

**FEDERAL MARITIME COMMISSION**  
**Office of Administrative Law Judges**

COLOR BRANDS, LLC, *Complainant*

v.

AAF LOGISTICS, INC., *Respondent*.

**DOCKET NO. 22-18**

Served: August 27, 2024

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**ORDER OF:** Erin M. WIRTH, *Chief Administrative Law Judge*.

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**INITIAL DECISION ON REMAND<sup>1</sup>**

**I. INTRODUCTION**

On August 11, 2022, Color Brands, LLC (“Color Brands”) filed a complaint alleging that AAF Logistics, LLC (“AAF”) violated the Shipping Act of 1984 (“Shipping Act”) by charging for insurance that it did not obtain for maritime shipments and engaging in improper practices concerning damaged cargo claims. On August 30, 2022, the Federal Maritime Commission (“Commission”) issued a Notice of Filing of Complaint and Assignment.

AAF did not respond to the complaint as required by Commission Rule 62(b)(1). 46 C.F.R. § 502.62(b)(1). In addition, AAF did not respond to the initial order, order to show cause, motion for default, or order to respond to the motion for default and AAF terminated the attorney it originally hired to represent it. On January 27, 2023, an Initial Decision on Default (“I.D.”) was issued, which granted Color Brands’ motion for default against AAF and awarded \$322,624.17, plus interest from December 17, 2021, as reparations. I.D. at 4-5.

On January 18, 2024, the Commission issued an Order Affirming Initial Decision in Part and Remanding in Part (“Remand Order”), affirming the default against AAF, vacating the reparations amount and date of injury, and remanding for further proceedings. Remand Order at 5-6. The Commission remanded only two narrow issues: the amount of reparations and the date of injury. Remand Order at 3-5.

On January 22, 2024, the parties were ordered to file briefs with supporting evidence addressing the two issues remanded. On March 15, 2024, Complainant Color Brands filed its

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<sup>1</sup> This 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. 46 C.F.R. § 502.227.

remand brief (“Brief”) and a declaration under oath (“Decl.”) with nine exhibits, including a chart listing details of all shipments for which Color Brands seeks reparations in exhibit 1.

On March 22, 2024, an order requesting clarification and extending deadlines was issued, requiring Color Brands to submit a supplemental declaration with additional exhibits, including a revised chart adding a column listing the port of departure for all shipments, to determine which shipments utilized a United States port. The clarification order also extended the date for AAF to respond to Color Brand’s remand filings to May 13, 2024.

On April 10, 2024, Color Brands submitted a supplemental declaration under oath (Supp. Decl.”) with two additional exhibits, including a supplemental chart in exhibit 10. AAF has not made any filings since the Commission’s remand order.

For the reasons below, the evidence submitted is sufficient to award reparations of \$291,564.58, plus interest, to Color Brands for three dates of injury. Reparations are awarded for both insurance premiums and cargo damage.

## **II. ANALYSIS AND CONCLUSIONS OF LAW**

The Commission remanded for a determination of the amount of reparations and for a determination of the date of injury. Remand Order 3-5. The reparations amount will be discussed prior to addressing the date of injury.

### **A. Reparations**

#### **1. Relevant Law**

The Shipping Act requires that the “Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation” of the Act. 46 U.S.C. § 41305(b). Pursuant to Commission Rule 65(b), “[w]hen a party is found to be in default, the Commission or the presiding officer may issue a decision on default upon consideration of the record, including the complaint or Order of Investigation and Hearing.” 46 C.F.R. § 502.65(b). Pursuant to Commission Rule 65(c), the “presiding officer may require additional information or clarification when needed to issue a decision on default, including a determination of the amount of reparations or civil penalties where applicable.” 46 C.F.R. § 502.65(c).

Commission Rules provide additional guidance regarding proof for an award of reparations.

If many shipments or points of origin or destination are involved in a proceeding in which reparation is sought (See § 502.63), the Commission will determine in its decision the issues as to violations, injury to complainant, and right to reparation. If complainant is found entitled to reparation, the parties thereafter will be given an opportunity to agree or make proof respecting the shipments and pecuniary amount of reparation due before the order of the Commission awarding reparation is entered. In such cases, freight bills and other exhibits bearing on the details of all shipments, and the amount of reparation on each, need not be

produced at the original hearing unless called for or needed to develop other pertinent facts.

46 C.F.R. § 502.251 (Proof on award of reparation).

Complainants have the burden of proving entitlement to reparations.

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.”

*James J. Flanagan Shipping Corp. v. Lake Charles Harbor & Terminal Dist.*, 30 S.R.R. 8, 13, 2003 WL 22067203, \*8 (FMC Aug. 26, 2003) (quoting *Waterman v. Stockholms Rederiaktiebolag Svea*, 3 F.M.B. 248, 249 (1950)).

Reparations will only be awarded based on actual damages. *Tractors & Farm Equipment Ltd. v. Cosmos Shipping Co.*, Docket No. 81-57, 26 S.R.R. 788, 798 (ALJ Nov. 23, 1992), admin. final, Dec. 31, 1992. Actual damages means “compensation for the actual loss or injuries sustained by reason of the wrongdoing.” *Cal. Shipping Line, Inc. v. Yangming Marine Transport Corp.*, Docket No. 88-15, 25 S.R.R. 1213, 1230, 1990 WL 427466, at \*23 (FMC Oct. 19, 1990). “That does not require absolute precision but does require evidence sufficient to reasonably infer the actual loss sustained.” *MAVL Capital Inc. v. Marine Transport Logistics, Inc.*, Docket No. 16-16, 2022 WL 2209421, at \*3 (FMC June 10, 2022).

Federal courts may rely on detailed affidavits or documentary evidence to determine damages in the case of default.

A defaulting defendant is deemed to admit every well-pleaded allegation in the complaint. *Trans World Airlines, Inc. v. Hughes*, 449 F.2d 51, 63 (2d Cir.1971), *rev'd on other grounds*, 409 U.S. 363, 93 S.Ct. 647, 34 L.Ed.2d 577 (1973). Although the default establishes a defendant’s liability, the court is required to make an independent determination of the sum to be awarded unless the amount of damages is certain. *Adkins v. Teseo*, 180 F.Supp.2d 15, 17 (D.D.C.2001); *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1364 n. 27 (11th Cir.1997); *SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 814 (2d Cir.1975). Moving for a default judgment, the plaintiff must prove its entitlement to the requested damages. *Oberstar v. FDIC*, 987 F.2d 494, 505 n. 9 (8th Cir.1993). In ruling on such a motion, the court may rely on detailed affidavits or documentary evidence to determine the appropriate sum for the default judgment. *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir.1979). When the damages cannot be calculated with relative simplicity, however, the court may order an evidentiary hearing. *Cablevision Sys. New York City Corp. v. Lokshin*, 980 F.Supp. 107, 111-12 (E.D.N.Y.1997). Finally, the movant is entitled to all reasonable inferences from the evidence offered. *Au Bon Pain Corp. v. Artect, Inc.*, 653 F.2d 61, 65 (2d Cir. 1981).

*Flynn v. Mastro Masonry Contractors*, 237 F. Supp. 2d 66, 69 (D.D.C. 2002); *see also GAG Enterprises, Inc. v. Rayford*, 312 F.R.D. 230, 234 (D.D.C. 2015) (citations omitted).

Commission Rules provide guidance regarding how the Commission calculates interest in complaint proceedings.

Except as to applications for refund or waiver of freight charges under § 502.251 and claims which are settled by agreement of the parties, and absent fraud or misconduct of a party, interest granted on awards of reparation in complaint proceedings instituted under the Shipping Act of 1984 will accrue from the date of injury to the date specified in the Commission order awarding reparation. Compounding will be daily from the date of injury to the date specified in the Commission order awarding reparation. Normally, the date specified within which payment must be made will be fifteen (15) days subsequent to the date of service of the Commission order. Interest shall be computed on the basis of the average monthly secondary market rate on six-month U.S. Treasury bills commencing with the rate for the month that the injury occurred and concluding with the latest available monthly U.S. Treasury bill rate at the date of the Commission order awarding reparation. The monthly secondary market rates on six-month U.S. Treasury bills for the reparation period will be summed up and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period.

46 C.F.R. § 502.253 (Interest in reparations proceeding).

## **2. Analysis**

Color Brands seeks reparations for cargo insurance premiums and cargo damage or loss, relying on the declaration and supplemental declaration of its CEO Daniel Lutz, as well as eleven exhibits. Brief at 1-2. Color Brands also requests and calculates prejudgment interest. Decl. ¶¶ 20, 28. AAF has continued to not respond to this proceeding.

Because the end date for the interest determination is the date of the Commission's order awarding reparations, the determination of the amount of interest is premature at this point. That amount will be calculated by the Commission in its final order. *See, e.g. Muhammad Rana v. Michelle Franklin*, 2 F.M.C.2d 70, 101, 2020 WL 13512909, at \*29 (ALJ May 12, 2020) (*aff'd* 2022 WL 1744905 (FMC May 25, 2022) (with interest calculated)); *Shipco Transport Inc. v. Saturn Air Sea Cargo*, Docket No. 95-07, 1995 WL 348131 at \*1, 4 (ALJ June 2, 1995).

The amount of reparations for the insurance premiums will be addressed prior to determining the amount for cargo damage and loss. Then, the date of injury will be determined.

### **a. Insurance Premiums**

Color Brands asserts that it paid insurance premiums on 1,221 shipments with values totaling \$36,104,153.77 and the insurance payment reimbursement claim totals \$115,533.29. Brief 2-3; Supp. Decl. ¶ 4; Exhibit 10. Color Brands acknowledges that of the 1,221 shipments,

AAF provided proof of insurance for three, reducing Color Brands' insurance premium damages by \$649, to \$114,884.29, covering 1,218 shipments. Brief at 3; Decl. ¶¶ 13-14; Supp. Decl. ¶ 6.

In Color Brands' supplemental declaration, they argue that "the FMC has jurisdiction over all the insurance premium claim shipments against AAF, a U.S. licensed NVOCC who collected the premiums in the U.S., charged a U.S. shipper." Supp. Decl. ¶ 12. However, the Shipping Act defines a common carrier as a person that "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(7). An NVOCC is defined as 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(17); *see also* 46 C.F.R. § 515.2(k). Thus, only the shipments that arrive or depart from a United States port are regulated. *CMI Distribution, Inc. v. Service By Air, Inc.*, Docket No. 17-05, 2019 WL 4734318 at \*11 (ALJ May 24, 2019) *aff'd in part, rev'd in part*, 2021 WL 3367603 (FMC July 26, 2021). Therefore, the claims based on shipments that did not utilize United States ports are excluded from the reparations calculation.

After being ordered to supplement the information in exhibit 1, Color Brands submitted exhibit 10, which includes the information in exhibit 1 and adds the port of loading for each shipment, AAF's place of receipt, and identifies fourteen shipments that did not use a United States port. Exhibit 10; Supp. Decl. ¶¶ 7-9. Color Brands also provides bills of lading for four of the fourteen shipments that did not use a United States port. Exhibit 11; Supp. Decl. ¶ 11.

The evidence shows that Color Brands paid AAF \$115,533.29 in cargo insurance premiums from August 30, 2019, to August 30, 2022, on 1,221 shipments. Decl. ¶ 3. These shipments are all within the three-year limitations period for reparations claims. Of this amount, AAF obtained insurance for three shipments, reducing the damages by \$649. Decl. ¶ 13; Supp. Decl. ¶ 6. In addition, fourteen shipments did not utilize a port in the United States, which equates to insurance premiums of \$1,754.57. Supp. Decl. ¶¶ 9, 13. If these amounts are subtracted, Color Brands calculates the reparations due as \$113,129.72. Supp. Decl. ¶ 13. The detailed evidence is credible and supports the amount claimed.

Therefore, the evidence shows that Color Brands paid \$115,533.29 in cargo insurance. Subtracting the three containers for which AAF obtained insurance (\$649) and the fourteen containers that were shipped from Canada (\$1,754.57), the amount of reparations due to Color Brands from AAF for cargo insurance that was paid for but not purchased is \$113,129.72.

#### **b. Cargo Damage and Loss**

Regarding reparations for cargo damage and loss, Color Brands asserts that there were fifteen shipments with cargo damage and seeks \$189,929.10 for the damage to those containers. Brief at 5; Decl. ¶¶ 21-23.

Color Brands submits a detailed chart showing for each shipment: the order number, bill of lading number, vessel name, booking number, container number, origin, destination, submission date, claim number, claim amount, shipping date, and delivery date. Decl. ¶ 22; Exhibit 6. Color Brands also provides detailed support for three of these damage claims,

including bills of lading, photographs of the damage, loss and damage claim forms, and memos regarding the losses. Exhibits 7-9; Decl. ¶¶ 24-26. One of the damaged shipments did not utilize a United States port and the claim for that shipment is \$11,494.24. Exhibit 6.

The evidence submitted is credible and supports Color Brand's cargo damage and loss claim of \$189,929.10. However, reparations cannot be awarded for the one shipment originating in Canada, so \$11,494.24 is subtracted from the claim. Therefore, the evidence supports reparations of \$178,434.86 for fourteen cargo damage and loss claims.

## **B. Date of Injury**

A complaint seeking reparations must be filed within three years after the claim accrues. 46 C.F.R. § 502.62(a)(4)(iii); *see also* 46 U.S.C. §§ 41301(a), 41305(b). The initial complaint in this proceeding was filed on August 11, 2022, and the Notice of Filing was served on August 30, 2022. Color Brands alleges violations spanning from August 30, 2019, to August 30, 2022. Decl. ¶ 3; Exhibit 1.

The Shipping Act permits reparations for actual injury and defines "actual injury" to include "the loss of interest at commercial rates compounded from the date of injury." 46 U.S.C. § 41305(a). The Commission stated that "with respect to multiple shipments, the ALJ should be able to determine the reasonable date or dates of injury," concluding that:

[I]t would not appear to be unreasonable to determine that the mid-point date of the period of all eligible shipments was the date of injury for the claim, because such a date may award Color Brands approximately the same amount of interest as being calculated using each shipment date, by evening out the earlier and later dates of injury.

Remand Order at 5. The reparations amount "can be based on something less than precision but something based on a reasonable approximation supported by evidence and by reasonable inferences." *Tractors & Farm*, 26 S.R.R. at 798-99.

The Commission remanded, finding the ALJ should be able to determine a reasonable date of injury and that Color Brands should be able to provide the relevant information to do so. Remand Order at 5 (citing 46 C.F.R. § 502.251). The Commission indicates that a mid-point calculation of all shipment dates would be reasonable for the date of injury concerning Color Brands' insurance premiums and that the dates of injury concerning cargo damages should be the date on which the cargo was damaged. *Id.*

For the insurance premium claim of \$113,129.72, Color Brands requests interest accruing from the midway point of the three-year period from August 30, 2019, to August 30, 2022, which it identifies as March 2, 2021. Brief at 4. However, the chart in exhibit 10 shows that insurance premiums were paid from August 30, 2019, to February 18, 2022, a period of 903 days. The mid-point of that timeframe is November 23, 2020, a date which better matches the facts presented. Therefore, Color Brands' declarations and exhibits, which are appropriately considered in calculating reparations in a case in which default judgment is entered, establish actual injury of \$113,129.72 with a date of injury, and interest running from, November 23, 2020.

For the cargo loss and damage claim of \$178,434.86, Color Brands requests interest accruing from the midway point of the delivery dates from September 1, 2021, to March 12, 2022, which it identifies as November 20, 2021. Brief at 5. Color Brands' chart of damage and loss claims includes detailed information, including three dates: a submission date, departure date, and arrival date. Exhibit 6. It is not entirely clear what the submission date is and it is noted that one submission date is before the delivery date, for bill of lading NEWMEL108028. Exhibit 6. Therefore, the delivery date is found to be the most reliable date for determining the date of the damage or loss. Reviewing the dates and amounts of the claims, it is possible to group these claims into two time periods.

There were nine damage and loss claims totaling \$86,690.24 from September 1, 2021, to October 16, 2021. These claims are close in time and will be grouped together, with a mid-point of September 23, 2021. Similarly, the five claims totaling \$91,744.62, from December 4, 2021, to March 12, 2022, will be grouped together, with a mid-point of January 22, 2022. Color Brands' declarations and exhibits establish actual injury of \$86,690.24 with a date of injury, and interest running from, September 23, 2021, plus actual injury of \$91,744.62 with a date of injury, and interest running from, January 22, 2022.

### III. ORDER

Upon consideration of the record, the arguments of the parties, the findings and conclusions set forth above, in the Initial Decision, and in the Commission Order, and the default determination, it is hereby

**ORDERED** that AAF Logistics pay Color Brands reparations in the amount of:

- \$113,129.72 for insurance claims with interest running from November 23, 2020, plus
  - \$86,690.24 for cargo loss and damage with interest running from September 23, 2021, plus
  - \$91,744.62 for cargo loss and damage with interest running from January 22, 2022,
- for a total reparations amount of \$291,564.58.

  
Erin M. Wirth  
Chief Administrative Law Judge