3,781.00. (JA-404.)

Service by Air issued air waybill N771763 identifying CMI as the shipper, Dynamex as the consignee, Shanghai as the airport of departure, and Las Vegas as the airport of destination of container number [illegible]. (JA-403.)

On April 1, 2015, Mediterranean Shipping Company (USA) Inc. representative Colin Freeman sent an email to tonyshih@acmefreight.com stating that container number MSCU4867660 accumulated storage and detention charges of $1,340.00 by 4/8/15. (JA-408.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number MSCU4867660.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MSCU4867660.

Joint Appendix FLDR 52 contains documents related to the shipment of container number TRHU3313918 from Qingdao, China, to Chicago, IL.
LAS Freight System Ltd. issued bill of lading number QINCHII502003 identifying Yantai Foodpack Packaging Products Co., Ltd as the shipper and CMI as the consignee of container number TRHU3313918. (JA-432.)

Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL, the place of delivery of container number TRHU3313918, shipped on board 20150213. (JA-432.)

Acme Freight Services Corp. issued bill of lading number QD15020138 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TRHU3313918. (JA-424.)

On 3/1/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-027254 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TRHU3313918 indicating that the ocean freight due was $3,750.00. (JA-427.)

Service by Air issued air waybill N771769 identifying Yantai Foodpack as the shipper, CMI as the consignee, Shanghai as the airport of departure, and O’Hare as the airport of destination of container number TRHU3313918. (JA-426.)

Service by Air issued air waybill B771769 identifying Yantai Foodpack as the shipper, CMI as the consignee, Shanghai as the airport of departure, and O’Hare as the airport of destination of container number TRHU3313918. (JA-425.)

On May 14, 2015, Freight Tech Cartage, Inc., issued invoice number 22164 to SBA Global indicating charges for container number TRHU3313918, reference number N771769, including BNSF LPC to CMI, Wheeling ($350.00), fuel surcharge ($133.00), pre pull ($125.00), chassis charges ($1,225.00), demurrage ($6,125.00), and yard storage ($1,200.00), total $9,158.00. (JA-431.)

Service by Air issued an invoice to CMI for air bill number N771769 with charges for air freight ($4,245.00) and import duty/tax ($947.76) total of $5,192.76 for container number TRHU3313918. (JA-436.)

Service by Air issued an invoice to CMI for air bill number B771769 with charges for container demurrage of $14,100.00 for container number TRHU3313918. (JA-435.)

CMI paid Service by Air the demurrage charges on air bill number B771769. (CMI Exh B-1; JA00433.)
FF52/11  No document indicates that LAS Freight imposed any detention or demurrage charges for container number TRHU3313918.

FF52/12  No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TRHU3313918.

FLDR 53 JA-440-455.

Joint Appendix FLDR 53 contains documents related to the shipment of container number TRLU4651517 from Qingdao, China, to Las Vegas, NV.

FF53/1  LAS Freight System Ltd. issued bill of lading number QINCHI1502008 identifying CMI as the shipper and Dynamex as the consignee of container number TRLU4651517. (JA-450.)

FF53/2  Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Las Vegas, NV, the place of delivery of container number TRLU4651517, shipped on board 20150215. (JA-441, 443, 450.)

FF53/3  Acme Freight Services Corp. issued bill of lading number QD15020303 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TRLU4651517. (JA-441.)

FF53/4  On 3/12/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-027260 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number TRLU4651517 indicating that the ocean freight due was $4,080.00. (JA-443.)

FF53/5  Service by Air issued air waybill B771807 identifying CMI as the shipper, Dynamex as the consignee, Shanghai as the airport of departure, and Las Vegas as the airport of destination of container number TRLU4651517. (JA-442.)

FF53/6  Service by Air issued an invoice to CMI for air bill number B771807 with charges for ocean freight of $8,734.58 with no container number listed. (JA-453.)

FF53/7  No document indicates that LAS Freight imposed any detention or demurrage charges for container number TRLU4651517.

FF53/8  No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number TRLU4651517.
FLDR 54 JA-457-478.

Joint Appendix FLDR 54 contains documents related to the shipment of container number MSCU4337608 from Qingdao, China, to Edison, NJ.

FF54/1 LAS Freight System Ltd. issued bill of lading number QINCHI1503001 identifying CMI as the shipper and Joshen Paper & Packing as the consignee of container number MSCU4337608. (JA-480.)

FF54/2 Qingdao, China was the port of loading, New York USA, the port of discharge, and Edison, NJ, the place of delivery of container number MSCU4337608, shipped on board 20150302. (JA-459, 469, 480.)

FF54/3 Global Links Express Inc. issued bill of lading number QD15030101 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU4337608. (JA-469.)

FF54/4 On 04/08/15, Global Links Express Inc. issued arrival notice/freight invoice number 11005370 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU4337608 indicating that the ocean freight due was $5,150.00. (JA-459.)

FF54/5 Service by Air issued air waybill B771910 identifying CMI as the shipper, Joshen Paper & Packing as the consignee, Shanghai as the airport of departure, and Newark as the airport of destination of a shipment, but did not state a container number stating storage $7,154.50. (JA-457.)

FF54/6 Service by Air issued an invoice to CMI for air bill number B771910 with charges for storage of $7,154.50 for container number MSCU4337608. (JA-485.)

FF54/7 No document indicates that LAS Freight imposed any detention or demurrage charges for container number MSCU4337608.

FF54/8 No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MSCU4337608.

FLDR 58 JA-488-505.

Joint Appendix FLDR 58 contains documents related to the shipment of container number MSCU5670932 from Qingdao, China, to Chicago, IL.
LAS Freight System Ltd. issued bill of lading number QINCHI1503007 identifying Weifang Sunshine Plastic Co., Ltd as the shipper and CMI as the consignee of container number MSCU5670932. (JA-500.)

Qingdao, China as the port of loading, Long Beach, CA, as the port of discharge, and Chicago, IL, as the place of delivery of container number MSCU5670932, shipped on board 20150402. (JA-489, 491, 500.)

Acme Freight Services Corp. issued bill of lading number QD15030134 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU5670932. (JA-489.)

On 4/9/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-027567 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air of container number MSCU5670932 indicating that the ocean freight due was $3,850.00. (JA-491.)

Service by Air issued air waybill B852111 identifying Weifang Chenxi as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O'Hare as the airport of destination of container number MSCU5670932 stating container demurrage of $12,000.00. (JA-490.)

On June 9, 2015, Freight Tech Cartage, Inc., issued invoice number 22477 to SBA Global indicating charges for container number MSCU5670932, reference number N852111, including BNSF, LPC to CMI, Wheeling ($350.00), fuel surcharge ($133.00), pre pull ($125.00), chassis charges ($1,000.00), demurrage ($6,800.00), and yard storage ($975.00), total $9,383.00). (JA-497.)

Service by Air issued an invoice to CMI for air bill number N852111 with charges for ocean freight ($4,895.00), import duty/tax ($1,045.93), total of $5,940.93 for container number MSCU5670932. (JA-503.)

Service by Air issued an invoice to CMI for air bill number B852111 with charges for container demurrage of $12,000.00 for container number MSCU5670932. (JA-502.)

CMI paid Service by Air the demurrage charges on air bill number B852111. (CMI App. Ex. A-8.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number MSCU5670932.
FF58/10 No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MSCU5670932.

FLDR 59 JA-507-551.

Joint Appendix FLDR 59 contains documents related to the shipment of container number KKFU1167644 from Qingdao, China, to Las Vegas, NV.

FF59/1 LAS Freight System Ltd. issued bill of lading number QINCHI1504002 identifying CMI as the shipper and Dynamex as the consignee of container number KKFU1167644. (JA-545.)

FF59/2 Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Las Vegas, NV, the place of delivery of container number KKFU1167644, shipped on board 20150411. (JA-513, 514, 515, 516, 545.)

FF59/3 On April 11, 2015, Anchor Logistics issued bill of lading number EWCL0008616 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number KKFU1167644. (JA-511.)

FF59/4 On April 24, 2015, Anchor Logistics issued arrival notice/freight invoice number ANCH10410 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number KKFU1167644 indicating that the ocean freight due was $3,000.00. (JA-515.)

FF59/5 Anchor Logistics issued arrival notice/freight invoice number ANCH10410, revised May 12, 2015, identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number KKFU1167644 indicating that the ocean freight and pier pass due totaled $3,133.00. (JA-512.)

FF59/6 Anchor Logistics issued arrival notice/freight invoice number ANCH10410, revised June 19, 2015, identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number KKFU1167644 indicating that an additional storage fee of $5,075.00 was due for the period May 15, 2015, to June 18, 2015. (JA-514.)

FF59/7 Anchor Logistics issued arrival notice/freight invoice number ANCH10410, revised July 27, 2015, identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number KKFU1167644 indicating that an additional per diem fee of $4,505.00 was due for the period May 15, 2015, to July 13, 2015. (JA-516.)
Service by Air issued air waybill N852232 identifying CMI as the shipper, Dynamex as the consignee, Shanghai as the airport of departure, and Las Vegas as the airport of destination of container number KKFU1167644. (JA-509.)

On May 13, 2015, Service by Air issued a check for $399.00 to Anchor Logistics, including $133.00 for arrival notice/freight invoice number ANCH10410A, reference number B852232. (JA-521.)

On June 19, 2015, Service by Air issued a check for $15,650.00 to Anchor Logistics, including for $5,075.00 for arrival notice/freight invoice number ANCH10410B, reference number B852232. (JA-520.)

Service by Air issued an invoice to CMI for air bill number N852232 with charges for ocean freight ($4,095.00), import duty/tax ($1,005.32), total of $5,100.32 for container number KKFU1167644. (JA-546.)

With no document showing a charge for demurrage, Service by Air issued an invoice to CMI for air bill number C852232 with charges for container demurrage of $6,300.00 for container number KKFU1167644. (JA-547.)

With no document showing a charge for demurrage, Service by Air issued an invoice to CMI for air bill number B852232 with charges for container demurrage of $12,250.00 for container number KKFU1167644 (JA-538.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number KKFU1167644.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number KKFU1167644.

FLDR 60 and 61 JA-507-551.

Joint Appendix FLDR 60 and 61 contains documents related to the shipment of containers number KKFU1363499 and KKFU1614383 from Qingdao, China, to Las Vegas, NV. These two containers were included on one bill of lading by some carriers and other documents treat them together.

LAS Freight System Ltd. issued bill of lading number QINCHII504004A identifying CMI as the shipper and Dynamex as the consignee of container number KKFU1614383. (JA-590.)

FLDR 60-61 does not have an LAS Freight bill of lading for container number KKFU1363499.
QQ60-61/2 Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Las Vegas, NV, the place of delivery of containers number KKFU1363499 and KKFU1614383, shipped on board 20150411. (JA-558, 559, 560, 590.)

FF60-61/3 On April 11, 2015, Anchor Logistics issued bill of lading number EWCL0088617 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number KKFU1363499 and KKFU1614383. (JA-557.)

FF60-61/4 On April 24, 2015, Anchor Logistics issued arrival notice/freight invoice number ANCH10409 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number KKFU1363499 and KKFU1614383 indicating that the ocean freight due was $6,000.00. (JA-562.)

FF60-61/5 Anchor Logistics issued arrival notice/freight invoice number ANCH10409, revised May 12, 2015, identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number KKFU1363499 and KKFU1614383 indicating that the ocean freight and pier pass due totaled $6,266.00. (JA-563.)

FF60-61/6 Anchor Logistics issued arrival notice/freight invoice number ANCH10409, revised June 19, 2015, identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number KKFU1363499 and KKFU1614383 indicating that an additional storage fee of $5,075.00 was due for container number KKFU1363499 for the period May 15, 2015, to June 18, 2015, and $5,600.00 for KKFU1614383 for the period May 12, 2015, to June 18, 2015. (JA-561.)

FF60-61/7 Anchor Logistics issued arrival notice/freight invoice number ANCH10409, revised July 27, 2015, identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of containers number KKFU1363499 and KKFU1614383 indicating that an additional per diem fee of $4,250.00 was due container number KKFU1363499 for the period May 15, 2015, to July 10, 2015, and $4,420.00 for container number KKFU1614383 for the period May 12, 2015, to July 9, 2015. (JA-560.)

FF60-61/8 Service by Air issued air waybill D852230 identifying CMI as the shipper, Dynamex as the consignee, Shanghai as the airport of departure, and Las Vegas as the airport of destination of containers number KKFU1363499 and KKFU1614383 for import duty/tax. (JA-555.)

FF60-61/9 Service by Air issued air waybill B852230 identifying CMI as the shipper, Dynamex as the consignee, Shanghai as the airport of departure, and Las Vegas
as the airport of destination of containers number KKFU1363499 and KKFU1614383 for import duty/tax. (JA-556.)

FF60-61/10 Service by Air issued air waybill D852230 identifying CMI as the shipper, Dynamex as the consignee, Shanghai as the airport of departure, and Las Vegas as the airport of destination of containers number KKFU1363499 and KKFU1614383 for container stripping. (JA-554.)

FF60-61/11 On May 13, 2015, Service by Air issued a check for $399.00 to Anchor Logistics, including $266.00 for arrival notice/freight invoice number ANCH10409A, reference number B852230. (JA-567.)

FF60-61/12 On June 19, 2015, Service by Air issued a check for $15,650.00 to Anchor Logistics, including $10,575.00 for arrival notice/freight invoice number ANCH10409B, reference number B852230. (JA-568.)

FF60-61/13 Service by Air issued an invoice to CMI for air bill number N852230 with charges for ocean freight ($7,490.00), import duty/tax ($1,575.92), total of $9,065.95 for containers number KKFU1363499 and KKFU1614383. (JA-592.)

FF60-61/14 With no document showing a charge for demurrage, Service by Air issued an invoice to CMI for air bill number B852230 with charges for container demurrage of $12,400.00 for container number KKFU1363499 and container demurrage of $12,400.00 for container number KKFU1614383. (JA-538.)

FF60-61/15 CMI paid Service by Air the charges on containers number KKFU1363499 and KKFU1614383. (CMI App. Exh. B-1; JA-591.)

FF60-61/16 No document indicates that LAS Freight imposed any detention or demurrage charges for containers number KKFU1363499 and KKFU1614383.

FF60-61/17 No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for containers number KKFU1363499 and KKFU1614383.

FLDR 62 JA-507-551.

Joint Appendix FLDR 62 contains documents related to the shipment of container number MSCU5915505 from Qingdao, China, to Chicago, IL.

FL62/1 LAS Freight System Ltd. issued bill of lading number QINCHI1504003 identifying Weifang Sunshine Plastic Co., Ltd as the shipper and CMI as the consignee of delivery of container number MSCU5915505. (JA-615.)
Qingdao, China was the port of loading, Long Beach, CA, the port of discharge, and Chicago, IL, the place of delivery of container number MSCU5915505, shipped on board 20150412. (JA-599, 601, 615.)

Acme Freight Services Corp. issued bill of lading number QD15040139 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU5915505. (JA-599.)

On 4/20/15, Acme Freight Services Corp. issued arrival notice/freight invoice number INV-027690 identifying LAS-SWEG Logistics (Shanghai) Ltd. as the shipper and Service by Air as the consignee of container number MSCU5915505 indicating that the ocean freight due was $3,800.00. (JA-601.)

Service by Air issued air waybill B852231 identifying Weifang Chenxi as the shipper, CMI as the consignee, Hong Kong as the airport of departure, and O’Hare as the airport of destination but container number listed stating container demurrage of $12,600.00. (JA-600.)

On June 18, 2015, Freight Tech Cartage, Inc., issued invoice number 22604 to SBA Global indicating charges for container number MSCU5915505, reference number N852231, including BNSF, LPC to CMI, Wheeling ($350.00), fuel surcharge ($133.00), pre pull ($125.00), chassis charges ($1,075.00), demurrage ($7,000.00), and yard storage ($1,050.00), total $9,733.00. (JA-614.)

Service by Air issued an invoice to CMI for air bill number N852231 with charges for ocean freight ($4,895.00), import duty/tax ($1,043.46), total of $5,938.46 for container number MSCU5915505. (JA-628.)

Service by Air issued an invoice to CMI for air bill number B852231 with charges container demurrage of $12,600.00 for container number MSCU5915505. (JA-629.)

CMI paid SBA the demurrage charges on air bill number B852231. (CMI App. Exh A-10; JA-629.)

No document indicates that LAS Freight imposed any detention or demurrage charges for container number MSCU5915505.

No document indicates that either CMI or Service by Air paid LAS Freight any detention or demurrage charges for container number MSCU5915505.
VIII. OTHER OUTSTANDING ISSUES.

A. CMI’s Allegations Against Radiant Are Deemed Abandoned.

CMI alleges that respondent Radiant violated the Shipping Act. SBA contends: “CMI has abandoned its claims against Respondent Radiant Customs Services, Inc. as successor of SBA Consolidators, Inc., as CMI does not address that respondent’s alleged liability in either of its two briefs.” (SBA Brief at 1.) CMI did not discuss its allegations against Radiant in any of the briefs it filed. Also, in its Reply Brief, CMI did not respond to SBA’s contention that CMI abandoned its claims against Radiant. Therefore, CMI’s claims against Radiant are deemed abandoned and dismissed with prejudice.

B. SBA’s Statute of Limitations Defense is Deemed Abandoned.

In its answer, Service by Air states as an affirmative defense that “CMI’s claims are time barred, wholly or partially, by the applicable statute of limitations.” (SBA Answer at 5.) Service by Air does not argue in its briefs that claims about any shipments at issue are barred by the statute of limitations. Therefore, Service by Air’s statute of limitations defense is deemed abandoned.

IX. ATTORNEY FEES.

“In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.” 46 U.S.C. § 41305. “In order to recover attorney fees, the prevailing party must file a petition within 30 days after a decision becomes final. For purposes of this section, a decision is considered final when the time for seeking judicial review has expired or when a court appeal has terminated.” 46 C.F.R. § 502.254(c). See also Organization and Functions; Rules of Practice and Procedure; Attorney Fees, Final rule, 81 Fed. Reg. 10508 (Mar. 1, 2016). CMI has proven by a preponderance of the evidence that Service by Air violated the Shipping Act and that it suffered actual injury as a result of the violations. Therefore, CMI is the prevailing party.

ORDER

Upon consideration of the record in this proceeding and for the reasons set forth above, complainant CMI Distribution, Inc., has established by a preponderance of the evidence that respondent Service by Air, Inc. violated the Shipping Act of 1984 (Shipping Act or Act), 46 U.S.C. §§ 40501(a)(1), 40901(a), 41102(c), and 41104(2)(A), and Commission regulations promulgated pursuant to the Act. 46 C.F.R. §§ 515.3 and 520.3. Therefore, it is hereby

ORDERED that claims regarding the shipment of maritime container number PCIU8352944 (FLDR 2) be DISMISSED WITHOUT PREJUDICE. It is
FURTHER ORDERED that respondent Service by Air, Inc., CEASE AND DESIST from operating as a non-vessel-operating common carrier without a license in violation of 46 U.S.C. § 40901(a) and operating without a published tariff in violation of 46 U.S.C. § 40501(a)(1). It is

FURTHER ORDERED that respondent Service by Air, Inc., pay reparations to complainant CMI Distribution, Inc. in the amount of $126,185.00 for actual injury caused by violations of 46 U.S.C. § 41104(2)(A). It is

FURTHER ORDERED that claims against respondents Radiant Customs Services Inc. (formerly known as SBA Consolidators, Inc.), and LAS Freight Systems Ltd. be DISMISSED WITH PREJUDICE.

Clay G. Guthridge
Administrative Law Judge