

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

SAMSUNG ELECTRONICS AMERICA, INC., *Complainant*

v.

ZIM INTEGRATED SHIPPING SERVICES LTD., *Respondent*.

DOCKET NO. 22-30

Served: April 22, 2025

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

INITIAL DECISION¹

I. INTRODUCTION

A. Overview and Summary

Complainant Samsung Electronics America, Inc. (“SEA”) alleges Shipping Act violations by Respondent ZIM Integrated Shipping Services Ltd. (“ZIM”) related to unreasonable practices, retaliation, refusal to deal, and improper invoices for home appliance products shipped to the United States. Specifically, SEA alleges violations of 46 U.S.C. sections 41102(c), 41104(a)(3), 41102(d), 41104(a)(10), 41104(a)(14), and 41104(a)(15). Complaint ¶¶ 47-75. SEA alleges that ZIM shifted responsibility for demurrage and detention (“D&D”) charges in store-door moves to SEA, identifying numerous unreasonable practices for nearly 10,000 separate charges on almost 3,000 containers. SEA seeks damages of over twelve million dollars. Brief² at 23-54.

Respondent ZIM, an ocean common carrier, denies the allegations. ZIM asserts that SEA “seeks to recover the entirety of certain categories of charges it paid to ZIM and third parties, even though the evidence demonstrates that SEA’s acts and omissions and those of its agents contributed to these charges being incurred.” Opposition at 1. ZIM contends that SEA fails to meet its burden of proof; SEA fails to take responsibility for its actions; SEA’s chronic failure to pay invoices on time and its own approval process delayed payments; and SEA failed to establish proximate cause or prove the alleged damages with reasonable certainty. Opposition at 3-4.

¹ This 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. 46 C.F.R. § 502.227.

² On September 24, 2023, SEA filed an Errata to its initial brief, with a Corrected Brief at the end of the Errata. The cover page does not identify the Corrected Brief as different from the initial brief, although the Corrected Brief has different pagination. Citations are to the Corrected Brief.

The evidence shows that the non-party shipper, which is the entity or affiliate that entered into a service contract with ocean common carrier ZIM, was responsible for freight charges. Most shipments required delivery to the door (or warehouse), with carrier ZIM responsible for both ocean and inland transportation, known as carrier haulage, so that ZIM paid the truck driver to deliver the containers. Many of the truck drivers were recommended by SEA as preferred or customer nominated truckers (“CNTs”).

Demurrage accrues when cargo arrives at a port or terminal facility and remains beyond its allotted free time. Detention accrues when equipment is not returned within a specific period of free days following delivery. Per Diem refers to charges for detaining equipment beyond the free time allowed. This case is primarily about demurrage, detention, and per diem charges which were imposed due to delays in removing containers from the port, delays at rail yards, or delays returning empty containers.

ZIM frequently refers to SEA as Samsung, although there are over a dozen different Samsung entities identified in the record. SEA, which was the consignee for the shipments, asserts that it should not be responsible for any of the demurrage, detention, and other charges. ZIM asserts that SEA is responsible for some of the charges. But avoiding these charges for delay is like the dreaded group project. It requires that the carrier has made the container available for pickup, the trucker has availability, chassis are available, the port is open, SEA’s customer has appointments and staff to unload the container timely, and the trucker is available and can find an appointment to return the empty container. Sorting out responsibility is a complex undertaking, requiring reviewing emails and evidence regarding the cause of delay for each container. And, some delays are not the fault of either party.

The majority of these shipments occurred prior to the Ocean Shipping Reform Act (“OSRA”), passed in 2022, which created the Commission’s charge complaint process. The charge complaint process is designed to resolve disputes quickly and is a resource for any entities engaged in similar disputes. The accumulation of disputed charges was one of the reasons that ZIM imposed multiple cargo holds on SEA’s shipments. These cargo holds prevented SEA’s cargo from being delivered and led to additional demurrage charges. The disputes continued to grow until they encompassed 9,984 separate demurrage and detention charges on 2,980 containers over an extended period of time from July 2019 to December 2022, making this a complex proceeding to resolve.

The parties thoroughly litigated the case, exchanging more than two hundred thousand pages of documents, conducting depositions of thirteen fact witnesses, and utilizing multiple expert witnesses. The parties filed their briefs with over 11,000 pages of exhibits. The proceeding was stayed after briefing, at the parties’ request, from April 18, 2024, to August 2, 2024, while the parties pursued a settlement. The case is decided based on the record provided by the parties after extensive discovery was conducted.

As discussed below, SEA has established that multiple cargo holds were unreasonable practices which violated section 41102(c) and that it is entitled to reparations. ZIM’s arguments that the cargo holds were justified as a valid expanded maritime lien are not sufficient to overcome established Shipping Act precedent, including a prior case against ZIM. Moreover,

given the numerous ZIM billing errors, SEA has established that the cargo holds were also not reasonable or justified by the facts.

SEA also establishes that it was an unreasonable practice for ZIM to shift liability for demurrage and detention charges to SEA solely on the basis that a preferred or customer nominated trucker was utilized, although reparations are not awarded for this section 41102(c) violation due to the challenges in determining who was responsible for each demurrage charge.

SEA, however, has not established that ZIM was responsible for all detention and demurrage charges on door delivery/carrier haulage shipments. SEA does not present evidence necessary to determine which specific detention and demurrage charges were the fault of ZIM, particularly given that some charges were due to SEA's customers' inability to accept deliveries, the parties contemporaneously negotiated disputed charges, and it is not clear from the record which charges ZIM waived. Therefore, charging demurrage for store-door/carrier haulage is not found to be an unreasonable practice. Moreover, SEA has not established that ZIM retaliated, refused to deal, or that ZIM's post-OSRA invoicing violated the OSRA invoicing requirements.

SEA seeks an award of \$10.8 million for demurrage and detention charges plus \$1.4 million in additional costs incurred, and award of attorneys' fees and costs in due course. Both parties rely on expert witness testimony regarding reparations. SEA's expert identifies demurrage charges related to cargo holds found to violate the Shipping Act totaling \$3,680,339, and provides data regarding the shipments used to calculate that amount. Therefore, the amount of reparations awarded is the \$3,680,339 identified by SEA's expert and substantiated by the record.

This part discusses the procedural history, parties' arguments, motions for confidential treatment, and evidence. Specific findings of fact are in part two, prior to the analysis and conclusions of law in part three, and the order in part four.

B. Procedural History

On October 13, 2022, SEA's complaint was received by the Commission. On October 25, 2022, the Commission issued a notice of complaint and assignment. On November 18, 2022, an order granting Respondent's motion of extension of time to file an answer was issued. On December 19, 2022, Respondent filed a verified answer. On January 12, 2023, a scheduling order was issued, and the parties began discovery.

On March 23, 2023, Complainant filed an expedited motion to compel and for sanctions. On March 30, 2023, Respondent filed its opposition with a cross-motion for extension of scheduling order. Complainant filed an opposition to Respondent's cross-motion for extension of scheduling order on April 3, 2023. Also on April 3, 2023, an order dismissed the motion to compel as moot and granted the cross-motion seeking an extension of time.

On June 1, 2023, Complainant filed a motion to compel deposition. On June 8, 2023, Respondent filed an opposition. Both parties filed requests for confidential treatment. On June 9, 2023, an order was issued denying the motion to compel deposition and granting the motions for confidential treatment. On June 30, 2023, an order was issued on Respondent's motion for extension of the scheduling order, permitting a shorter than requested revised schedule. On July 27, 2023, an order granting a joint motion to reschedule expert deposition was issued. On

August 21, 2023, an order was issued granting an emergency unopposed motion to extend the time to file briefs.

On August 23, 2023, Complainant filed its brief, proposed findings of fact (“SEA PFF”), appendix, and motion for confidential treatment. On September 26, 2023, Respondent filed its opposition brief, labeled as a reply (“Opposition”), proposed findings of fact (“ZIM PFF”), reply to Complainant’s proposed findings of fact (“ZIM RPF”), and appendix with exhibits labeled RX. On August 24, 2023, SEA filed an errata to its brief with a corrected brief (“Brief”). On August 29, 2023, SEA filed an updated confidential appendix with exhibits labeled CX.

On September 26, 2023, Respondent filed a motion to strike the expert report of John McCown (“Motion to Strike”). On September 29, 2023, Complainant filed a letter motion requesting an extension of time to file its opposition. On October 5, 2023, Respondent filed a response to Complainant’s motion to extend time. On October 6, 2023, an order was issued on the motion to extend time to respond to the motion to strike, finding that the request to strike was not untimely or improper, and giving two additional days to Complainant to file its response to the motion to strike.

On October 10, 2023, Complainant filed its reply brief (“Reply”), response to Respondent’s proposed findings of fact (“SEA RPF”), and supplemental appendix. On October 12, 2023, Complainant filed its opposition to Respondent’s motion to strike the expert report of John McCown (“Opposition Motion to Strike”).

On April 18, 2024, a joint motion to stay proceedings in furtherance of renewed settlement discussions was filed. On April 23, 2024, an order granting the motion to stay and requiring a joint status report was issued. On June 24, 2024, the parties filed a joint status report. On July 3, 2024, an order was issued denying Complainant’s request for a mediator and ending the stay as of August 2, 2024.

C. Arguments of the Parties

SEA contends that ZIM’s breaches of the Shipping Act and OSRA, as alleged in SEA’s complaint, support reparations against ZIM, arguing that ZIM is subject to the FMC’s jurisdiction; ZIM has failed to establish, observe, and enforce just and reasonable regulations and practices in connection with receiving, handling, storing, or delivering property in violation of section 41102(c) of the Shipping Act; ZIM’s actions constitute retaliation under 46 U.S.C. § 41102(d); ZIM’s actions constitute a refusal to deal under 46 U.S.C. § 41104(a)(10); and certain ZIM invoices also violated OSRA’s new guard posts as to invoicing unreasonable charges under 46 U.S.C. §§ 41104(a)(14) and (15). Brief at 13-59.

ZIM asserts that its exercise of its lien rights was reasonable under § 41102(c); SEA is liable for acts and omissions of its CNTs; ZIM’s policies and procedures were reasonable; SEA has failed to demonstrate that ZIM’s alleged conduct was the proximate cause of harm; SEA has failed to prove damages with reasonable certainty; and SEA’s other legal arguments are without merit. Opposition at 4-41.

In reply, SEA argues that ZIM’s exercise of its lien rights was unreasonable under § 41102(c); ZIM was responsible for acts and omissions of all truckers, CNTs or not, used with

SEA containers shipped under store-door terms; ZIM's policies and procedures were unreasonable; SEA has established its losses with reasonable certainty and demonstrated that ZIM's conduct was the proximate cause of its losses; and the evidence supports SEA's remaining causes of action. Reply at 10-66.

D. Motions for Confidential Treatment

The parties both filed motions for confidential treatment with their briefing. No objections to the motions for confidential treatment were received.

On August 23, 2023, SEA filed a motion for confidential treatment of its appendix, filed with its opening brief. SEA states that "SEA is seeking confidential treatment of testimony and exhibits contained in SEA's Appendix, designated as Confidential Material by ZIM." SEA Motion for Confidential Treatment at 3. Complainant did not seek confidential treatment of its supplemental appendix filed with its reply brief.

On August 24, 2023, counsel for Complainant sent an email filing an errata to its brief and stating: "In accordance with the motion for confidentiality, once ZIM has confirmed confidentiality designations, we will provide the Secretary's Office with an updated link and password for the Appendix." Holland & Knight August 24, 2023, email. On August 29, 2023, counsel for Complainant sent an email filing an Updated Confidential Appendix and stating: "Below is a link to the updated confidential version of SEA's Appendix with ZIM's confidentiality designations highlighted. The Public Version has been filed with the Secretary's Office." Holland & Knight August 29, 2023, email.

Therefore, although no revised motion for confidential treatment was filed by Complainant, effectively Complainant revised its initial overbroad request for confidentiality for the entire appendix, to limit the request to pages highlighted in the confidential version and redacted in the public version.

Unfortunately, the redactions to Complainant's appendix do not appear to be reflected in the Table of Contents or other filings. The modified request appears to be limited to include: CX 2791-92; portions of CX 3047; portions of CX 3051-52; portions of CX 3217-19; portions of CX 3998-99; portions of CX 4554-62; portions of CX 4568-69; portions of CX 4621-24; portions of CX 4632-35; portions of CX 4639-47; portions of CX 4652-60; portions of CX 4664-77; portions of CX 4681-83; portions of CX 4687-88; portions of CX 4698-99; portions of CX 4704-07; portions of CX 4984; portions of CX 4988-90; portions of CX 4996; portions of CX 5036; portions of CX 5419-23; CX 5455-56; portions of CX 5476; portions of CX 5481-82; portions of CX 5511-20; portions of CX 5632-43; portions of CX 5647-53; portions of CX 5656-60; CX 5663-70; portions of CX 5672-79; portions of CX 5687-90; CX 5693; CX 5699-700; and portions of CX 5716-17. The request for confidential treatment is treated as limited to the material redacted in the public version and that is the material addressed in this section.

On September 29, 2023, ZIM filed a motion for confidential treatment of portions of the appendix filed with its opposition brief. ZIM seeks confidential treatment for the following documents: (1) RX 5-14, (2) RX 152-153, (3) portions of RX 740-742, and (4) three Excel spreadsheets, and states that:

All of the foregoing material consists of information about ZIM's financial relationship with customers other than Samsung Electronics America, Inc. and thus constitutes commercial information that is normally maintained as confidential by ZIM and which, if disclosed to the public, could cause commercial harm and/or embarrassment to the customers in question.

ZIM Motion for Confidential Treatment at 2.

These requests are limited to only specific pages, portions of pages, or spreadsheets in the appendices that contain confidential information, primarily of commercially sensitive information about non-parties. Therefore, good cause has been shown and both motions seeking confidential treatment are granted. The material redacted by Complainant in the public version of its appendix is granted confidential treatment as well as the list of documents provided by Respondent. It is noted that highlighting confidential material in yellow, as done by Complainant, is confusing when non-confidential information is also highlighted in yellow. *See, e.g.*, CX 1942; CX 7466; CX 7468.

For clarity of the record, it does not appear that the grayed-out information in CX 2472, CX 7325, and CX 7373 are entitled to confidential treatment. Both the public and confidential versions look the same. The information is difficult to read; however, it is not critical to the analysis.

E. Motion to Strike

On September 26, 2023, Respondent filed a motion to strike the expert report of John McCown. On October 6, 2023, an order was issued on Complainant's motion to extend time to respond to the motion to strike, finding that the request was not untimely or improper, although it should have been filed as part of Respondent's opposition brief, and giving two additional days to Complainant to file its response. On October 12, 2023, Complainant filed its opposition to the motion to strike.

In a lengthy motion, Respondent moves to strike Mr. McCown's entire report, arguing that Mr. McCown is not qualified to offer the opinions proffered in sections IV, V, VI, and VIII of his report; Mr. McCown's opinions are not based upon reliable evidence; and opinions set forth in section VII of Mr. McCown's report are not relevant. Motion to Strike at 2-21.

Complainant contends that Mr. McCown is qualified to offer opinions on global container shipping, including a carrier's policies, practices, and procedures in handling cargo; Mr. McCown's opinions are firmly based on his extensive knowledge of the industry and the evidence established in the record and, therefore, reliable; financial analysis revealing ZIM's D&D practices being grossly out of line with the industry average is relevant; and there is no danger that the court, as the sole trier of fact, will be misled or unduly influenced by McCown's opinions in his report. Opposition to Motion to Strike at 5-18.

Commission Rule 502.141(d) addresses expert testimony, stating:

(2) *Witnesses who are required to provide a written report.* Unless otherwise stipulated or ordered by the presiding officer, if the witness is one retained or

specially employed to provide expert testimony in the proceeding or one whose duties as the party's employee regularly involve giving expert testimony, the disclosure must be accompanied by a written report, prepared and signed by the witness. The report must contain:

- (i) A complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) The facts or data considered by the witness in forming them;
- (iii) Any exhibits that will be used to summarize or support them;
- (iv) The witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) A list of all other proceedings or cases in which, during the previous 4 years, the witness testified as an expert in a trial, an administrative proceeding, or by deposition; and
- (vi) A statement of the compensation to be paid for the study and testimony in the proceeding.

46 C.F.R. § 502.141(d)(2).

The Federal Rules of Evidence also address expert testimony, with Rule 702 stating:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702; *see also Marine Repair Serv. v. Ports America Chesapeake*, Docket No. 11-11, 32 S.R.R. 1133, 2013 WL 9808672, at *23-24 (ALJ Jan. 20, 2013), admin. final March 20, 2013.

When ruling on the admissibility of expert opinions, courts consider whether the expert is qualified in the relevant field and examine the methodology the expert used in reaching the conclusions at issue. *See, e.g., Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The court's role as a "gatekeeper," pursuant to *Daubert*, to prevent expert testimony from unduly confusing or misleading a jury, is less applicable in a bench trial. *Magistrini v. One Hour Martinizing Dry Cleaning*, 180 F. Supp.2d 584, 596 n.10 (D.N.J. 2002) (citing *Gibbs v. Gibbs*,

210 F.3d 491, 500 (5th Cir. 2000) (“Most of the safeguards provided for in *Daubert* are not as essential in a case such as this where a district judge sits as the trier of fact in place of a jury.”). Rather than excluding expert testimony, “[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” *Daubert*, 509 U.S. at 596; *Marine Repair Services* 32 S.R.R. at 1154, 2013 WL 9808672, at *24.

Mr. McCown is a Non-Resident Senior Fellow at the Center for Maritime Strategy with over four decades of operating and investment experience in the container shipping industry and an MBA from Harvard Business School who publishes a monthly report analyzing U.S. container volume and a quarterly report analyzing the actual results of the container shipping industry. CX 8534; CX 3836. Mr. McCown’s education and work experience qualify him to provide expert testimony.

ZIM’s arguments regarding Mr. McCown’s qualifications, methodology, and opinions, including the underlying data on which he relied, are relevant to the weight to be given to his opinions, but not to their admissibility. ZIM’s argument regarding state of mind opinions and statements not supported by evidence are well taken and those opinions are given little weight. However, these opinions do not impact the admissibility of the report. Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this, where the presiding officer is capable of assigning appropriate weight to evidence. Accordingly, the motion to strike Mr. McCown’s expert report is **DENIED**.

F. Evidence

Under the Administrative Procedure Act, 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, 98-102 (1981). This initial decision is based on the pleadings, exhibits, briefs, proposed findings of fact and conclusions of law, and replies thereto filed by the parties.

This initial decision addresses only material issues of fact and law. Proposed findings of fact not included in this decision were rejected, either because they were not supported by the evidence or because they were not dispositive or material to the determination of the allegations in the complaint or the defenses thereto. 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.’” *Minneapolis & St. Louis R.R. Co. v. United States*, 361 U.S. 173, 193-94 (1959). To the extent individual findings of fact may be deemed conclusions of law, they shall also be considered conclusions of law. Similarly, to the extent individual conclusions of law may be deemed findings of fact, they shall also be considered findings of fact.

No consideration is given to evidence that is not in English and not accompanied by an English translation, as required by Commission Rule 7. 46 C.F.R. § 502.7; *see, e.g.*, CX 7328-29.

II. FINDINGS OF FACT³

A. Relevant Entities

1. Complainant SEA is a corporation organized and existing under the laws of New York State, with its principal place of business in New Jersey. Complaint at ¶ 1; Answer at ¶ 1.
2. SEA is a consumer electronics products company offering home appliance products, refrigerators, laundry, oven, and televisions, to the American public. CX 2205; Complaint at ¶ 7; SEA PFF ¶ 11.
3. SEA provides its consumer goods to the American public online through Samsung.com; retailers like Best Buy, The Home Depot, and Lowes; and through distributors. Complaint at ¶ 9; Answer at ¶ 9.
4. In order to meet its distribution needs in the United States, SEA has relied on transportation companies like ZIM to carry its goods to inland destinations throughout the United States. Complaint at ¶ 10; Answer at ¶ 10.
5. Respondent ZIM is an ocean common carrier with its corporate office in Haifa, Israel. Complaint at ¶ 2; Answer at ¶ 2.
6. ZIM conducts business in the United States through ZIM American Integrated Shipping Services Company Co. LLC, whose principal corporate office is located in Norfolk, VA. Complaint at ¶ 2; Answer at ¶ 2.
7. SEA was designated as the consignee for the SEA containers at issue. Complaint at ¶ 27; Answer at ¶ 27; *see, e.g.*, CX 8868-926 (ZIM bills of lading). In 2021 and 2022, ZIM handled about 2.6% of the containers shipped to SEA. CX 6076.
8. The shipments at issue comprised of home appliances shipped to the United States in ocean shipping containers. Complaint at ¶ 27; Answer at ¶ 27; CX 8868-926.

B. Relevant Contracts

1. Service Contracts

9. During the relevant time period, ZIM transported shipments for other Samsung entities that were not SEA shipments. Brief at 52. RX 1789; RX 1807-08; RX 1852; RX 1871-72; RX 1900-01; RX 1940-41; CX 7468-69.
10. ZIM entered into service contracts with certain Samsung entities, for example, Samsung SDS Global SCL America, Inc. (“Samsung SGSA”) - Service Contract Nos. 7100204807, Z18436KR, and Samsung Electronics Logitech Co., Ltd. (“Logitech”) - Service Contract

³ Quotations maintain the spelling, language, emphasis, spacing, and punctuation as the original.

Nos. 7100171730, Z19179KR, 7100102863. ZIM Response to SEA PPF at ¶ 20; RX 1789; RX 1817; RX 1836; RX 1852; RX 1880; RX 1918.

11. With regard to the governing tariffs, the above ZIM service contracts with Samsung SGSA and Logitech provide:

Except as otherwise provided herein, cargo moving under this Contract shall be subject to all charges, rules and conditions as are, or may be subsequently, published in and effective under the applicable governing tariff(s) in effect on the date the cargo is received for shipment by the Carrier or its designated agent:

The term “Governing Tariff(s)” shall mean all of Carrier’s applicable rule and rate tariffs and provisions thereof, as well as the tariff in which the publicly available essential terms of this contract are published, or may be published in the future. The governing tariffs applicable to this contract are listed in Appendix “F” of this contract.

Shipments tendered and carried under this Contract shall also be subject to the provisions of Carrier’s Bill of Lading presently on file with the Federal Maritime Commission. In the event of any conflict between the terms of this Contract and those of Carrier’s Bill of Lading, the Carrier’s Bill of Lading shall prevail. Unless otherwise stated herein, this Contract does not concern provisions involving responsibility and liability for carriage of the goods, provisions of which are part of the Carrier’s Bill of Lading contract.

Without limitation on the foregoing paragraph, the rates in this Contract shall be subject to increase by the amount of any increase published in Carrier’s rate tariff applicable to any or all commodities/routings covered by this Contract. Said increase shall be applied by the Carrier automatically and Merchant consents to Carrier filing an amendment to this Contract with the Federal Maritime Commission reflecting said increases, without any further signature or consent of the Merchant.

If rates are increased through application of this paragraph at any time during the term of the Contract, Merchant may in its discretion (a) request a negotiation in good faith regarding a reduction of the increase in this Contract, or (b) terminate the Contract upon thirty (30) days’ written notice to the Carrier.

RX 1790 ¶ 2; RX 1818 ¶ 2; RX 1853 ¶ 2; RX 1881 ¶ 2; RX 1920 ¶ 2.

12. The above ZIM service contracts with Samsung SGSA and Logitech define a “Merchant” or “Shipper” to “mean the company identified on the signature page of this Contract as ‘Merchant [or Shipper],’ and all Affiliates as named in Appendix ‘C’, herein.” RX 1790 ¶ 1; RX 1818 ¶ 1; RX 1853 ¶ 1; RX 1881 ¶ 1; RX 1920 ¶ 1.

13. The ZIM service contracts with Samsung SGSA identify the following Samsung entities as affiliates of the Merchant/Shipper, “entitled to tender shipments under this Contract under the same terms and conditions as the” Merchant/Shipper:

Samsung SDS Global SCL Asia Pacific Pte Ltd, Singapore
Samsung SDS Global SCL Asia Pacific, Singapore
Samsung SGSA, San Diego, CA
Samsung SDS Global SCL (M) Sdn Bhd, Seksyen UI, Malaysia
Samsung SDS Global SCL America Inc., Sante Fe Springs, CA
Samsung SDS Global SCL Beijing Co Ltd, Suzhou, China

RX 1807-08; RX 1836.

14. The ZIM service contracts with Logitech identify the following Samsung entities as “affiliates of the Merchant . . . entitled to tender shipments under this Contract under the same terms and conditions” as the Merchant:

Samsung Electronics, Seoul, Korea
Samsung Display, Youngin, Korea
Samsung Electro-Mechanics, Gyeonggi-DO, Korea
Samsung Electronics Logitech Co., Ltd, Gyeonggi-DO, Korea
SDS Global SCL (M) SDN BHD, Selangor Darul Ehsan,
Samsung SDS America, Inc., San Diego, CA
Samsung Electronics Home Appliance America (SEHA), Newberry, SC
Samsung Electronics Co., Ltd, Gyeonggi-DO, Korea

RX 1871-72; RX 1900-01; RX 1939-41.

15. With regard to the designation of trucking vendors for land transportation, the service contracts provide, in part:

For shipments designated for pick up or delivery at any U.S. location or facility located outside the Port or Container Yard (i.e., “Door” pick up or delivery, also referred to as “Carrier Haulage”), Carrier shall normally nominate the Vendor to provide such services. If, upon Contract of the parties, the Merchant is to nominate the Vendor (“Preferred Trucker”), the following shall apply:

Compensation shall be as set forth at Appendix C, and shall be subject to review and/or change in accordance with subparagraph 12b (below).

Should Merchant’s Preferred Trucker fail to accept a Transport Order within twenty-four (24) hours of issue, or fail to perform as ordered, Carrier shall nominate and provide instruction to an alternate Vendor; and

Any expense or charge in excess of the Compensation rate set forth at Appendix G, including demurrage, detention, or other storage fees, which accrue or are assessed as a result of the Merchant’s nomination of a new or

alternate Preferred Trucker, or as a result of the Preferred Trucker's failure to accept or perform a Transport Order, shall be to the account of the Merchant.

No. 12a in RX 1794, RX 1821-22, RX 1857, RX 1885, RX 1925.

16. With regard to demurrage, per diem, and free time, the service contracts provide:

"Demurrage" shall refer to the charges Merchant pays for Carrier's equipment kept beyond free time allowed for taking delivery of the goods in the port, terminal or depot (whether inland port, rail ramp, or other interchange point). Demurrage shall include all storage, service, and equipment costs, unless otherwise specified.

"Per Diem" shall refer to charge the Merchant pays for detaining Carrier's equipment outside the port, terminal or depot, beyond the free time allowed.

Demurrage and Per Diem charges set forth in Carrier's applicable Tariffs shall apply to all shipments tendered and carried under this Contract, subject [to] the terms and conditions delineated in any relevant appendix or appendices to this Contract, and shall be calculated as set forth in the Tariff.

12d in RX 1795, RX 1822-23, RX 1857, RX 1886, RX 1926.

17. With regard to freight, charges, and invoicing, the service contracts provide:

The Merchant and all affiliates, subsidiaries, association members and agents acting on Merchant's behalf, as well as all other parties responsible for freight under the Bill of Lading, and the cargo itself, are jointly and severally obligated to pay, on demand, all freight charges, dues, taxes, per diem, collection fees, or charges and/or other expenses in connection with the goods:

The Carrier, its servants or agents, shall have both a maritime and contractual lien on the goods or any part thereof, and the Carrier or its Agent shall have the right to sell such goods, whether privately or by public auction, upon reasonable notice to the Merchant, for all freight (including additional freight payable as is herein stipulated) primage, deadfreight, demurrage, detention, container demurrage, charges, salvage, average of any kind whatsoever, stamps, duties, fines or penalties. *The lien hereby accorded may be exercised by the Carrier, its servants or agents notwithstanding that it or they may have parted with actual or constructive possession of the goods.* Nothing in this clause shall prevent the Carrier from recovering from the Merchant the difference between the full amount due, and the net amount realized by the exercise of the rights given to the Carrier under this Clause.

Carrier shall invoice Merchant promptly following lading to the manifested vessel or provision of other services. Payment of each invoice shall be made by Merchant within thirty (30) days of the date of invoice.

Merchant shall be granted credit only upon execution of Carrier's Credit Agreement and shall be under terms as detailed therein. Carrier's Credit Agreement shall be attached hereto as Appendix H, as appropriate.

Merchant shall provide notice of any dispute within ten (10) days of the date of invoice, detailing the basis for dispute and the specific relief requested; in the absence of notice with the ten (10) day notice period, invoices will be presumed valid and payment due within relevant terms.

¶ 8 in RX 1792, RX 1819-20, RX 1855, RX 1883, RX 1922-23 (emphasis added).

18. SEA is not a signatory to any service contract with ZIM. SEA PFF at ¶ 20; ZIM RPPF at ¶ 20; RX 1789; RX 1811; RX 1817; RX 1836.
19. SEA is not named as an "Affiliate" in any of the above service contracts with ZIM. RX 1807-08; RX 1836; RX 1871-72; RX 1900-01; RX 1939-41.
20. Samsung Electronics Co. Ltd, identified as an affiliate in ZIM's service contracts with Logitech, was designated as the shipper for some SEA shipments at issue. RX 1871-72; RX 1900-01; RX 1939-41; CX 8868-926.
21. ZIM transported the SEA shipments under through bills of lading, or sea waybills from the overseas locations through United States ports and on to designated United States inland locations. Complaint at ¶ 28; Answer at ¶ 28; CX 8868-926.
22. Under the through bills of lading and sea waybills, ZIM was responsible for the ocean carriage of the SEA containers to a United States port and the inland carriage of the SEA containers to the United States inland locations, generally SEA warehouses or directly to SEA customer locations. Complaint at ¶ 29; Answer at ¶ 29; CX 8868-926.
23. The "majority" of SEA cargo that ZIM transported "was moved on store door terms." ZIM PFF ¶ 42; SEA RPPF ¶ 42.
24. Under store-door terms, also described as "carrier haulage," the ocean common carrier is responsible for the inland movement of the shipped containers via rail and/or truck drayage to the named delivery place, and the provision of chassis to move the containers. Complaint at ¶ 30; Answer at ¶ 30; ZIM PFF ¶ 42.
25. When cargo is moving to SEA under one of the contracts signed by SDS or Logitech, the responsibility for paying the ocean carrier freight charges for the transportation of the cargo lies with SDS or Logitech. SEA PFF at ¶ 22; ZIM RPPF at ¶ 22.

26. By contrast, under “container yard” (“CY”) or “port-to-port” terms, commonly described as “merchant haulage,” the shipper or consignee is responsible for the inland movement from the port to the final inland destination. Complaint at ¶ 31; Answer at ¶ 31.
27. Under CY terms, ZIM’s responsibilities terminated when the container was delivered to the port or the rail ramp. SEA PFF at ¶ 28; ZIM RPF at ¶ 28.
28. ZIM’s tariff, effective August 1, 2020, states regarding free time and demurrage at destination:

F) FOR CARRIER CONTROLLED INLAND DOOR OR RAIL SERVICE, DEMURRAGE OR STORAGE CHARGES ASSESSED BY THE RAIL UNDER CIRCUMSTANCES BEYOND THE CONTROL OF THE CARRIER AT THE POINT OF INTERCHANGE (INCLUDING, BUT NOT LIMITED TO, STRIKES, LOCKOUTS, FRUSTRATED APPOINTMENTS AND/OR INABILITY OF THE CONSIGNEE TO RECEIVE THE CONTAINERS FOR WHATEVER REASON) SHALL BE FOR THE ACCOUNT OF THE CARGO.

G) UNDELIVERED CARGO 1. NOT WITHSTANDING THE ABOVE, CARGO WHICH IS UNDELIVERED AND REMAINS AT THE PORT TERMINAL, CY, OR RAIL RAMP SHALL BE SUBJECT TO ANY ADDITIONAL CHARGES IN ACCORDANCE WITH THE RELEVANT TERMINAL, RAIL AND/ OR CARRIER TARIFF.

UNDELIVERED CARGO MAY BE PLACE IN PUBLIC STORAGE AT ANY TIME AFTER EXPIRATION OF FREE TIME, AT THE OPTION OF CARRIER AND AT THE RISK AND EXPENSE OF THE CARGO.

CX 8927; *see also* Opposition at 21 n.13 (The rule in effect during the period from late 2019 to mid-2022 was Rule 23.F of ZIM-480).

29. ZIM’s tariff, effective April 1, 2023, states regarding demurrage and free time at U.S. Ports:

G) CARRIER CONTROLLED INLAND DOOR OR RAIL SERVICE

(1) IN THE EVENT THAT CARRIER IS, FOR ANY REASON, UNABLE TO DELIVER CARGO WITHIN FREE TIME DUE TO A CARRIER DISABILITY OR SERVICE FAILURE, NO DEMURRAGE CHARGE SHALL BE ASSESSED FOR ANY DAY DURING THE PERIOD OF SERVICE FAILURE. FOR GOOD ORDER, IF THE CARGOS ARE IN FREE TIME AT THE COMMENCEMENT OF THE DISABILITY OF SERVICE FAILURE, FREE TIME SHALL BE EXTENDED FOR A PERIOD EQUAL TO THE DURATION OF THE DISABILITY OR SERVICE FAILURE; IF THE CARGOES ARE NO LONGER IN FREE TIME, ASSESSMENT OF DEMURRAGE SHALL BE SUSPENDED FOR THE DURATION OF THE DISABILITY OF

SERVICE FAILURE, RESUMING AT THE RATE APPLICABLE UPON COMMENCEMENT OF THE DISABILITY.

(2) DEMURRAGE OR STORAGE ASSESSED BY THE RAIL UNDER CIRCUMSTANCES BEYOND THE CONTROL OF THE CARRIER, INCLUDING BUT NOT LIMITED TO STRIKES, LOCKOUTS, FRUSTRATED APPOINTMENTS, AND / OR INABILITY OF THE CONSIGNEE TO RECEIVE THE CARGOS (CONTAINERS) FOR ANY REASON, SHALL BE FOR THE ACCOUNT OF THE CARGO.

CX 8927; *see also* Opposition at 21 n.13 (Rule 4.G of ZIMU-136 is ZIM's current rule).

2. Preferred Trucker Provisions

30. When ZIM relied on its own house truckers to complete cargo movements on behalf of SEA on store-door terms, ZIM was responsible for handling the movement of cargo from pickup points overseas to the United States end point. SEA PFF at ¶ 24; ZIM RPPF at ¶ 24.
31. A document labeled "2021 RFQ for Ocean Freight" ("RFQ") was issued by Samsung SDS Co. Ltd. ("SDS"). RX 30-49.
32. ZIM's Logitech Service Contract Nos. 7100171730 and 7100102863 state in Appendix B, "Contract Rates," that "Except as otherwise provided herein, cargo moving under this Contract shall be subject to the agreed rates set forth in the attached 'Rate Spreadsheet,' which shall form a part of this contract." RX 1852; RX 1870; RX 1918; RX 1939. Under "Rate Spreadsheet" is "Note 2: 2021 RFQ" and "[EMBED AcroExch.Document.11] [EMBED Word.Document.12\s]." RX 1870; RX 1939.
33. Under Section I in the RFQ titled "Introduction," Samsung Electronics, a designated Logitech affiliate, and the shipper for the SEA containers at issue, is identified as one of the Samsung Group companies covered under the RFQ. RX 33.
34. Under Section III in the RFQ titled "Service Requirements" at number 1, "Transportation," the RFQ states in part: "This Service Contract covers whole Export and Import Overseas transportation process owned by SDS on behalf of Samsung and its affiliates." RX 39.
35. Under Section III in the RFQ titled "Service Requirements" at number 6, "Customer Service," the RFQ states in part:
 - **Preferred Trucker & Delivery**
 - Carriers are required to provide local delivery service with consignee's preferred trucker if any. (CNT = Customer Nominated Trucker)
 - Truckers should send an appointment via Email.
 - Truckers should deliver cargo as planned.
 - Carriers will contribute the utmost efforts to complete delivery.

RX 41.

36. Under Section IV in the RFQ titled “Rate Quotation” at number 2, “Rate Condition (1/2),” the RFQ states in part:

- **Rate Structure**

- Freight Rate should be in USD and all applicable surcharges must be included.
- Rate consists of (A) Ocean Freight + (B) Origin Charges + (C) Destination Charges
 - CY-CY : Subject to Destination Local Surcharges
 - CY-Door: Super All-in
 - BAF: FIXED
- Additional charges from carriers’ sub-contractors (such as trucker, terminal, depot) is to be included.
- Exception is applicable only where it’s Fre-in/out port

RX 42; *see also* RX 43.

37. Under Section IV in the RFQ titled “Rate Quotation” at number 5, “Detention / Demurrage Freetime,” the RFQ lists free time conditions and the number of required days for demurrage and detention at origin and destination, including for the USA. RX 46.

38. “Normally, all-in refers to ocean freight plus bunker together. Super all-in is ocean freight – is including everything, also the other surcharges, like OTHC, ISPS, all the applicable surcharges. That’s what a super all-in can include.” CX 5249. And when asked: “What are some examples of local surcharges in the destination country?” one of ZIM’s corporate representatives, Moshe Shpitzer, responds: “Different countries have different surcharges. It can be fee delivery order fee, for example,” and then clarifies that: “Super all-in means that includes all the surcharges, including the manifested and the local surcharges.” CX 5251.

39. SEA does not have written transportation contracts with preferred truckers for the inland moves from the ZIM ports of discharge to SEA’s customers or SEA warehouses. SEA PFF at ¶ 26; ZIM RPPF at ¶ 26.

40. SEA characterized customer nominated truckers as truckers that Samsung would recommend for a particular lane for ZIM to consider, define rates, and determine whether or not to use the trucker. SEA PFF at ¶ 49; ZIM RPPF at ¶ 49.

41. On occasion, ZIM would reject a trucking company to become a CNT or would not agree on rates with a trucking company. *See, e.g.*, RX 1175.

C. Cargo Holds

42. ZIM United States (“ZIM U.S.”) collection policies and procedures are memorialized in a document titled “Comprehensive Collections Policy” (“Collections Policy”), which is reviewed and approved by ZIM’s chief financial officer (“CFO”) in the United States. SEA PFF at ¶¶ 129-30; ZIM RPPF at ¶¶ 129-30; CX 5600-24.

43. The ZIM U.S. Finance team led ZIM's efforts to collect demurrage and detention ("D&D") charges from consignees like SEA. Ms. Ilana Rosenberg, Mr. Yaacoub Yaacoub, and Ms. Adrienne Martin ("ZIM U.S. Finance"), with support from their direct reports, led ZIM's efforts to collect the D&D charges from customers in the United States. SEA PFF at ¶ 132; ZIM RPF at ¶ 1320; CX 4583; CX 4773-81.
44. Mr. Yaacoub, Director of Finance for ZIM U.S., is responsible for collection as well as disputes, and has three direct reports, all of whom are managers, and for his collection efforts, is assisted by Ms. Martin, ZIM U.S.'s Collections Manager. SEA PFF at ¶ 133; ZIM RPF at ¶ 133; CX 3073.
45. Mr. Yaacoub reports to ZIM U.S. CFO, Ms. Rosenberg, who in turn, reports to ZIM U.S. president, Mr. Yochai Nissim (previously, Mr. George Goldman). SEA PFF at ¶ 134; ZIM RPF at ¶ 134; CX 3074.
46. The ZIM U.S. Finance team generates and updates a demurrage report called "USA Overdue Review" on a monthly basis. SEA PFF at ¶ 137; ZIM RPF at ¶ 137; CX 5482.
47. The "USA Overdue Review" is for internal use by the ZIM U.S. Finance team, which then gets presented to the headquarters in Haifa, Israel. SEA PFF at ¶ 138; ZIM RPF at ¶ 138; CX 5482-83; CX 5711-18.
48. A "cargo hold" means that ZIM will withhold the release of the containers until it receives payment or commitment for payment. In that event, ZIM advises the customer or the customer's trucker that the container cannot be released or picked up. SEA PFF at ¶ 140; ZIM RPF at ¶ 140; CX 3125-26.
49. While ZIM mainly uses the terminology "cargo hold," in ZIM parlance "cargo hold" and "credit hold" are "more or less, the same." CX 3099.
50. When ZIM imposes a "credit suspension" on cargo, it stops taking credit from the customer and the customer then has to pay all cash. CX 3099-3100. A credit suspension is different from a cargo or credit hold. CX 3099.
51. There were four periods of cargo holds imposed by ZIM against SEA cargo between August 5, 2020, and Mid-August 2020; May 27 and June 30, 2021; September 27 and October 6, 2021; and January 11 and March 17, 2022. SEA PFF at ¶ 158; ZIM RPF at ¶ 158; CX 1570.

1. The First Cargo Hold: August, 2020

52. The first cargo hold imposed by ZIM against SEA cargo was from August 5, 2020, to mid-August 2020. CX 5325-26; CX 1570.
53. At the time ZIM imposed the first cargo hold against SEA's cargo, the overdue balance said to be owed by SEA was \$143,225.26 and upon SEA's payment of \$36,710, ZIM lifted the cargo hold. SEA PFF at ¶ 159; ZIM RPF at ¶ 159; CX 1570.

54. On July 8, 2020, Elizabeth Harris, ZIM accounts collections specialist, sent an email to various SEA staff, including Maria Fernando, with various ZIM staff copied, including Adrienne Martin, stating in part:

Attached is an updated statement that is \$154,483.16 in arrears with invoices ranging between 2 to 1,743 days still open on the account and not settled.

Please review and advise when payment will be submitted as your account is not within the given credit terms and is now subject to being escalated for credit review. Back up has been provided as requested and those invoices which I was asked to review have been deemed valid and due.

Look forward to hearing from your side.

All dispute (s) request should be forwarded directly to the Zim Dispute Request Desk. (dispute-request.us@zim.com).

CX 7227-28.

55. On July 28, 2020, Adrienne Martin from ZIM followed up with an email to various SEA staff, including Maria Fernando, with various ZIM staff copied, with the Subject: "CREDIT SUSPENSION PENDING - \$145K PAYMENT DUE ON JULY 31, 2020," stating: "We have been advised to expect payment of \$145K by this Friday, July 21, 2020 in order to prevent credit suspension and holding of cargo. Credit suspension will be implemented on Friday if payment is not received." CX 7227.
56. On July 28, 2020, Blair Ji from Samsung responded in part:

Please send all the outstanding invoices to ADCInvoice@sea.samsung.com. Please provide approvals of email threads for the invoices. If you don't have them, please see the below contacts for obtaining approval. Once you receive the approval from them, please forward that email thread along with the corresponding invoice(s) so I may validate and process.

CX 7226-27. The names and individual emails were included for the "Direct Ship Team" and the "Inbound Team." CX 7227.

57. On July 29, 2020, Adrienne Martin responded to Blair Ji's email, stating:

Please confirm this message is intended for Samsung Internal processing and not for Zim's handling.

Zim has provided all invoices and documents according to our standard process and have sent invoice copies to the relative parties at Samsung. We will await payment as mentioned and will proceed with credit suspension if not received by Friday, July 31st.

CX 7226.

58. Blair Ji responds:

The below email was intended for ZIM. Please find the attached email for your reference that was sent by Stacie. As you can see, an invoice was sent to ADCInvoice with an approval (on the attached email thread) that was provided by Samsung team listed below before getting sent to Samsung accounting. I will be able to process invoices that were sent with the approvals like the attached (which was paid), however, if they are not approved, the invoices need to get approved first before getting processed for payments. If there is outstanding invoices with approvals as attached, please send them over to ADCInvoice, if not, please contact either Direct Ship or Inbound team to get them approved.

CX 7225.

59. Also on July 29, 2020, Adrienne Martin sent an email to the ZIM Dedicated Service Group (“ZIM DSG”), with various other ZIM staff copied, including Barbara Speight from ZIM, asking: “Is there a contract agreement for us to process the demurrage invoices per the below and attached instructions? DSG – Can you confirm all of the invoices were sent to Samsung in this format?” CX 7224-25. On the same day, Barbara Speight responded, stating: “The only invoices that DSG would handle would be any prepulls & rail storage. Those are always sent to ADCInvoice@sea.samsung.com attached to the approval email. DSG does not handle port demurrage invoices.” CX 7224.

60. On August 4, 2020, Elizabeth Harris emailed Adrienne Martin and other ZIM staff, stating: “After checking the Samsung account payment was not received as requested. Please advise how you would like me to proceed with the account.” CX 7224. The same day, Adrienne Martin emailed various ZIM staff, including Lu Giles from ZIM: “We need your feedback if the response from Samsung regarding the process to submit invoices, is this process included in the contract?” CX 7223. Lu Giles responds the same day:

Samsung US and Korean still arguing on this:

Samsung Electronics America (SEA) has been requesting their own format for their internal (CFO's) approval Carrier should provide to collect Demurrage. Unfortunately, ZIM USA CS Team used to reject to do because they can not do additional work for Samsung but keep on sending invoices only. Won't they do it yet?

Can we know is that solved? Anyway I think what Yael told is to hold their shipment until they pay. Pls. also help coordinate with them the format of the demurrage in the future as anyway it's an argument.

CX 7223.

61. On August 5, 2020, Adrienne Martin responded within ZIM: “Your response is noted. We will start holding cargo effective today for Samsung Electronics only. Please see attached list of shipments by arrival date.

Arrival Date	Containers
8/6/2020	29
8/7/2020	41
8/10/2020	3
8/12/2020	53
8/17/2020	3
8/19/2020	32
8/21/2020	25
8/27/2020	12
8/28/2020	23
8/29/2020	6
9/4/2020	27
9/11/2020	14
Grand Total	268

CX 7222-23.

62. On August 5, 2020, Elizabeth Harris emailed just Adrienne Martin, stating:

Morning! And just as an FYI when I have been requested to provide any reports, any additional information I have given to Samsung. I have added additional details to their statement at their request and last time I checked I have never known or been informed that Samsung must have approval emails to pay per diem and demurrage invoices.

Hold their cargo!!! 😊 😊

CX 7222 (emojis in original).

63. On August 5, 2020, SEA’s Maria Fernando responded to Adrienne Martin and Elizabeth Harris regarding the status of pending invoices issued by ZIM from periods ranging from February 22, 2019, to July 7, 2020, and due dates ranging from February 22, 2019, to August 8, 2020. SEA approved some of the invoices and rejected the remainder on the basis that it needed more information, containers were within their free time or the demurrage amount charged was incorrect, and some containers did not belong to SEA. Specifically, Maria Fernando stated:

Please review all the summary below

I hope this will clear the invoicing from ZIM and please review and send it back to us the 1st and 3rd Summary

Please note these are different groups that review the invoices, please make sure to provide the summary
Thank you

1st Summary – We need the breakdown of these invoices which means, “OUT GATE and IN GATE Date,” as you know this is about money and we need to be more detailed
Elizabeth is providing the summary for the other invoices but for these invoices, there’s no summary.
We need the summary to check the validity of the amount, since we had so many discrepancy with invoiced amount from the previous ZIM billing. [29 invoices listed.]

2nd Summary – Approved invoices, please send the invoices to our Accounting for payment processing
All the APPROVED INVOICES, please send the invoices to our Accounting for payment processing.
Some of the invoices were approved and re-approved again, if ZIM will not provide the invoices then this approval and review will be useless and ZIM will not get paid. [Approximately 60 invoices listed.]

3rd Summary – These were rejected invoices due to discrepancy with amount computation and # of days billed to SAMSUNG. On the DS REMARKS, I put the correct amount based with the per diem rate.
Kindly review and re-calculate, and provide the per diem rate that ZIM is using
Below on this summary, I have provided the breakdown and # of days that were accrued under per diem, because some invoices were “WITHIN THE FREE TIME,” which means no per diem invoice to SAMSUNG [About 30 invoices listed, of which 7 state “within the free time.”]

4th Summary – Those invoices doesn’t belong to us. Kindly review and send it to the correct department. [10 invoices listed.]

CX 7208-17.

64. On August 6, 2020, Elizabeth Harris responded as follows:

1st Summary: I separated your list as you noted not only rail demurrage, port demurrage but also Perdiem. Following is the requested information: [list included in original omitted].

2nd Summary: Please advise how the invoices have been approved yet Samsung requires a copy? ZIM will resend the invoices and your accounting department will be in receipt of 61 invoices no later than tomorrow afternoon.

3rd Summary: ZIM to open a dispute and internally review the invoices based on contract rates

4th Summary: ZIM will investigate and advise[.]

CX 7206-08.

65. On August 20, 2020, Maria Fernando followed up with another email, inquiring: “Do we have an update with the disputed invoices?” CX 7206.
66. Elizabeth Harris responded the same day, August 20, 2020, providing a list containing free time and demurrage charge information for 16 of the rejected invoices, and stating: “Please see below for invoices that have been deemed valid.” CX 7204-06. It appears that ZIM was no longer seeking compensation for the other half of the invoices in the 3rd summary.
67. For this first cargo hold, ZIM sought payment for 130 invoices, of which, SEA contested over half on the basis that the amount was wrong (3rd summary), additional information was needed (1st summary), or it was not their shipment (4th summary). CX 7204-06. Additional information was ultimately provided and/or payment approved for about 80% of the 130 containers. *Id.*
68. SEA rejected the invoices in the 4th Summary, totaling \$16,352, because, according to its employee, Maria Fernando: “Those invoices doesn’t belong to us. Kindly review and send to the correct department.” CX 7209.
69. Even after the cargo hold was lifted, the parties continued discussing billing. On September 8, 2020, Elizabeth Harris sent an email to SEA staff, stating: “Attached is an updated statement that is **\$115,983.16** in arrears with invoices ranging between 12 to 1,815 days still open on the account and not settled. Please review and advise when payment will be submitted as your account is not within the given credit terms.” CX 2473.
70. On February 16, 2021, an internal ZIM email identified billing issues including: “Manual billing process delayed due to increase in volumes” and suggested as the resolution requirement that: “Zim systems are not set up to execute the manual and special invoicing requirements agreed to within the service contracts. IT enhancements are needed to eliminate/reduce the amount of manual effort spent to invoice according the customer’s requirements. These enhancements will also help to reduce the delays and errors.” CX 5628.
71. On March 10, 2021, Adrienne Martin from ZIM sent an email to various SEA staff, including ADCInvoice@sea.samsung.com and Maria Fernando, titled “Statement Samsung-OVERDUE \$641K-CREDIT SUSPENSION,” stating: “Please see the attached updated statement for Samsung. Over \$600K is overdue mostly for unpaid per diem/equipment detention invoices. Immediate payment is needed to avoid credit suspension and cargo hold.

	IM FRTINV	DEMURRAGE	PER DIEM	RAIL DEMURRAGE	Grand Total
SAMSUNG ELECTRONICS AMERICA INC.	8,578	67,530	550,165	2,100	628,373
SAMSUNG SDS GLOBAL SCL AMERICA		1,000			1,000
SAMSUNG SDS GLOBAL SCL AMERICA INC.	200	7,870	1,875		9,945
SAMSUNG SDS GLOBAL SCL AMERICA, INC			1,920		1,920
Grand Total	8,778	76,400	553,960	2,100	641,238

CX 2472 (dark gray in both public and confidential versions); SEA RPF 31.

72. On March 10, 2021, Maria Fernando responded: “Hi Adrienne, Can you please advise the meaning of IM FRTINV What kind of charge is this?” CX 2471-72. On March 10, 2021, Adrienne Martin responded back: “Import Freight Invoice.” CX 2471.
73. On March 10, 2021, Maria Fernando responded: “Just FYI, the import Freight Invoice needs to be billed to the origin of the loads[.] We don’t manage the payment for that charge type. We will review the invoices. Please give us until early next week since there are old invoices Please confirm and our loads not are going to be held.” CX 2471.
74. On March 10, 2021, Adrienne Martin responded again: “Why next week?? As you have stated the invoices are old, why were they not paid until now? Cargo hold cannot wait for next week.” CX 2470.
75. On March 10, 2021, Maria Fernando again responded:

Because there are different groups to review it
In addition, ZIM is not sending the statement to us and aside from that we did work with ZIM’s AR before and we manage to clear the aging invoices. But now on your statement, we are seeing old invoices again, which means we need to go back to the old file that we worked with ZIM’s AR team. In addition, we have disputed invoices to ZIM before, but we never received the feedback from the AR team too

There are different communication with the AR team, but it seems like the follow up from ZIM side were oversight that’s why the account with ZIM increase

Again, we need to time to review these invoices, since we just receive the summary today and after several months not receiving it from ZIM

CX 2470.

76. On March 24, 2021, Maria Fernando sent an email to Adrienne Martin from ZIM and various SEA staff stating:

Holding the loads will not resolve the issue, because the main issue here is the way ZIM's AR team handling the SAMSUNG billing.

We have a process and protocol to follow, and for your sure ZIM has its own process too.

If ZIM's AR team will not going to follow the billing process that our subsidiary established, then we are going to face the same problem always.

The only resolution for this issue is that SAMSUNG and ZIM, needs to follow it's respective process, to avoid any delay with the payment.

We have mentioned this so many times with your AR team especially with Elizabeth that we don't review any invoices that doesn't belong to our team.

There are invoices that you have sent belongs to different subsidiaries and we are not the correct department nor help you with those invoices.

Any Freight charges, you need to reach out to origin. Our loads are PREPAID by origin, any Freight issue, you need to reach out to them SEA logistics, will review any accessorial charges but not Freight.

If you will check your summary, there are different subsidiaries invoices, please reach out to Sales team to assist you to find the correct department.

We, SEA team, would like to clean and assist ZIM with aging but we need to follow each other's process and this will cover all the gray area of the process.

Please provide the container # also on the summary.

I put some charges that I did review from May 2020, these were disputed invoices due to incorrect computation

Please review because until now, the amount is not changed.

Below is my charge type inquiry. Please advise so that we can assist you and clean up all these aging

Let us know what is the meaning for the 3 charge types

If you have questions, you may call me

IMPORTANT ISSUE:

1. ZIM keeps sending incomplete information for charge validation purposes

a. **IM FRTINV-What charge type?**

b. **Over/Short Payments-what charge type?**

c. **Wire- charge type?**

2. ZIM sends summary of other open invoices from different subsidiary

3. ZIM AR team needs to audit and make sure to follow up the payment to SAMSUNG's Accounting

Billing Summary

1. Follow up the SAMSUNG Billing Process (provide summary including: container#, charge type, in and out date for per diem invoices or storages). Send to SEA HA Direct Ship (SEA-HA-Direct-Ship@sea.samsung.com and ADC INBOUNDADCINBOUND2@sea.samsung.com>
 - a. Once receive the complete information, SEA Logistics will review the invoices and send back to ZIM for invoice processing and ZIM will send the invoice to accounting with approval (recommended: attached invoices on the approval email)
2. Follow up with Accounting all the payment status because SEA Logistics is only validating the amount for approval, but Accounting pays the charges
 - a. Accounting email: ADC Invoice ADCInvoice@sea.samsung.com
 - b. [blank in original]
3. Any payment inquiry send email to Accounting.

RX 159-60 (hyperlinks removed).

2. The Second Cargo Hold: May-June, 2021

77. The second cargo hold imposed by ZIM against SEA cargo was from May 27, 2021, to June 30, 2021. SEA PFF at ¶ 169; ZIM RPF at ¶ 169; CX 1570; RX 172.
78. At the time ZIM imposed the second cargo hold against SEA's cargo, the overdue balance said to be owed by SEA was \$857,914.64 and upon SEA's payment of \$510,975, ZIM lifted the cargo hold. SEA PFF at ¶ 170; ZIM RPF at ¶ 170; CX 1570.
79. On May 28, 2021, Maria Fernando of SEA was notified by email received from DeAnna Flores of P.B. Industries, Inc. ("P.B."), that ZIM had imposed a credit hold against its cargo. The email stated: "We received work orders for these Lowe's Newnan's and the containers were on hold at the SAV PORT 5/27. We will not be able to outgate until 6/1 but we need for Samsung to work with ZIM on the Customer Credit Hold issue." CX 7285; RX 1550.
80. On May 28, 2021, Maria Fernando responded to the email, copying other staff from P.B., SEA, and ZIM, including Stacie Payton from ZIM, asking: "Stacie, Do we have a credit hold issue?" CX 7284; RX 1550. Stacie Payton responded the same day, stating: "Yes ma'am, Samsung is on credit hold. ZIM was told Samsung was notified the same; please reach out to your accounting team for further assistance." CX 7284; RX 1549.
81. On June 15, 2021, Peter King of SEA sent an email to various SEA and ZIM staff, including Stacie Payton from ZIM, stating: "I have provided the approved invoice but

have not receive the copy of the invoice. We must have them to send the payment out. Please check the attached approved invoice and provide the copy PDF file and by tomorrow morning. SEA Total Approved Amt \$347,045.” CX 7277.

82. On June 23, 2021, Peter Kim sent an email to various SEA and ZIM staff stating:

Please check the attached first file”ZIM 6-22 Approved” for this week additional approval for payment. **\$163,930 PLEASE MAKE SURE NOT TO HOLD OUR SHIPMENT AGAIN IN**

Please check and make sure to send the PDF copy of the invoice to Blair Ji and ADC Invoice we need to have the invoice in order to send the payment.

please check below rejected invoice DSAV173151051 that move by ZIM house trucker and demurrage should cover by ZIM.

please check the rejected invoice “Not SEA Shipment & N/A not in system” with you HQ, they are not Samsung Electronics America shipment and we can not tell who is the correct team for approval

CX 7275 (email addresses and container lists omitted).

83. On June 30, 2021, Stacie Payton of ZIM advised Peter Kim of SEA:

I have received confirmation from Imports team that all shipments that were held are now removed from freight hold. However, these cntrs are now on demurrage hold. Truckers must scheduled cntrs and advise the pick up dates. Once completed, demurrage invoices will be sent to Samsung team to remit payment PRIOR to removing hold. Note, ZIM cannot cover costs and must be completed by your team.

CX 7273.

84. ZIM imposed demurrage charges on SEA cargo that were on hold. For instance, in the case of Container DRYU9649797, ZIM invoiced SEA for 25 days of demurrage at the Port of Savannah from May 29, 2021, during the hold period, until June 22, 2021, and another \$5440 for 17 days of demurrage through July 9, 2021, totaling \$12,980. SEA PFF at ¶¶ 177-178; ZIM RPPF at ¶¶ 177-178; CX 7487-88.

3. The Third Cargo Hold: September-October, 2021

85. The third cargo hold imposed by ZIM against SEA cargo started on September 27, 2021. The evidence shows the cargo hold ended on October 6th, although there is a chart that listed October 16th. SEA PFF at ¶ 181; ZIM RPPF at ¶ 181; CX 7376; RX 172; CX 1570. SEA’s expert uses a mid-point date of October 11, 2021. CX 6246.

86. At the time ZIM imposed the third cargo hold against SEA's cargo, the overdue balance said to be owed by SEA was \$943,708.14 and upon SEA's payment of \$638,870, ZIM lifted the cargo hold. SEA PFF at ¶ 182; ZIM RPF at ¶ 182; CX 1570.
87. On September 25, 2021, Tzu-Yun Jen from Samsung SDS sent an email to Stacie Payton from ZIM asking: "Could you please advise why these are on hold for Freight from BL ZIMUSEL7087728 & ZIMUSEL7087727?" CX 2298-99. On September 27, 2021, Stacie Payton responded to Tzu-Yun Jen's email, stating: "Samsung is on credit hold. Per the list provided by Finance the below shipments are on hold." CX 2298. Tzu-Yen Jen responded back, inquiring: "Could you please advise how are they on credit hold? How can we clear those holds?" CX 2297-98. Stacie Payton responded back: "Collections advised Samsung has not paid the past due balance and provided a list of cargo to hold." CX 2297.
88. Samsung SDS and ZIM staff exchanged a series of emails on September 27, 2021, in which Samsung SDS employee, Jonathan Park identified bills of lading and containers belonging to its non-party customers, for which payment was overdue for days ranging from 39 to 424 days, stated that he was sharing the payment plan for certain containers, and asked for a release of the freight hold for the bills of lading. CX 2289. *See also* email from Vaishnavi Lakshmanan from Samsung, stating: "I understand that following containers have been kept under hold, due to Credit hold. Could you please Share the reason for the credit hold and details of any pending invoices that needs to be processed?" CX 7372-73; email from ZIM DSG to Maria Fernando, SEA, and UPS staff, stating: "Please see attached report. I have added a notes column that will be helpful. ****IMPORTANT NOTICE**** I was informed Samsung was placed on credit hold. I have notated the shipments in red that are on credit hold. Please have your Finance team speak with ZIM's Collections" team with any questions or concerns." CX 7373.
89. On September 29, 2021, Adrienne Martin from ZIM responded to Jonathan Park, stating: "The overdue balance for Samsung is \$1,181,574.31. This is the payment amount required in order to remove the hold." CX 2289.
90. In addition, the same day, September 29, 2021, Adrienne Martin sent an email to ZIM DSG, other ZIM staff, and SEA staff, stating: "Please find the account statement attached and advise what additional information is needed." CX 7371.
91. Peter Kim from SEA responded on September 29, 2021: "We can not review the charges without detail. Please provide the detail BOL, container, charge type, starting and end if charge are for demurrage/detention so we can review for the appval and payment. Seem like some of them are not for Samsung Electronics America." CX 7370-71.
92. Adrienne Martin responded back on September 29, 2021: "Demurrage/detention information has been added to the attached revised statement." CX 7370.
93. The same day, September 29, 2021, Joy Lee from Samsung SDS followed up on the September 27, 2021, series of email exchanges between Samsung SDS and ZIM staff, stating to Adrienne Martin:

Thank you very much for your time today. Per our conversation, am proposing that SDS will make a payment of some \$200,000 by this Friday Oct 1st. As a return, Zim release the urgent boxes (Tab 1) which i specify below. I will send the screen shot after the payment is done. . . .

For the ones that are beyond our control i.e., Samsung electronics, i will have an internal discussion and come up with payment commitment by Monday next week.

With scheduled payment plan, please cooperate to release the boxes (Tab2) as those are unnecessarily impacted by outstanding create by SEA.

Please help us sustain our valuable business Adrienne.

CX 2288-89 (list of 12 bills of lading and container numbers omitted).

94. On September 30, 2021, Joy Lee from Samsung SDS sent a screenshot reflecting a payment of \$266,384 on September 30, 2021, from Samsung SDS to Adrienne Martin and other ZIM and Samsung staff, stating: “Adrienne, as we promised here the s[c]reen shot for the due Friday payment. Please [release] the 12 boxes which i have stated yesterday.” CX 2287.

95. On October 1, 2021, Joy Lee from Samsung SDS emailed Ilana Rosenberg from ZIM, stating:

I lead non-Samsung business team. As you might have got reported from Adrienne, we have total of 90 boxes that are on hold due to Samsung Electronics long standing payment.

Our cargo has nothing to do with Samsung electronics and we are under a different division but since the on-hold impact is too harsh for us, we are committing that if Samsung Electronics do not make a payment until Thursday next week Oct 7, SDS on behalf of SEA will make full payment on Oct 8th. You have our commitment on this.

Like I made promise to Adrienne, I did make payment of \$280K yesterday and you have my words. Please trust me.

Again Samsung SDS will make whole amount paid by Oct 8th 2021 if SEA do not make payment by Oct 7th 2021 and this is business commitment. Please support my team so we can keep our valuable business. Your help is vital.

FYI we are under discussion with SEA for this issue.

Would appreciate your feedback or we can discuss over the [phone] as well.

CX 2286.

96. On October 1, 2021, Adrienne Martin from ZIM emailed Ilana Rosenberg from ZIM, stating:

This is related to the text I sent you this morning. I knew Samsung would reach out to you today to plead their case to have some of the cargo released as they continue to work with Samsung Korea to pay the past due balance.

Similar to the previous cargo holds on Samsung, they make some significant payments in order to get some releases, then all payments slow down or stop.

I explained to Ms Lee, that your position is that the full past due balances must be paid before release of cargo and because we have had broken commitments from them following previous cargo holds, that you would likely not approve any exceptions for release this time.

Please see below balances as of today.

INVOICE TYPE	Current	1-30 Days	31-60 Days	61-90 Days	91-180 Days	180-365 Days	Over 365 Days	Grand Total
Per Diem		162,630	155,245	146,685	118,720	201,375	3,680	788,335
Freight Invoice	154,288	123,618	70,889	84,460	2,076	4,785	3,993	444,108
Demurrage			49,225	81,135	5,940	3,285	2,645	142,230
Rail Demurrage						450	1,650	2,100
Credits				-25,720	-8,650	2,200	-11,078	-43,248
Grand Total	154,822	286,248	275,359	286,560	118,086	212,095	890	1,333,524

OVERDUE 1,179,237
OVER 30 DAYS 892,989
OVER 60 DAYS 617,630
OVER 90 DAYS 331,070

We have received the below payment today, which is not included in the above balances.

266,384.00
SENDER: SAMSUNG SDS AMER

CX 2285.

97. On October 4, 2021, Peter Kim from SEA sent an email to Adrienne Martin from ZIM and various SEA, Samsung, ZIM, and other staff stating:

Please check below summary and attached “Statement Detail”
 From SEA: Total \$854,875
 Approved **\$629,825.00** and ZIM need to send the PDF invoice to “ADC
 Invoice ADCInvoice@sea.samsung.com)
 Pending to review **\$225,050.00**
 For “**Not for SAMSUNG ELECTRONICS AMERICA**” please check
and make sure to send the invoice to correct team (\$502,895.04) . . .

Note	Note2	Total
Approved	Approved	\$629,825.00
Approved Total		\$629,825.00
Not for SAMSUNG ELECTRONICS AMERICA	SEHA	\$389,664.00
	FREIGHT INVOICE	\$53,341.04
	SDS GLOBAL SCL	\$31,120.00
	Not on the system	\$28,770.00
Not for SAMSUNG ELECTRONICS AMERICA Total		\$502,895.04
OVER / SHORT PAYMENTS	OVER/SHORT PAYMENTS	-\$21,908.23
OVER / SHORT PAYMENTS Total		-\$21,908.23
Pending	Pending detail	\$2,100.00
	Pending to review	\$222,950.00
Pending Total		\$225,050.00
Grand Total		\$1,335,861.81

CX 7368.

98. On October 6, 2021, Stacie Payton sent an email to various SEA, Samsung, ZIM, and other staff, advising: “Collections recently gave the ok to remove credit hold. Please allow some time for holds to be removed, if any cntrs are in demurrage Samsung will be responsible for remitting payment to get the cntrs moving.” CX 7367.

4. The Fourth Cargo Hold: January-March, 2022

99. The fourth cargo hold imposed by ZIM against SEA cargo was from January 11, 2022, to March 17, 2022. SEA PFF at ¶ 193; ZIM RPF at ¶ 193; CX 1570.
100. At the time ZIM imposed the fourth cargo hold against SEA’s cargo, the overdue balance said to be owed by SEA was \$1,538,200.64. SEA PFF at ¶ 194; ZIM RPF at ¶ 194; CX 1570. Upon SEA’s payment of \$119,615, ZIM released the cargo hold. CX 1570.
101. On January 13, 2022, Yun-Han Liu from SEA sent an email titled “Remittance for Samsung Electronics America, Inc. (SALS Division) 01-13-2022 Payment” to various ZIM and SEA staff, stating: “Please see attached Remittance Details for payment made on 01-13-2022. For invoice status inquiries please inquire as noted below,” then listing email

addressed for “Inbound related charges,” “Transportation charges,” and “Warehouse charges.” RX 1640.

102. On January 21, 2022, Cristina Dizon Marucut from SEA sent an email titled “RE: SAMSUNG-Account Block/Cargo Hold Pending for January 10th (ZIM Open Invoice and Payment Status)” to various ZIM staff, with SEA and Samsung staff copied, stating:

Zim,

I would like to follow-up the meeting request I request from since 1/12, in order to clear issues related to pending invoices and payment. Please assign contact person from ZIM so I can set-up a call.

We need to discuss the following **(1)** audit status of the new file that we received today with total pending amt \$601K **(2)** why you are still not clearing invoices that we paid on 10/8 **(3)** Want to make sure that rejected items can be removed from our open AR **(4)** Want to check if you have any other open invoices that are pending to bill so we can audit your open invoices all at once.

Row Labels	Sum of Amount due
Approved-paid on 10.08 (Ref# 100000033278)	\$ 291,610
Rejected: Not SEA Cntr	\$ 182,400
Pending review (newly received)	\$ 97,079
Rejected: Accident-Claim to ZIM	\$ 28,795
Rejected: Duplicate	\$ 1,740
Grand Total	\$ 601,624

RX 919. A table is provided listing two containers as “Approved-paid on 10.08” and two containers as “Duplicate.” RX 919.

103. On January 28, 2022, Jonathan Cleva, ZIM’s Head of Strategic Accounts, sent an internal email stating: “We are threatening to hold one of our most profitable customers—who do not have credit with ZIM—but they are claiming not to have all invoices to issue payment.” CX 8863.
104. On February 4, 2022, Maria Fernando from SEA, followed up Yun-Han Liu’s message with an email to various ZIM staff, inquiring: “Can you please advise if you have received the payment made to ZIM on 01.14? Our loads are still on hold. Kindly release out loads asap.” RX 1640.
105. Another SEA employee, Christina Marucut, again followed up the email on February 7, 2022, stating:

ZIM, Can you please advise if our shipment is still on hold?

Based on the attached 2-statements that we received from you on January, except for the \$97K (being validated by DS team) all the charges were

either completely paid or rejected. From the attached raw data file, there is a “Remark and Status” columns that you can use to reference rejection reason. These files were also shared and communicated to ZIM

Other than these 2, we did not receive any other pending statement. Please let us know if there is an updated statement.

SOA: Received on Jan 21 → \$97K is new charges, all other charges were part of the Jan 06 Statement.

Row Labels	Sum of Amount Due	
Approved-paid on 10.08 (Ref# 100000033278)	\$ 291,610	
Rejected: Not SEA Cntr	\$ 182,400	
#N/A	\$ 97,079	Under Review
Rejected: Claim	\$ 28,795	
Duplicate	\$ 1,740	
Grand Total	\$ 601,624	

SOA: Received on Jan 06 → All charges were completely audited. Rejected ones need

Row Labels	Not SEA	SEA-DS	SEA-IB	Grand Total
Approved-paid on 10.08 (Ref# 100000033278)		\$225,110	\$66,500	\$291,610.00
Approved-paid on 1.12 (Ref# 100000070729)		\$346,890	\$8,010	\$354,900.00
Rejected: Not SEA Cntr	\$506,820			\$506,820.00
Rejected: Claim		\$28,795		\$28,795.00
Credit	\$ (39,125)	\$(15,410)	\$(1,920)	\$(56,455.00)
Duplicate		\$1,740		\$1,740.00
Grand Total	\$467,695	\$587,125	\$72,590	\$1,127,410.00

RX 1639.

106. In a February 9, 2022, email to Peter Kim of SEA, Maria Fernando of SEA stated: “Please be advised that we are still on hold from ZIM. As of right now, per ZIM we owe them \$635K, I am waiting for the summary. From the last statement, there’s \$500K that belongs to SAMSUNG but not for SEA.” CX 7395.

107. On February 22, 2022, Cristina Marucut from SEA sent an email titled “Status Update for ZIM Open Statement as of 2/7” to ZIM staff, with SEA and Samsung staff copied, stating:

Please see status update based on the latest statement that we received on 2/9, **Can we set-up a call so we can discuss the following? Please let us know if you have time this week.** From attached excel file (DATA tab), column P will give you the update per line item.

- **\$291K** → has been paid to **ZIM** yet we keep receiving these invoices over and over again, please confirm if you received the payment or not.
- **\$120K** → we need More Information (Charge type, LFD [last free day], Start/End date) in order to complete approval for Invoice Amount
- **\$397K** → invoices were rejected, we need container information in order to check that these charges belong to SEA. We tried using info from column J “Reference Key 2” but these are showing as invalid containers from our system.

Row Labels	Sum of Amount Due
Approved-paid on 10.08 (Ref# 100000033278	\$ 291,610.00
Credits	\$ (31,770.00)
Pending	\$ 120,630.00
Rejected	\$ 397,421.05
Grand Total	\$ 777,891.05

CX 7415-16.

108. On February 24, 2022, Cristina Marucut from SEA followed up her February 22nd email, again asking ZIM: “Can we set-up a quick call today so we can discuss the attached updated file that we received last night from HQ ZIM?”

Note	2-24 Note	Remarks	Total
HQ/SDS	Not SEA Shipment SEA/SDS and HQ to check with correct Samsung team	Rejected: Not SEA Cntr/ SEA shipment	\$158,592.50
		Rejected:Not SEA Cntr	\$42,315.70
		Rejected:Not SEA Cntr/ /SEHA SHIPMENT	\$100,070.00
		Rejected: Not SEA Cntr/ //SDS A SHIPMENT	\$20,500.00
		Rejected: Not SEA Cntr/ //SDS A (NVOCC)	\$210.00
		Rejected: Not SEA Cntr- HVAC AMERICA	
		CHECKING	\$21,432.50
		Rejected: Not SEA Cntr- SAMSUNG AUSTIN	
		SEMICONDUCTOR	\$23,765.35
HQ / SDS Total			\$366,866.05
	Need detail proof of Payment for Remittance	Approved-paid on 10.08 (Ref# 10000033278)	
SEA Invoice team			\$291,610.00
SEA Invoice team Total			\$291,610.00

	Need to review Have	Charge type, LFD,	
	Charge type, LFD,	Start/End date received	
	Start/End date		
DS & Inbound			\$113,910.00
DS & Inbound Total			\$113,910.00
	Need More		
	Information		
ZIM	(Charge type, LFD,	Need More Information	
	Start/End date)//Not	(Charge type, LFD, Start/	
	SEA	End date)//Not SEA	\$8,460.00
ZIM Total			\$8,460.00
ZIM/Invoice team	Credit	(blank)	-\$31,770.00
	Rejected: Claims	Rejected: Claims	\$28,795.00
ZIM/ invoice team			
Total			-\$2,975.00
Grand Total			\$777,891.05

CX 7414-15.

109. The same day, February 24th, Adrienne Martin responded to Cristina Marucut:

It was a pleasure speaking with you this afternoon and we are here to assist Samsung to clear the overdue balances.

Per your below recap and as discussed, the remarks provided do not indicate any dispute or billing discrepancies to explain why payment has not been processed.

Until the full overdue balance is paid, we are unable to remove the account from hold. I did also mention to you, the option for Samsung to send the full amount to be placed on the account as a credit until you are able to process the invoices through your system. We will remove the hold immediately upon receiving the payment.

CX 7413-14; RX 1637.

110. Also on February 24th, Byung Choi from SEA sent an email to multiple ZIM, SEA, and Samsung staff, including Adrienne Martin, stating:

++ HQ and SDS Leadership.

I add related personal of several email loop into one email loop.

We tried to explain the situation and made a call with Zim Line US. I don't understand what SEA can do more and responsible for the wrong invoice and no evidence invoice that should be paid by event and validation? . . .

I was able to speak to Adrienne to clarify what is needed to solve the situation. I have list the relevant points of our discussion below.

- ZIM has had to put the Samsung account on hold 4 times in the last 2 years because of overdue balances.
- Samsung has a balance of \$578,951 overdue with the majority being overdue greater than 30 days.
- The challenge ZIM has with Samsung is that the balances are for multiple divisions within Samsung, HVAC and SC in Austin were 2 called out but no one from Samsung will take ownership for getting ZIM paid.
- An exception is not possible due to the fact that last May Samsung was past due by \$1M and stated they would get current but did not.
- The only way to get the containers released is to pay the total overdue balance.
- I called ZIM back to ask for a breakdown of what is owed by each group within Samsung but had to leave a voicemail and I'm pending a call back.

I will call her back in the next hour if I don't get a call back on the request I have made.

I'd like to ask SDS/Logitech team more involvement.

RX 1636.

111. On February 26, 2022, Keisha Bennett from ZIM wrote an email to undisclosed recipients, titled "Samsung SOA as of 2025.2022:"

Hello All

Please find Samsung's attached SOA for review. Please also find Samsung Open Account Summary below. The status of Samsung account is critically overdue therefore immediate action is required to b[r]ing the account current. ***The overdue age of the account is 229 days with a seriously overdue balance of \$612,875.00 (see below).*** Samsung has been given more than enough time to clear their past dues. Therefore the account must be handled based on ZIM USA's Collection Policy.

According to the policy, the account has passed the escalation stage of cargo hold and credit suspension. Further, ZIM received wire payments totaling \$67,895.00 without details (see below). Please assist with providing those details as it may aid with reducing the overdue balance. Again, please urgently review the SOA, immediately provide the missing wire payment application details and provide wire payment confirmation showing payment has been remitted to cover the entire seriously overdue balance. If a conference call is required to assist with bringing the account current, please let me know and I will gladly set it up.

Account Summary

Open Account Activity	Amount
Invoice Seriously Overdue	612,875.00
Invoices less than 30 days	59,661.00
Invoices Within Terms	169,944.00
Valid Credit	-25,690.00
Wire payment needs details	-67,895.00
Grand Total	748,895.00

CX 7411.

112. On February 28, 2022, Junsoo Ryu from Samsung SDS responded:

I'm JS from Samsung SDS(Ocean Logistics Operation Group). Your message is very well noted and the received overdue list is being reviewed by relevant parties with top priority over the weekend, doing our utmost efforts to clarify the cause of delay by shipment and aiming to deliver SEHA's urgent raw material shipment without delays. We, SDS/Samsung Electronics/all related parties, would like to have a conference call to discuss/verify more details and correct discrepancy if any. Please advise your available time for conference call, so that we share the current payment status and payment plan. FYI, Samsung's preferred C/C time is tomorrow(Feb 28th, Mon) 15:00(EST) // 14:00(CST).

CX 7410.

113. On February 25, 2022, Ho Dong from Samsung emailed various people at ZIM, stating:

This is Ho Dong Deo, EVP at Samsung SDS HQ, Head of Logistics for Samsung Electronics. On behalf of Samsung Logistics, I am writing to show my intension to do my best endeavours to settle DEM pending issue as soon as possible.

Attached and below is the list of DEM pending from ZIM Korea. You can see the payment plan - \$71,876.05 was already paid (proof attached), \$300 will be paid on today(Feb.26th), \$420 will be paid once SDS received invoices, \$135,342.5 will be paid by March 4th and \$159,492.5 will be paid once Samsung received details. I will thoroughly check the payment to the end.

I have ONE important thing to ask of you. Due to the DEM pending issue, ZIM IS has held 10 CNTRs containing several molds and raw material for Home Appliances Factory at Newberry. This Factory is separate business legal entity and is NOT related with DEM pending issue. I respectfully ask of you to release 10 CNTRs immediately (list below).

Again, I will take care of the payment till the end and thank you very much for your patience. Your immediate release of 10 CNTRs below will be highly appreciated.

CX 5735.

114. On February 25, 2022, Ilana Rosenberg responded to Ho Dong at Samsung, stating, in part: “As I am sure you understand, we can’t accept our customer constantly maintaining such substantial unpaid past due amounts. Nevertheless, as a onetime courtesy, we agree to release the below 10 containers subject to a payment plan covering full past due (589K).” CX 5734.

115. On March 3, 2022, Ilana Rosenberg again responded to Ho Dong at Samsung, stating:

After further review, we understand that the 10 cnts below belong to a separate entity, C&T (which was not mentioned below). Following that understanding, we will release the 10 cnts immediately (because, as stated in my below email, the hold is related only to Samsung Electronics)[.] Regardless, pls provide the payment plan and resolve the substantial past due asap so we can avoid any further complications with Samsung Electronics.

CX 5734 (paragraph breaks removed).

116. On March 4, 2022, Ho Dong from Samsung emailed various people at ZIM, stating: “I was informed of the immediate release of 10 CNTRs.” CX 5732. She closed the email by stating:

As promised, I will take of the payment till the end and I have TWO IMPORTANT things to ask you.

1. Please contact right persons based on Consignee. Attached #4 is the list of Samsung Contact. In order to effectively communicate and expedite payment, information and invoices should be provided to the relevant parties, accordingly.

2. Please take your action based on Consignee. We understand and respect ZIM’s rules and procedures such as credit suspensions and holds. However, every single Consignee in Attached #4 is the separate legal business entity and should be treated as separate one.

CX 5733.

117. On March 16, 2022, Junsoo Ryu from Samsung SDS sent an email to Yaacoub Yaacoub of ZIM and CPGS from Samsung, with various ZIM and Samsung staff copied, stating:

Dear Mr. Yaacoub and ZIM US,

This is JS Ryu from SDSHQ Ocean Logistics Operation Group.

Please find below latest update of SOA and operation (container holding) issue which needs your kind support.

(If you advise available time, we would arrange a call ASAP, inviting “Samsung Electronics America” and all relevant party, Samsung Electronics Logitech)

1) Please note SAMSUNG is duly paying outstanding amount based on SOA provided by Keisha Bennet on FEB 25th.

Please find below payment status as of today while some invoices are still under review(Claim case and cases asking further information) or not considered as “delayed”

	Status	Amount
Fully Paid		633,759
Claim case		28,795
Under Review		9,983
Total		672,536

Please note below invoices should not be considered as “delayed” as below **FOB** shipments have not arrived at the port yet as of today (MAR/15).

Bills of Lading	Invoice Number	Container	POL	POD	Pay Terms	Amount
ZIMUSEL711057	ORFRO754711		KRPUS	USSAV	Pay Immediately	21,500
ZIMUSEL200239349	ORFRO754708		KRPUS	USSAV	Pay Immediately	21,500
ZIMUSEL200239346	ORFRO754707		KRPUS	USSAV	Pay Immediately	21,500
ZIMUSEL200239345	ORFRO754706		KRPUS	USSAV	Pay Immediately	21,500
ZIMUSEL200239344	ORFRO754704		KRPUS	USSAV	Pay Immediately	21,500

2) Per above ongoing payment status/progress, please do not hold SAMSUNG containers at port, as SAMSUNG will pay outstanding invoices within allowed term, as soon as verification is completed.

Samsung Electronics America is planning to gate out all pending containers ASAP hopefully within MARCH. (Please refer to attachment#2 of “On-hold” containers list)

- If there is any outstanding invoices requiring immediate payment, as well if that causes containers “On-Hold”, please share the latest SOA with applying amounts SAMSUNG has paid.

PLEASE PROVIDE ANY CONTAINER NO. RELEASED (IF ANY), SO THAT “SAMSUNG ELECTRONICS AMERICA” CAN ARRANGE TRUCKING WITH CNT(TRUCKER) ASAP. YOUR IMMEDIATE RELEASE WILL BE HIGHLY APPRECIATED.

3) Please include below 8(eight) e-mail addresses in copy for entire invoices of “Samsung Electronics America” shipments.
Just in case, please re-send entire outstanding invoices to below recipients SEA requested, again.

RX 623-24 (SEA email addresses and phone omitted).

5. Subsequent Communication

118. An April 21, 2022, email from ZIM to various staff at ZIM, SEA, and others states:

Please find Samsung’s attached SOA (by branch) for review. Please also find Samsung’s Open Account Summary below. The status of Samsung’s account is critically overdue therefore immediate action is required to bring the account current. **The overdue age of the account is 2405 days with a seriously overdue balance of 630,301.04 (see below).** Samsung has been given more than enough time to clear their past dues. Therefore the account must be handled based on ZIM USA’s Collection Policy. According to the policy, the account has passed the escalation of stage of cargo hold. Again, please urgently review the SOA then immediately provide wire payment confirmation showing payment has been remitted to cover the entire seriously overdue balance.

CX 7470 (table omitted).

119. A July 12, 2022, invoice lists seven containers from six bills of lading. CX 7492. For three containers, the free time start date was May 22, 2022, while for the other four containers, the free time start date was May 23, 2022. However, the end free time/start calculate date is the same: May 27, 2022. May 22, 2022, was a Sunday. However, the free time ended the same day as the containers that were available on Monday. CX 7493 has the same “Init.Ref.Doc” number and a cover sheet that says it is for the July 12, 2022, invoice. It states “Free days period calendar: **Business Days**” suggesting that it only charged free days for business days. CX 7493. This page also states that free time is for days 1-4. CX 7493. The invoice shows that SEA was provided four free business days whether the containers were listed as available on Sunday or Monday. CX 7492.

120. An August 2, 2022, email states:

We, Samsung SDS America are facing a serious issue with our customers due to an issue that ZIM has not releasing numerous containers which belong to our customers. SDS was informed that ZIM was placing a hold due to Samsung Electronics’ old aging payment.

As we emailed below email, We, Samsung SDS is a totally different entity and separately operated company from Samsung Electronics. In order to minimize further impact, we appreciate that ZIM urgently releases our

customer's cargo from the hold. Once again, our cargos are not related to Samsung Electronics.

CX 7471-72.

121. An August 3, 2022, email states:

This is Adrian Lee, group leader from SDS America. Did you check emails from our co-workers? We are totally a different entity from Samsung Electronics. Please release all the containers belong to our customers.

Also, I added 4 columns for POL/POD/Shipper/Consignee information on your statement. If you fill out these information, I will do my best finding out solution.

CX 7471.

122. On August 18, 2022, Maria Ducumos from SEA's LPS-Finance sent an email to Keisha Bennet and Jang Hyunseon from ZIM, stating:

I would like to bring to your attention that we sent a letter via mail requesting additional information relating to demurrage and detention charges that we paid in connection the containers carried by ZIM. Please find the attached copies of the letter and excel file for your reference. These were sent via certified mail early this week to the attention of and office address listed below: . . .

Looking forward with your partnership to obtain the requested information. Please let me know if you have any question.

RX 202 (name and address omitted).

123. On September 23, 2022, Michael Rapske, Vice President, Logistics for SEA wrote to ZIM American Integrated Shipping Services Co. LLC, with a copy to ZIM Integrated Shipping Services Co. Ltd. Haifa, Israel and Ken Murata, General Counsel for SEA in a letter titled "Notice of Demand for Action," stating:

As you know, Samsung Electronics America, Inc. ("Samsung") is a recipient of import containerized cargo moving under "store-door" terms with ZIM and has received numerous invoices and other communications from ZIM demanding charges for demurrage, detention, handling, and/or storage ("Fees") and threatening delays and other actions if such Fees are not paid.

Although Fees should not have been charged to Samsung for transporting Samsung containers to the designated inland locations because ZIM was responsible for obtaining all necessary resources therefor under the store-

door terms, Samsung has been forced to pay for these unjust and unreasonable fees under ZIM's threat of holding up the release of containers and threats of other punitive actions. Per the Shipping Act of 1984, 46 U.S.C. § 40101, *et seq.*, the foregoing is a clear violation of the Shipping Act, including 46 U.S.C. § 41102(c).

Further even if Samsung was responsible for the Fees or the delivery terms were not "store-door," ZIM was required, but failed to provide, adequate billing information and/or invoices relating to the Fees that would have allowed Samsung to meaningfully understand the Fees. ZIM also failed to provide adequate means to dispute such Fees, and, in fact, repeatedly rejected any attempt by Samsung to discuss this matter with ZIM's billing coordinators. ZIM does not have an unfettered right to take advantage of inland transportation and port congestion challenges to unilaterally shift its common carrier inland transportation responsibilities or costs onto Samsung.

ZIM's failures constitute clear violations of the Shipping Act, including 46 U.S.C. § 41102(c) and the newly promulgated provisions in § 41104(a). Indeed, ZIM's unfair and unreasonable policy with respect to unsubstantiated and uncontestable Fees was a key motivation behind the Ocean Shipping Reform Act of 2022 (Public Law 117-146) ("OSRA") and in particular, section 7 thereof.

The Fees wrongfully imposed on Samsung since 2020 have amounted to more than **\$5 million dollars (\$5,000,000)**, based on available data on posted charges as of Q1 2022, and are continuing to be assessed without any justification.⁴ Samsung protests the unjust, unreasonable and unlawful Fees and intends to seek reparations before the Federal Maritime Commission ("FMC") for the entire amount of the Fees paid pursuant to 46 U.S.C. § 41305, along with interest pursuant to 46 U.S.C. § 41305(a) and attorneys' fees pursuant to 46 U.S.C. § 41305(e), unless ZIM agrees to immediately refund all such Fees paid by Samsung. To the extent Samsung is forced to pay additional Fees going forward, **all such payments are under protest and under reservation of all rights**, including the right to recover and to challenge the validity and reasonableness of such Fees.

Notwithstanding the foregoing, Samsung prefers to reach a private and amicable resolution on mutually-acceptable terms. Please provide written confirmation within two weeks from the date of this letter to indicate

⁴ SEA is currently evaluating the data related to charges posted after Q1 2022 and expects that the total amount of the Fees will materially increase for charges posted in and after Q2 2022, and will continue to evaluate this data going forward.

ZIM’s interest in reaching a confidential settlement. If you have any questions regarding this letter, let me know.

RX 16-17 (footnote in original).

124. On October 3, 2022, Adrienne Martin from ZIM sent an email titled “SAMSUNG-TIMELINE AND CARGO HOLD HISTORY,” to Yaacoub Yaacoub from ZIM, stating:

Please see timeline and attached communications regarding Samsung cargo hold. SOA is also attached

Date	Comments
5/20/2021	General Lien / Cargo Hold implemented for unpaid overdue balance. Containers held = 200
6/15/2021	Communication with Samsung Korea Sr Manager, Peter Kim to review email addresses used to send pdf invoices.
6/30/2021	Partial Hold Released – 8 Urgent containers released
9/14/2021	Advised senior managers at Samsung regarding slowing payment trend and increase in overdue. Immediate action requested to avoid cargo hold.
9/23/2021	General Lien / Cargo Hold implemented for unpaid overdue balance. Containers held = 153
10/1/2021	Partial Hold Released – 12 Urgent containers released
10/6/2021	Cargo hold removed
11/17/2021	Conference call with ZIM US FI, ZIM Korea AO and Samsung to address invoicing and payments
1/10/2022	General Lien / Cargo Hold implemented for unpaid overdue balance.
2/15/2022	Communication with Samsung regarding consignee listed on bills of lading for Samsung Electronics
3/15/2022	Partial Hold Released – 39 Urgent containers released
3/17/2022	Cargo hold removed
4/21/2022	Communication to Samsung regarding past due, warning of cargo hold
7/18/2022	Cargo hold implemented

RX 172.

125. On October 5, 2022, Mark E. Newcomb, Vice President and General Counsel for ZIM, responded to Michael Rapske of SEA’s September 23, 2022, letter, with a copy to Nissim YOCHAI, President of ZIM and Dan Sutton, Senior Vice President of ZIM, stating:

Mr. Rapske:

We have received your September 23 letter demanding action with respect to “*more than five million dollars (\$5,000,000)*” in Demurrage, Detention, Handling and / or Storage charges (“Fees”) you allege were wrongfully assessed against Samsung Electronics America, Inc. from calendar year to 2020 to the present. While you cite to circumstances including imposition of charges for inland transportation when cargoes were manifested for

“Door Delivery,” failure “to provide adequate billing information and / or invoices relating to the Fees that would have allowed Samsung to meaningfully understand the Fees,” failure “to provide adequate means to dispute such Fees,” and made demand for “immediate [...] refund of all such fees paid by Samsung,” you have provided little in the way of specifics to support Samsung’s claim.

In order to properly review Samsung’s claim and provide a reasoned response, we ask that you forward a detailed explanation and calculation of the amount claimed, including:

- (1) identification of the ZIM invoice numbers and dates subject to your claim;
- (2) to document relating to any Dispute filed with ZIM by Samsung;
- (3) details of communications through which ZIM “repeatedly rejected any attempt by Samsung to discuss [these matters] with ZIM’s billing coordinators.”

To be sure, ZIM values its long-standing business relationship and prefers to reach an amicable resolution of Samsung’s claim on mutually acceptable terms. We will endeavor to provide a detailed response as soon as possible after receipt of the foregoing.

Should you have any questions or wish to discuss these matters, please do not hesitate to contact me.

RX 21-22.

D. Customer Nominated Truckers

126. SEA nominated preferred truckers, referred to as customer nominated truckers, to be used by ZIM in moving SEA’s containers. ZIM PFF ¶ 47; SEA RPF ¶ 47; CX 2112; CX 2232; CX 2346.
127. SEA nominated its CNTs based on their capacity and ability to deliver cargo for SEA. CX 2112; CX 2232; CX 2345-46.
128. “Prepull and/or Storage” results from an interim move in which a container is removed from the terminal facility in order to avoid or minimize demurrage charges and stored elsewhere until it is actually delivered to its final destination. ZIM PFF ¶ 82; SEA RPF ¶ 82; Smith Rep. ¶ 29, CX 5799-802.
129. Yard storage also results from an interim move before a final delivery to a warehouse or customer location, and the trucker charges a fee for storing the container at its yard rather than at a terminal. ZIM PFF ¶ 82; SEA RPF ¶ 82; Smith Rep. ¶ 29, CX 5799-5802.

130. SEA would normally be responsible for prepull, storage, or yard storage charges resulting from it or its customer's facility's inability to take delivery of a shipment, and not attributable to ZIM. CX 2250-51.

131. There were some occasions when SEA's warehouses were unable to take delivery of SEA's containers at the pre-arranged times. See, e.g., email from Stacie Payton from ZIM DSG to Maria Fernando and other SEA and CNT staff, dated May 12, 2019, stating:

The warehouse double booked the 10a slot for today. The warehouse will accept the 10a appt at 12, however the 2nd cntr will be rescheduled per below. Detention will incur on the 1st cntr and pre-pull and yard storage will be due for the 2nd cntr as today is the LFD. If the 2nd cntr is not approved for pre-pull & yard storage, demurrage charges will be due for 05/23 & 05/24. Urgently advise how to proceed.

I have also attached the BBY portal schedule for the below cntrs.

ZINU811996-0 was scheduled for 05/22 @ 10am- Will offload @12pm as they refusing to offload 2nd box @ 10am-detention will applicable.

ZCSU870091-0 was scheduled for 05/22@12pm-Rescheduled for 5/24 pre-pull on LFD 05/22, \$50 yard storage/per day + \$150 pre-pull charges applicable

RX 1582; *see also* RX 1530-31 (email titled "CHICAGO (CN-HARVEY), IL ROMEOVILLE, IL/// Urgent Request !!!!!!! LFD 9/28", dated September 28, 2020, from Sandra Morales, ZIM Import Logistics Coordinator to Samsung and UPS staff, stating: "Containers are scheduled to warehouse availability. Kiswani advised they could deliver today but warehouse scheduled for tomorrow. The LFD is today 9/28. Carrier can pre-pull for \$200+50.00 per BL. Please advise how to proceed."); CX 2250-51.

132. When reviewing invoices, SEA's employees checked the rates, the container numbers, the in gate/out gate dates, and last free day. CX 2340; CX 2427-28; CX 2439. The evidence shows regular requests by SEA for the LFD (last free day) and requests to pre-pull containers – moving them to less expensive storage – to avoid higher D&D charges. CX 2097-98 ("Prepulls are when the container would have to gate out to avoid demurrage or rail storage"); CX 2622 and CX 2731 (email from Maria Fernando dated July 12, 2021, stating: "I need you to minimize all the demurrage and dwelling of our cargoes[.] I can't afford to keep paying for the demurrages"); CX 7415-16.

133. A February 24, 2021, internal ZIM email "cautioned about the high risk of accepting non-preferred door moves given the high cost volatility, particularly to demurrage/storage." CX 2790. Moshe Shpitzer, ZIM's corporate representative, testified that in preferred trucker moves, demurrage and detention were similar to CY moves, with "cover for any additional cost by the customer" and ZIM is "covered against price changes and service failure." CX 5211-13. Barbara Speight explained how ZIM treated house and preferred trucker availability issues differently:

Q. Okay. What would be an example of ZIM trucker availability in this sense?

A. It's a ZIM house truck. So there's no preferred trucker involved. We've dispatched from a work order. We need them to pick cargo up, and they say we don't have the availability to pick this cargo up until X date, which I assume would be after the free time.

Q. Okay. In that scenario, that is ZIM's responsibility for resulting charges; is that correct?

A. Correct.

Q. If Samsung with its preferred trucker issues a work order at exactly the same time in exactly the same way and that preferred trucker has precisely the same lack of availability as a house trucker, that's – the resulting charges, it's ZIM's position, or the consignees responsibility; is that correct?

A. Correct.

Q. Okay. From a -- what is the difference between those situations other than hiring of the preferred -- excuse me -- the designation of a preferred trucker; is that the only difference?

A. The difference is that, if it's a ZIM house trucker that has no availability, we have the ability to find a trucker that can deliver it sooner.

Q. Does ZIM not have that availability with respect to a preferred trucker arrangement?

A. No.

Q. Why is that?

A. Because the customer has stated, that's the only customer that can deliver their cargo.

CX 2925-26.

134. The charges reflected in the damages report by SEA's expert witness, Mr. Smith, include demurrage, detention, prepull, storage and yard storage charges that were attributable to SEA because its facilities were unable to take delivery of the shipments. CX 5931-44; CX 2251.
135. Under Samsung's RFQ, ZIM is "required to provide local delivery service with consignee's preferred trucker if any." RX 663; RX 945; RX 1870; RX 1939. For example, an email from SEA's Maria Fernando, dated March 6, 2020, to Stacie Payton from ZIM

DSG, states: “We have a CNT for Shippensburg which is Harvest[.] I need these loads to be dispatched to Harvest[.] Please cancel the house trucker and send it to Harvest because this is Lowe’s (drop and hook).” RX 967. Stacie Payton responded on March 6, 2020, “Harvest was approved today as the preferred trucker. Note, ZIM will not be responsible for additional charges for cancelling work orders late and reassigning a different trucker. Kindly confirm you would like to proceed.” RX 967.

136. ZIM had the authority to reject a CNT and did not always accept SEA’s CNT. *See, e.g.*, RX 1555-56 (email from Jaehwan Lee from SEA to ZIM DSG, dated July 24, 2020, inquiring “Who rejected PBI? What is the reasons? Does ZIM have a PREFERRED TRUCKER List for Samsung?” and response from Stacie Payton from ZIM DSG, stating “ZIM and the account holder rejected PBI as the rate was too high.”); RX 1558-59 (email dated July 23, 2020, from Sooyong Choi from SEA to Stacie Payton from ZIM DSG, stating: “I just found the work orders have been sent to the below carrier that I’ve never seen before. These following containers should be handled by PBI which is a nominated trucker by Samsung. Please advise us the reason why Kiswani has been dispatched and where these containers are currently located in” Stacy Payton responding: “I wasn’t aware this lane has a nominated trucker. I will request with my Inland team. For the below shipments, they should arrive tomorrow and one cntr on Monday. It is too late to get PBI as the trucker for these cntr and will remain with Kiswani. I will advise if PBI is rejected or approved.” RX 1558. On July 24, 2020, Stacie Payton advised: “PBI is rejected to be the preferred trucker. Shipments will remain with house trucker.” RX 1556); RX 1296 (Maria Fernando of SEA seeking approval from ZIM to assign loads to PBI); RX 1288 (Stacie Payton at ZIM DSG reassigning the loads to PBI); RX 1172-75 (Stacie Payton of ZIM DSG advising SEA that Southern Companies was rejected as preferred trucker due to its rates.).
137. ZIM and SEA understood that when ZIM uses a house trucker, SEA would not be responsible for any costs resulting from the trucker’s fault. For example, an email dated July 27, 2020, from Sooyong Choi from SEA followed up on Stacie Payton from ZIM DSG’s email, stating:

If ZIM and the account holder rejected PBI which is a nominated trucker and decided to use house truckers, the house truckers dispatched has to get the following containers delivered on time without any extra charges and live unload will be required to avoid any detention. Or They have to notify Samsung in advance what cause the unexpected costs and why Samsung has to pay

RX 1555; *see also* RX 967 (Stacie Payton from ZIM DSG stating to Maria Fernando from SEA on March 6, 2020, “Harvest was approved today as the preferred trucker. Note, ZIM will not be responsible for additional charges for cancelling work orders late and reassigning a different trucker. Kindly confirm you would like to proceed.”).

138. On July 28, 2020, Stacie Payton from ZIM DSG responded: “ZIM will cover the cost of storage for these cntrs. I have asked the trucker to reschedule the cntrs for later today, please advise the warehouse to accept today.” RX 914.

139. SEA sometimes failed to timely respond to requests for action needed for the processing of SEA's containers and requests to pay demurrage and detention charges on its containers. *See, e.g.*, RX 1023-125 (SEA repeatedly ignoring emails from ZIM regarding approval of pre-pull and storage plans for of its container); RX 1097-1100 (SEA failing to timely provide information needed for warehouse appointment); RX 1963-68 (SEA failing to respond to multiple emails from ZIM and CNTs to confirm accrued charges prior to pick up of its containers); RX 1688-1714 (ZIM DSG's repeated emails advising SEA that approval for pre-pull and storage charges was needed to proceed with delivery, for example, stating to Maria Fernando on May 27, 2021: "Please advise on the previous emails, this is my 4th email." RX 1708; on June 1, 2021, "Additional charges have accrued on this shipment as pre-pull & storage were not approved. Please advise how to proceed." RX 1692. On June 3, 2021, Maria Fernando finally responded, solely stating: "Approved." RX 1688); RX 1532-37 (emails titled "*****PLEASE RESPOND-5TH MESSAGE** URGENT**TCNU564577-5 COPPELL, TX ZIMUSEL200234679 *Samsung* ***DETENTION***" from ZIM DSG to SEA starting November 12, 2021, to December 8, 2021, repeatedly asking SEA to approve payment for accrued detention charges on SEA's container).
140. On November 19, 2021, ZIM DSG followed up with SEA: "Can I get you to approve detention fee? I sent several emails, but to date I have not received a response. Please assist." RX 1535.
141. On November 23, 2021, ZIM DSG again followed up with SEA: "Please approve the below detention charges that occurred at the warehouse. POD sent an initial email. If no approval by the end of the day, I will proceed with invoicing and sending copy to ADCINvoice. I will also cc in my collections rep to make the rep aware, I did contact Samsung numerous times with no response. I hope to hear from you soon." RX 1535.
142. On December 8, 2021, ZIM DSG also followed up with SEA staff, stating: "Please urgently approve. I do not want Samsung placed on credit hold due to no approval." RX 1533.
143. On December 13, 2021, ZIM DSG again followed up its other emails, stating to SEA staff: "Detention approval is pending since 11/12. I have invoiced charge, per initial email. Please see attached invoice and remit payment accordingly." RX 1533; RX 1385-1462 (outstanding per diem on SEA shipments not paid despite repeated messages from AV Logistics, SEA's CNT, in which SEA was copied, from May 5, 2020, to July 20, 2020, indicating that truckers were in danger of being shut out by ZIM for failure to pay the charges. Although the emails were not directly written to SEA, it was copied as a recipient in the emails and the per diem was owed on SEA shipments. SEA did not intervene until July 17, 2020, when AV Logistics indicated that ZIM had shut out one of its truckers. RX 1389); RX 1195-97 (emails from XPO Logistics to SEA from April 1, 2020, to April 21, 2020, repeatedly requesting approval of prepull and storage charges for SEA containers to avoid accrual of per diem.); RX 1138-60 (emails beginning June 6, 2022, from Knight Transportation to SEA repeatedly requesting it to pay outstanding port charges and demurrage to secure release of SEA's containers for transportation, with SEA finally

responding on June 28, 2022, and further email communications from Knight Transportation indicating demurrage charges still outstanding as of July 8, 2022.).

144. There were occasions when SEA disputed the ZIM charges as improper. *See, e.g.*, RX 1252-54 (Maria Fernando disputing demurrage for TCKU4650617 asserting that error resulting in delay of pick up was due to fault by ZIM/UPS and the trucker, Harvest, not by SEA); RX 1052 (Maria Fernando indicating that charges accrued because ZIM rejected SEA’s preferred trucker at the last minute); RX 839-40 (Disputing ZIM invoices as not reflecting the correct free time. ZIM conceded that the invoices were incorrect and stated that it would clear the charges and deliver the affected shipments.); RX 685-94 (SEA disputing the charges on the basis that ZIM did not advise it of the last free day for the containers at issue).
145. On October 27, 2022, Sondra Reetz of ZIM sent an email titled “Samsung Disputes” to Yacoub Yacoub of ZIM and various ZIM staff, stating:

The below disputes for SAMSUNG ELECTRONICS AMERICA – (USSMSUN)-from current to 2020. I have attached what we have from the dispute system from the customer.

There are 11 Disputes on record through the UDM system:

Perdiem-2
 Freight-2
 Import Demurrage – 7 (Customer Service)

Case ID	Bill of Lading	Reason for dispute	Type of dispute	Creation date
100023280	ZIMUSIN8424572	No Available Appointments	Per diem	3.5.2022
100022504	ZIMUSEL200238493 / ZIMUSEL200238122	Free Time	Per diem	4.03.2022
100020828	ZIMUSEL709337	Duplicate Billing	Import Demurrage	2.24.2022
100019029	DSAV1730237424, DSAV1730237426, DSAV1730237427, DSAV1730237430, DSAV1730237432, DSAV1730237434, DSAV1730237435	Incorrect Free Time	Import Demurrage	1.4.2022
100018376	ZIMUSEL7066683	Free Time	Import Demurrage	8.12.2021
100016935	DSAV1730161416, DSAV1730161415, DSAV1730161414, DSAV1730120921	Incorrect Free Time	Import Demurrage	9.30.2021

100016931	ZIMUSNH1314631	Duplicate Billing	Import Demurrage	9.30.2021
100016930	ZIMUSEL7077922	Duplicate Billing	Import Demurrage	9.30.2021
10014182	ZIMUSEL200213301	Free Time	Import Demurrage	2.15.2021
100011455	ZIMUSNH20112746, ZIMUSNH20112752, ZIMUSNH20112748, ZIMUSNH20112749	Incorrect Rate	Freight	3.23.2020
100011454	Zimusnh20109694, Zimusnh20109695, Zimusnh20109698 and Zimusnh20109669	Incorrect Rate	Freight	3.23.2020

RX 148-49.

146. SEA issued delivery instructions directly to truckers. *See, e.g.*, RX 1247 (Annece Steward of ZIM Dispatch stating to SEA’s CNT, PBI: “Customer should be sending appts directly to you as you are their preferred [trucker].”). *See also* RX 1977-78 (email dated March 4, 2021, subject: “Lowe’s TOBYHANNA-RDD 02.20/21-ZIM-NY Port ♦ NEW RDD WINDOW -2(Earlier)/+5 CALENDAR DAY based from RDD Date,” Maria Fernando from SEA issuing PO to trucker, Harvest, and giving it delivery instructions for pulling and delivering SEA containers); RX 1755-59 (Maria Fernando issuing delivery instructions to XPO Logistics); RX 1743-46 (Maria Fernando issuing delivery instructions to truckers, including CNT AV Logistics); RX 1684 (Maria Fernando issuing delivery instructions to PBI a CNT); RX 1680-82 (Maria Fernando issuing delivery instructions to CPG a trucker); RX 1618-19 (SEA instructing PBI to deliver 40 containers “asap” to Coppell warehouse the same week to avoid detention charges); RX 1260 (Maria Fernando issuing delivery instructions to Harvest).
147. There were occasions when the demurrage charges accrued due to the trucker’s failure to pick up SEA’s containers prior to the last free day because they were not timely provided delivery orders. *See, e.g.*, RX 1967-76.
148. On March 15, 2021, Stacie Payton from ZIM DSG sent an email to Maria Fernando of SEA, with Samsung and Harvest staff included, following up on the March 4, 2021 email titled “Lowe’s TOBYHANNA-RDD 02.20/21-ZIM-NY Port ♦ NEW RDD WINDOW - 2(Earlier)/+5 CALENDAR DAY based from RD Date,” stating: “Cnts have discharged and are still pending delivery orders.” RX 1976.
149. On March 15, 2021, Maria Fernando responded and included UPS staff, inquiring: “UPS, Please advise the DO for the below loads[.] These were discharged already[.] Please advise[.] Thank you[.]” RX 1975.
150. On March 15, 2021, Beverly Kansas, Supervisor for UPS Supply Chain Solutions responded, emailed Jose Jimenez of UPS Customs Brokerage: “Hi Jose, Please advise on

the delivery orders for the below ASAP.” RX 1975. Jose Jimenez responded the same day: “Please see attached.” RX 1974. Stacie Payton of ZIM DSG responded the same day: “Thanks Jose, Please send to my delivery order team, us.do@zim.com.” RX 1973.

151. On March 18, 2021, Stacie Payton of ZIM DSG followed up with Maria Fernando of SEA, and various Samsung, UPS and Harvest staff on the above emails titled “Lowe’s TOBYHANNA-RDD 02.20/21-ZIM-NY Port ♦ NEW RDD WINDOW -2(Earlier)/+5 CALENDAR DAY based from RD Date,” stating: “Due to late delivery orders, the below cntrs are in port demurrage. Please clear storage through 03/24. Harvest – IMS advised 03/24, confirm if correct.” RX 1972 (listing 14 containers).
152. On March 18, 2021, Beverly Kansas from UPS responded to the group: “Delivery orders were sent on the 15th. If they are not taking delivery till the 24th, storage is not due to late delivery orders.” RX 1971.
153. On March 19, 2021, Stacie Payton of ZIM responded:

Cntrs were discharged on 03/11, delivery orders provided four days later on 03/15, LFD 03/17. This lane is with preferred trucker and they have requested to have storage cleared through 03/24. If this is not correct, please correspond with Harvest concerning alternate delivery plans, then clear port demurrage directly with terminal. Also see below screenshot of A/N showing an important note. This note is listed on all door moves A/N

RX 1969-70 (Screen shot not included). Referenced “Important Note” stating: “For all door moves delivery instructions will need to be received by ZIM at us.do@zim.com. If you have not done so, please send them to us immediately so there is no delay in the delivery of your cargo. ZIM will not be responsible for any charges incurred due to lack of delivery instructions or late receipt.”).

154. On March 19, 2021, Beverly Kansas from UPS Supply Chain Solutions emailed Maria Fernando from SEA, with the group included, stating: “Trucker not picking up freight till 3/24. UPS will be responsible for it.” RX 1968.
155. On March 19, 2021, Jeff Song of Harvest states to UPS, Samsung and Harvest staff:

The W/O sent to us yesterday after pass LFD and we have a lot of backlog due to chassis shortage and slow devanning at Tobyhanna[.] The maximum delivery per day is less than 5 containers and accumulating ton of pre-pull/storage. We are also maxed out storage capacity[.] We may start to PU from 3/23 or 3/24

RX 1968.

156. There were occasions when demurrage accrued because CNTs failed to timely pick up containers, asserting inability due to the logistical challenges experienced by the industry. See RX 1968 (CNT asserting it was unable to pick up containers partly because of “backlog due to chassis shortage”); RX 1952, RX 1955-57 (CNT asserting demurrage

“due to industry conditions.”). *See also* RX 1663-67 (Southern Cartage disclaimer in an email dated November 30, 2021, that: “Due to the current port congestion, chassis shortage, vessel delays, limited terminal appointments, and limited empty return locations, we are unable to guarantee pick-up before the last free day and empty return before per diem begins. Southern Cartage will not be responsible for any demurrage, per diem, and other accessorial charges that may occur.”)

157. On September 12, 2021, Southern Cartage advised Maria Fernando: “Please note that demurrage will need to be cleared for the below units as we were not able to grab these today ZCSU7259992 [and] ZCSU8729410.” RX 1664; RX 1255 (Trucker Harvest unable to pick up load due to lack of chassis availability); RX 834 (AV Logistics asserting to SEA: “The circumstances in the industry are beyond the control of AV Logistics therefore we will not be responsible for demurrage and other related charges. The epic surge that began in August continues today and the holidays are bringing increased limitations within the industry. We are doing everything we can to limit the exposure to additional costs.”); RX 824 (AV Logistics stating to SEA: “Please see below demurrage amounts Av has cleared on behalf of Samsung (that are completed) and confirm approved. Causes are due to the industry conditions.”).
158. There were occasions when the CNT refused to deliver until SEA provided a payment plan for containers pending delivery. *See, e.g.*, RX 1627-32 (email from PBI to SEA titled “(ZIM) BAYPORT to COPPELL/40 cntr’s – not available,” dated March 18, 2022, stating: “According to our top management instructions, the 10 containers below will be prepulled. But, please note that the delivery schedule will be planned after receiving the payment plan,” and that “In order to prepull additional containers next week, RST for containers past Port LFD must be paid.”).
159. Some of the ZIM charges originated because containers could not be timely pulled because of outstanding demurrage owed to the port. *See, e.g.*, RX 1576-82 (demurrage charges accrued because warehouse was unable to take delivery of SEA’s containers, which then resulted in demurrage from Baltimore port and ZIM because the containers exceeded their free time); RX 1306-35 (demurrage imposed by port in Jacksonville, FL and Savannah, GA); RX 1162-68 (port demurrage at Jacksonville); RX 1151 (Knight Transportation advising SEA: “I am just following up on this. We did not pull from port due to TMF and CTF still due. There is now demurrage due on this. Please advise once these fees are cleared so I can reschedule this pick up appointment).

E. Reparatons

160. Starting in 2020, and with increased frequency in 2021 and 2022, ZIM heavily billed SEA for D&D charges on ZIM shipments. SEA PFF at ¶ 77; ZIM RPPF at ¶ 77; CX 5816-944.
161. For 2020, SEA incurred less than \$10,000 in demurrage, but it incurred \$1.2 million in just the first quarter of 2021. SEA PFF at ¶ 78; ZIM RPPF at ¶ 78; CX 5816-944.

162. During the pandemic, the container shipping industry was affected by various issues such as chassis shortages, trucker shortages, inclement weather, and port and terminal congestion. SEA PFF at ¶ 314; ZIM RPF at ¶ 314.
163. “Ports across the United States continued to face a variety of headwinds throughout the first half of 2022—from elevated dwell times for cargo ships and landside bottlenecks to chassis shortages.” CX 8282-83 (Jason Price, *U.S. 2022 Ports Update*, Cushman & Wakefield); SEA PFF at ¶ 315; ZIM RPF at ¶ 315.
164. These industry-wide issues led to SEA having to build out capacity to receive cargo at the port or container yard and manage the inland transportation itself, and to develop new infrastructure including off-dock storage facilities and processes for contracting for the movement of containers to their ultimate destinations. SEA PFF at ¶¶ 316-317; ZIM RPF at ¶¶ 316-317; Complaint ¶ 22 (internal quotation marks omitted).
165. There are instances where SEA would be responsible for demurrage or detention charges for inland moves, including when SEA’s customer was not able to take delivery before the last free day or where customs clearance is delayed. CX 2248-51; CX 2247 (customs clearance).
166. ZIM charged Samsung for demurrage and detention 9,984 times on 2,980 containers between July 2019 and December 2022. ZIM PFF ¶ 95; SEA RPF ¶ 95; CX 6503, Zayas Rep. ¶ 9.
167. The ZIM charges were characterized as inland transportation charges consisting of demurrage, detention, rail storage, prepull and/or storage, yard storage, driver detention, and others. ZIM PFF ¶ 96; SEA RPF ¶ 96; CX 5932-44.
168. SEA included charges that were paid to parties such as CNTs and other logistics providers in its alleged damages. ZIM PFF ¶ 97; SEA RPF ¶ 97.
169. SEA approved some of the detention and demurrage charges for which it seeks reparations. ZIM PFF at ¶ 22, SEA RPF at ¶ 22; *see, e.g.*, RX 682 (Maria Fernando email to ZIM DSG dated February 4, 2021, stating: “Per our conversation with Barbara [Speight from ZIM], I asked her to cleared until 02.02 only[.] Please send the invoice to SAMSUNG from 02.03 to 02.08, kindly advise the amount and we will approve it[.] It is not ZIM’s responsibility after that since the appt was provided for 02.09”); RX 1688-1714 (Maria Fernando approving charges accrued due to failure to timely transmit pre-pull and storage charge approval); RX 1308 (Maria Fernando approving demurrage charges accrued because of outstanding charges owed to ports in Jacksonville, FL and Savannah, GA); RX 973 (approving invoices).
170. If a CNT has been asked to move a SEA shipment and does not have the capacity to handle it, or if a chassis shortage arises, under store-door moves, ZIM has the responsibility to procure another trucker to deliver the loads and does not need approval from SEA to do so. SEA PFF at ¶ 40; ZIM RPF at ¶ 40; RX 1794; RX 1821-22; RX 1857; RX 1885, and RX 1925 (at Section 12a of each contract).

171. In a series of emails in February 2018, SEA and ZIM discuss containers that were not picked up because the CNT's rate was not approved by ZIM, causing delays. Ultimately, ZIM's house trucker, AV, pre-pulled the containers as the CNTs who had access to the customer's appointments' portal were all booked. SEA concludes by stating:

You're not getting the point. The point is that the REJECTION was LAST MINUTE from ZIM's end. Which is not anybody's fault except ZIM line. ZIM inland rates should have negotiated for a long time before the loads come in to avoid any delay or issues. This simple rule.

Samsung will cover the charges until today only as below only. Actually, we should NOT be paying this but I need my loads to be out today. All the demurrage after today will be covered by ZIM. I need these loads to be out today and I will not going to approve any additional demurrage. AV is not my CNT right now, you have all the control with them, anything that will be with ZIM.

RX 1052-53.

172. SEA required ZIM to send its invoices to different SEA offices to obtain multiple approvals from the different offices in order for SEA to pay the invoices. CX 7208, 7218-19, 7226-27. Ms. Fernando testified:

Q. So I want to understand what you're saying here. Does paragraph number 2 concern invoices that have been approved by you?

A. I'm sorry?

Q. My question is, in paragraph number 2, you're telling her how to handle invoices that have been approved by your team; is that right?

A. Is that the number 2?

Q. Number 2. Where it says, follow up with accounting. All the payment status because SEA logistics is only verifying and validating the amount for approval, but accounting pays the charges.

A. Yes. I'm telling her what is the next step after the review.

Q. Okay. So if you, your team, has approved an invoice and it remains unpaid, what you're telling Adrienne Martin is ZIM has got to go to accounting to press for payment. Is that a correct summary of what is being said here?

A. Not press, but just follow up about the payment.

CX 2444-45. *See also* CX 7248-49 (SEA requiring ZIM to send PDF copies of SEA approved invoices to additional SEA office to obtain payment of approved invoices).

173. In her deposition, Ms. Fernando stated as follows, regarding SEA invoices claimed to be sent to the wrong SEA department:

Q. Okay. And what do you mean by, we don't review any invoices that don't belong to our team?

A. It means, if the load - - if the invoice doesn't belong to direct ship team, we don't review it.

Q. If you have an invoice that doesn't belong to the direct ship team, do you send it to the team that should be dealing with it?

A. You mean within Samsung?

Q. Yes.

A. No.

Q. Why not?

A. Because this is not my task. It should be ZIM's task to know where to send all the correct invoices.

Q. So if an invoice that you believe should be dealt with by the inbound team gets sent to you, you don't forward it to the inbound team?

A. I don't because we giving - - we told already to the steamship line or ZIM to whom they need to send all the invoices that we need to review. We provided them the guidance and the email addresses. Now it's for ZIM to follow that or send those information to those correct addresses.

Q. All right. Well, the - - let see. It's one two - - the third paragraph, it says, if you will check your summary, these are different subsidiaries invoices. Please reach out to sales team to assist you to find the correct department. First of all, whose sales team are you referring to? Is the ZIM sales team, or somebody else?

A. ZIM sales team.

Q. So if you receive an invoice, the direct ship team receives an invoice and its not theirs, it belongs to a different team within SEA, you don't forward it. You just return it to ZIM and tell them to return it to the correct department?

A. If they send us an invoice that it's SEA, but it's not under my department, we inform ZIM that it is not direct ship. So now once they receive that one, it's their job to send those information to the correct department.

Q. Do you tell them what the correct department is?

A. No.

CX 2442-44.

174. Samsung and SEA are included in the list of companies ZIM describes as Strategic Accounts (“SA”). CX 4748; CX 5717.
175. On December 7, 2021, Yael D’Angeli, ZIM Head of Strategic Accounts, sent an email titled “Fwd: SA overdues issues and resolutions” to Ilana Rosenberg from ZIM, with Dotan Saar of ZIM copied, stating: “Further to our call and also my short conversation with Saar, pls see the feedback from our team. Appreciate if you and your team can look at our suggestions.” CX 7377.
176. An email sent by Savannah Carmack of ZIM to Yael D’Angeli, also on December 7, 2021, and similarly titled “SA overdues issues and resolutions,” stated:

The SAMs in the US are spending on average 25% of their time on collections issues with SA customers.

Issues:

- Collectors not researching actual root cause of past dues or disputes received by customer. SAMs are having to chase customers for information that Finance should be collecting themselves. For example, LF Freight (see attached).
- Placing credit holds without notifying customers. For example, Trane and K&N. Trane placed on credit hold for Zim errors. K&N placed on credit hold before confirming with a second remittance was received as stated by customer (see attached)
- Invoices continuously being sent to wrong address even though it has been addressed previously. For example, Hecny (see attached).
- Action items from bi-weekly meeting not being following up on. Also, meeting summaries not being sent by Finance.
- Major delays or no response at all from Finance when requesting additional information about past dues and remittances received by customers. (See Trane & DHL examples attached.)
- Invoicing old per diem that cannot be collected from customer. For example, Electrolux being invoiced \$298k for old per diem charges (see attached).

Solutions:

- Collectors research and understand root cause of customer’s past dues as well as any disputes received from customers. It should be the collectors responsibility to do all of the research on the account before approaching sales. For example, as Babara D. did in the attached FMS e-mail. This is what we should be receiving for each account.

- Provide an agenda before each bi-weekly meeting.
- Action items from each bi-weekly meeting followed up on by end of week.
- Better overall communication from Finance.

CX 7377-78.

177. On January 4, 2022, May Marina from ZIM sent an email to certain ZIM staff, including Yael D'Angeli titled "CEO Summary-Accounts Receivables 4.01.22," stating:

Please find hereunder the CEO summary and actions items of the meeting in subject.

1. **Tal** – schedule a special meeting on SA overdue in 3 weeks. Yael – prepare and show the trend, present immediate already reached significant improvement in overdue, present the planned long-term solution.
2. **In case there won't be significant improvement in SA overdue in 3 weeks – stop the service for SA with overdue**
– **Yair/Yael** and all **BU managers**.
3. **Assaf and Eyal** will support SA efforts to improve collection / reduce the overdue and improve the processes.
4. Meeting on US overdue on Thursday- **Tal** to add Assaf and Eyal.
5. Guy – monitor the trend closely.
6. **Tal** – after the meeting on SA in 3 weeks, make bi-weekly meetings on accounts receivable.

CX 7380-81.

178. On January 4, 2022, D'Angeli Yael sent an email to various ZIM staff titled "SA Overdue slides December 2021.pptx." The email stated:

Team,

Following a meeting with our CEO regarding SA Overdues, mainly in US, the CEO instructed us clearly to reduce dramatically the overdues within 3 weeks.

Otherwise, he will stop the service to SA with overdues.

Though we are working on automated solutions, he expects us to work in a manual way in parallel to fix current dues ASAP.

I am asking you to please instruct your team to prioritize our team's requests for info/meetings/invoices to be sent to customers/disputes to be solved!

We will reach out case by case and handle each case together with you and your teams!

Its our mutual target to make this happen!

CX 7380.

179. A March 2022 ZIM presentation labeled "USA Overdue Review" indicates that the "main areas causing continues overdue" include billing related issues, D&D – delay in billing and technical (vessel delay). CX 5711, CX 5715. SEA is listed as one of a number of overdue strategic accounts. CX 5717. The demurrage and detention slide states:

Late / delayed demurrage and detention billing in Oct '21 – Mar '22 – \$95M \$65M (68.4%) COLLECTED

- Invoices are billed in delay of between 6 months and few years.
- Extremely challenging collection. High volume of disputes and requests for waivers and discounts
- Customer complaints including FMC, UIIA filings and threat of legal action

CX 5718.

180. An email from Kevin Ware of ZIM on September 14, 2022, to the ZIM waiver committee, regarding a demurrage waiver request for a non-Samsung entity stated that he wanted the committee to take note of the port involved "due to the huge difference and profit we have made off this demurrage," and noting that he "was advised that ZIM billed [the customer] \$947,350 ... of demurrage when the port only billed ZIM \$371,421" and that the customer was "speaking with the FMC." CX 5721-22; ZIM RPF at ¶¶ 230-33.
181. On September 28, 2022, Kevin Ware followed up with ZIM staff on his September 14th email, including Ilana Rosenberg, asking for an update. CX 5720-21. On September 28, 2022, Ilana Rosenberg responded, in part, that ZIM "cost is a confidential data, and should not be exposed to or used by sales or any party outside of operation and finance (I can only hope this type of discussion is not taking place with the customer)." CX 5720; ZIM RPF at ¶ 234.
182. ZIM would charge demurrage to SEA for containers on store-door moves whose inland transportation was provided by ZIM's in-house, even if SEA's customer lacked capacity to receive the cargo and the free time for the cargo expired prior to the completion of the delivery to the SEA customer. SEA PFF at ¶ 200; ZIM RPF at ¶ 200; CX 4591.
183. ZIM waived, refunded, or offered to waive demurrage and detention charges relating to Samsung shipments when they believed doing so was warranted. CX 2920 ("we had a large number of shipments that we basically fully discounted"); CX 3045 (discounting due to Zim trucker availability); RX 838 ("I have reviewed your dispute and agree with your

findings. I have cancelled the below [per diem] invoices”); RX 914 (ZIM covered storage for house trucker delays); RX 5 and CX 3278-79 (special negotiation in December 2022 estimating a significant waiver of D&D for SEA).

III. ANALYSIS AND CONCLUSIONS OF LAW

A. Preliminary Issues

1. Jurisdiction

The Shipping Act provides that a “person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part.” 46 U.S.C. § 41301(a). Pursuant to this provision, the Commission has jurisdiction over a complaint alleging that a respondent committed an act prohibited by the Shipping Act. *See Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, Docket No. 02-04, 30 S.R.R. 991, 2006 WL 2007808, at *10-11 (FMC May 10, 2006) (the Commission is obligated to hear allegations particular to the Shipping Act, even where the complainant has already obtained an arbitration award for related breach of contract claims); *see also Cargo One, Inc. v. COSCO Container Lines Co.*, Docket No. 99-24, 28 S.R.R. 1635, 1645, 2000 WL 1648961, at *15 (FMC Oct. 31, 2000) (the Commission must address allegations of violations of the Shipping Act, which are within its exclusive jurisdiction; no common law remedy exists for such violations). The Commission has an obligation to address Shipping Act claims, even if the relevant facts may also give rise to other claims between the parties. *MCS Industries, Inc. v. Mediterranean Shipping Company S.A.*, Docket No. 21-05, 2024 WL 95383, at *7 (FMC Jan. 3, 2024) (Shipping Act claims are distinct from breach of contract claims, entailing a different analysis of statutory standards that includes review of the carrier’s broader practices beyond those directly affecting the complainant).

2. Burden of Proof

To prevail in a proceeding to enforce the Shipping Act, a complainant bears the burden of proving their allegations by a preponderance of the evidence. 5 U.S.C. § 556(d); 46 C.F.R. § 502.203; *Maher Terminals, LLC v. Port Auth. of N.Y. & N.J.*, FMC Docket No. 08-03, 2014 WL 9966245, at *14 (FMC Dec. 17, 2014). Under the preponderance standard, a complainant must show that their allegations are more probable than not. *Crocus Investments, LLC v. Marine Transport Logistics, Inc.*, Docket No. 15-04, 2021 WL 3732849, at *3-4 (FMC Aug. 18, 2021) (Order Affirming Initial Decision on Remand). 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.*, Docket No. 93-15, 26 S.R.R. 1173, 1180 (ALJ Dec. 9, 1993), adopted in relevant part, 26 S.R.R. 1424, 1994 WL 279898 (FMC June 13, 1994).

B. Relevant Law

The Shipping Act defines and regulates a number of different types of entities that are involved in the international shipment of goods by water, including common carriers, which are subject to sections 41102(c) and 41104(a) at issue in this proceeding. The Shipping Act defines the term common carrier.

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.

46 U.S.C. § 40102(7).

The statutory definitions are echoed in the Commission’s regulations:

Common carrier means any person holding 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 that:

- (1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and
- (2) Utilizes, 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 C.F.R. § 515.2(e).

In the Ocean Shipping Reform Act of 2022 (“OSRA”), Congress modified some sections of 41104(a). Pub. L. No. 117-146, §7, 136 Stat. 1272, 1274 (2022). The pre- and post-OSRA language is discussed below.

C. Discussion

This section will address the 41102(c) and 41104(a)(14) allegations of unreasonable practices which encompass the vast majority of the parties’ arguments, followed by the 41104(a)(3)/41102(d) allegations of retaliation, then the 41104(a)(10) allegations of refusal to deal, and finally the 41104(a)(15) allegations of invoicing violations. Each section will discuss the legal framework before addressing the necessary elements.

1. Sections 41102(c), 41104(a)(14): Unreasonable Practices

a. Parties’ Arguments

SEA asserts that ZIM violated section 41102(c) because ZIM is an ocean common carrier under the Shipping Act; ZIM’s acts or omissions occurred on a normal, customary, and continuous basis; the practice or regulation relates to or is connected with receiving, handling, storing, or delivering property; ZIM’s practices and regulations are unjust or unreasonable; and the practice or regulation is the proximate cause of the claimed loss. Brief at 23-54.

ZIM contends that its exercise of its lien rights was reasonable; SEA is liable for acts and omission of its CNTs; ZIM's policies and procedures were reasonable; and SEA has failed to demonstrate that ZIM's alleged conduct was the proximate cause of harm. Opposition at 4-35.

In reply, SEA alleges that ZIM's exercise of its lien rights was unreasonable; ZIM was responsible for acts and omissions of all truckers, CNTS or not, used with SEA containers shipped under store-door terms; ZIM's policies and procedures were unreasonable; and SEA has established its losses with reasonable certainty, and demonstrated that ZIM's conduct was the proximate cause of its losses. Reply at 10-65.

b. Relevant Law

Section 41102(c) of the Shipping Act, previously section 10(d)(1), states that a "common carrier, marine terminal operator, 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). On December 17, 2018, after notice and comment, the Commission issued Rule 545.4, specifying the elements of a section 41102(c) claim. Final Rule: Interpretive Rule, Shipping Act of 1984, 83 Fed. Reg. 64478, 64480 (Dec. 17, 2018). Rule 545.4 states:

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.

46 C.F.R. § 545.4.

The Commission provides specific guidance on factors to consider in determining whether demurrage and detention charges violate section 41102(c). Commission Rule 545.5 provides:

- (a) *Purpose.* The purpose of this rule is to provide guidance about how the Commission will interpret 46 U.S.C. 41102(c) and § 545.4(d) in the context of demurrage and detention.
- (b) *Applicability and scope.* This rule applies to practices and regulations relating to demurrage and detention for containerized cargo. For purposes of this rule, the terms demurrage and detention encompass any charges, including "per diem,"

assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries (“regulated entities”) related to the use of marine terminal space (e.g., land) or shipping containers, not including freight charges.

(c) *Incentive principle*—(1) *General*. In assessing the reasonableness of demurrage and detention practices and regulations, the Commission will consider the extent to which demurrage and detention are serving their intended primary purposes as financial incentives to promote freight fluidity.

(2) *Particular applications of incentive principle*—(i) *Cargo availability*. The Commission may consider in the reasonableness analysis the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability for retrieval.

(ii) *Empty container return*. Absent extenuating circumstances, practices and regulations that provide for imposition of detention when it does not serve its incentivizing purposes, such as when empty containers cannot be returned, are likely to be found unreasonable.

(iii) *Notice of cargo availability*. In assessing the reasonableness of demurrage practices and regulations, the Commission may consider whether and how regulated entities provide notice to cargo interests that cargo is available for retrieval. The Commission may consider the type of notice, to whom notice is provided, the format of notice, method of distribution of notice, the timing of notice, and the effect of the notice. . . .

46 C.F.R. § 545.5.

Section 41104(a)(14) was adopted as part of OSRA, and only applies to charges assessed after June 16, 2022. This section states:

(a) IN GENERAL.—A common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not— . . .

(14) assess any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or part 545 of title 46, Code of Federal Regulations (or successor regulations).

46 U.S.C. §§ 41104(a)(14). This section is not discussed separately from the discussion of the section 41102(c) elements.

c. Analysis

To succeed in a claim for reparations alleging a violation of section 41102(c), five elements must be shown. Each is addressed below, including whether: (i) Respondent is a common carrier in connection with these shipments; (ii) the practices at issue relate to or are

connected with the receiving, handling, storing, or delivering of property; (iii) the practices are unjust or unreasonable; (iv) the practices are occurring on a normal, customary, and continuous basis; and (v) proximate cause. The two elements over which there is a significant dispute are the reasonableness and proximate cause elements.

i. Common Carrier

The first element requires that the respondent be an ocean common carrier, marine terminal operator, or ocean transportation intermediary. SEA asserts that “ZIM is a ‘common carrier’ and a vessel operating ‘ocean common carrier’ as defined in 46 U.S.C. § 40102(7) and (18), under the Shipping Act, and is subject to regulation by the FMC.” Brief at 20. ZIM does not contest this element. The evidence establishes that ZIM is an ocean common carrier. Complaint at ¶ 2; Answer at ¶ 2.

The evidence must also show that respondent acted as a common carrier for the shipments at issue, including that it used “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). ZIM transported the SEA shipments under through bills of lading, or sea waybills from the overseas locations through United States ports and on to designated United States inland locations. FOF 21. The SEA data relied on by its expert included the port of entry. CX 6515. The port of entry is particularly useful as it helps establish the FMC’s jurisdiction over the shipments. *TZ SSE Buyer, LLC v. Yang Ming Marine Transport Corp.*, Docket No, 24-10, 2025 WL 1083815, at *13-14 (ALJ March 24, 2025). That information was available to ZIM and its expert. ZIM does not assert that any of the shipments were not within the FMC’s jurisdiction, for example because they were shipped from overseas to a Canadian port or were shipped by air. Therefore, it is more likely than not that the cargo was shipped by water from an overseas port to a United States port. Therefore, this element is met.

ii. Receiving, Handling, Storing, or Delivering Property

SEA asserts that the practices at issue “are directly related to the movement of cargo in ocean shipping and that the “charges at issue arise directly from ZIM’s handling of SEA cargo and providing transportation services.” Brief at 22-23. ZIM does not contest this element. The practices at issue involve the transportation of containers, which were received, handled, and stored prior to delivery. Accordingly, the evidence supports finding that the practices at issue are related to receiving, handling, storing, or delivering property. Therefore, this element is met.

iii. Unjust or Unreasonable Practice

SEA asserts that a number of ZIM’s practices were unjust and unreasonable. While SEA identifies the unreasonable practices in different ways, they can be grouped into three categories: (a) inland transportation, including store-door/carrier haulage and preferred/customer nominated truckers, (b) cargo holds, and (c) billing practices, including invoice accuracy, dispute resolution, and empty container return practices. *See* Brief at 15, 25.

(a) Inland Transportation

SEA's inland transportation arguments that the charges were unreasonable as these shipments were door delivery with carrier haulage are addressed prior to the arguments regarding billing for customer nominated truckers.

(1) Store Door/Carrier Haulage

SEA asserts that ZIM's practices and regulations are unjust or unreasonable because ZIM charged SEA for inland transportation D&D charges, when ZIM was responsible to move the cargo, violating the incentive principle, and ZIM unreasonably shifted its common carrier inland transportation responsibilities – including direct cargo release and payment responsibility for inland demurrage charges – to the consignee SEA. Brief at 23-32.

ZIM contends that its policies and procedures were reasonable; ZIM did not abdicate its common carrier responsibilities for store-door delivery, or shift the responsibility for inland transportation to Samsung; and SEA's arguments with respect to ZIM's policies are inconsistent and without merit. Opposition at 19-20, 25-27.

SEA claims that it relied on ZIM for store-door service to deliver consumer electronics to American consumers. CFFF at III.A. However, SEA is not a signatory or named as an affiliate to any service contract with ZIM. FOF 18. ZIM does not contract directly with SEA, which is a consignee, but rather entered into service contracts with Samsung SDS Global SCL America, Inc. ("Samsung SGSA"), Samsung Electronics Logitech Co., Ltd. ("Logitech"), and other affiliated entities. FOF 10.

SEA alleges that "ZIM has failed to establish that the Service Contracts cited are applicable to the Shipments at issue," ZIM "never authenticated" them, and the "foreign entities have no bearing on this proceeding, and SEA has continued to oppose ZIM's reliance on the purported service contracts." SEA RPPF ¶¶ 41, 52; Reply at 10 n.9, 12. However, SEA has the burden of proof and should be able to provide the service contracts or agreements under which the cargo moved – especially as SEA's claim rests, in part, on the argument that the cargo moved under store-door terms. Even though SEA was a consignee and not a signatory to the agreements, there was extensive discovery and the cargo was shipped by a related entity. SEA's failure to provide any other controlling service contracts suggests that more likely than not, the service contracts provided by ZIM were utilized for these shipments. Even if the service contracts were not considered, the case would be decided based on ZIM's tariff and other evidence in the record, leading to the same outcome.

The ZIM service contracts with Samsung SGSA and Logitech define a "Merchant" or "Shipper" to also include affiliates named in an appendix. FOF 12. Samsung Electronics Co. Ltd., identified as an affiliate in ZIM's service contracts with Logitech, was designated as the shipper for many of the SEA shipments. FOF 20.

With regard to demurrage, per diem, and free time, the service contracts specify:

"Demurrage" shall refer to the charges Merchant pays for Carrier's equipment kept beyond free time allowed for taking delivery of the goods in the port, terminal or

depot (whether inland port, rail ramp, or other interchange point). Demurrage shall include all storage, service, and equipment costs, unless otherwise specified.

“Per Diem” shall refer to charge the Merchant pays for detaining Carrier’s equipment outside the port, terminal or depot, beyond the free time allowed.

Demurrage and Per Diem charges set forth in Carrier’s applicable Tariffs shall apply to all shipments tendered and carried under this Contract, subject [to] the terms and conditions delineated in any relevant appendix or appendices to this Contract, and shall be calculated as set forth in the Tariff.

12d in RX 1795, RX 1822-23, RX 1857, RX 1886, RX 1926.

ZIM transported the SEA shipments under through bills of lading, or sea waybills, from overseas locations through United States ports and on to designated United States inland locations. Complaint at ¶ 28; Answer at ¶ 28; CX 8868-926. Under the through bills of lading and sea waybills, ZIM was responsible for the ocean carriage of the SEA containers to a United States port and the inland carriage of the SEA containers to the United States inland locations, generally SEA warehouses or directly to SEA customer locations. Complaint at ¶ 29; Answer at ¶ 29; CX 8868-926.

ZIM transported the majority of SEA containers inland under “store-door” terms. Complaint at ¶ 28; Answer at ¶ 28. Under store-door terms, commonly described as “carrier haulage,” the ocean common carrier is responsible for the inland movement of the shipped containers via rail and/or truck drayage to the named delivery place, and the provision of chassis to move the containers. Complaint at ¶ 30; Answer at ¶ 30. By contrast, under “container yard” (“CY”) or “port-to-port” terms, commonly described as “merchant haulage,” the shipper or consignee is responsible for the inland movement from the port to the final inland destination. Complaint at ¶ 31; Answer at ¶ 31.

When cargo is moving to SEA, the responsibility for paying the ocean carrier freight charges lies with the shipper – SDS, Logitech, or an affiliate. SEA PFF at ¶ 22; ZIM RPF at ¶ 22. Under CY terms, ZIM’s responsibilities terminated when the container was delivered to the port or the rail ramp. SEA PFF at ¶ 28; ZIM RPF at ¶ 28. When ZIM relied on its own house truckers to complete cargo movements on behalf of SEA on store-door terms, ZIM was generally responsible for handling the movement of goods from pickup points overseas to the United States end point. SEA PFF at ¶ 24; ZIM RPF at ¶ 24.

The question addressed below is who was responsible for detention and demurrage charges for store-door delivery. The service contracts specify that demurrage will be charged at tariff rates, stating: “Demurrage and Per Diem charges set forth in Carrier’s applicable Tariffs shall apply to all shipments tendered and carried under this Contract.” FOF 16.

ZIM states that it “published a policy in its tariff and adhered to that policy when evaluating demurrage disputes” and points to its current tariff rule to argue that its “demurrage practice is accessible, clear, compliant with applicable law, and is the policy used by ZIM in evaluating demurrage disputes.” Opposition at 21-22. ZIM’s current rule regarding demurrage and free time at U.S. ports, effective April 1, 2023, states:

G) Carrier Controlled Inland Door or Rail Service

(1) In the event that carrier is, for any reason, unable to deliver cargo within free time due to a carrier disability or service failure, no demurrage charge shall be assessed for any day during the period of service failure. For good order, if the cargos are in free time at the commencement of the disability of service failure, free time shall be extended for a period equal to the duration of the disability or service failure; if the cargoes are no longer in free time, assessment of demurrage shall be suspended for the duration of the disability of service failure, resuming at the rate applicable upon commencement of the disability.

CX 8928 (capitalization removed); *see also* Opposition at 21 n.13 (Rule 4.G of ZIMU-136 is ZIM's current rule). Thus, ZIM's current tariff appears to impose demurrage charges after the free time on cargo, unless "due to a carrier disability or service failure" for carrier controlled inland door service. CX 8928 (capitalization removed).

However, ZIM's tariff that was effective on August 1, 2020, during the relevant period, states regarding free time and demurrage at destination:

F) For carrier controlled inland door or rail service, demurrage or storage charges assessed by the rail under circumstances beyond the control of the carrier at the point of interchange (including, but not limited to, strikes, lockouts, frustrated appointments and/or inability of the consignee to receive the containers for whatever reason) shall be for the account of the cargo.

G) Undelivered cargo 1. Notwithstanding the above, cargo which is undelivered and remains at the port terminal, CY, or rail ramp shall be subject to any additional charges in accordance with the relevant terminal, rail and/ or carrier tariff.

Undelivered cargo may be place in public storage at any time after expiration of free time, at the option of carrier and at the risk and expense of the cargo.

CX 8927 (capitalization removed); *see also* Opposition at 21 n.13 (The rule in effect during the period from late 2019 to mid-2022 was Rule 23.F of ZIM-480).

This prior tariff language, applicable to these shipments, is less clear. For example, it is not clear whether "charges assessed by the rail" applies to "demurrage" or just "storage charges." *Id.* It is similarly not clear whether the phrase "under circumstances beyond the control of the carrier" modifies "demurrage" or just "storage charges assessed by the rail carrier." CX 8927 (capitalization removed). However, the example of "inability of the consignee to receive the containers for whatever reason" suggests that any demurrage beyond the control of the carrier is charged to the cargo, here to SEA, including, specifically, when the consignee is unable to receive the containers. *Id.* Moreover, it appears that undelivered cargo is "subject to any additional charges in accordance with the relevant terminal, rail and/ or carrier tariff." *Id.* Thus, ZIM's publicly available tariff does not suggest that it is responsible for all demurrage charges, but rather, that charges incurred "under circumstances beyond the control of the carrier" are passed on to the cargo. It is helpful to look at the parties' course of conduct to fully understand how these provisions were understood and applied.

SEA acknowledges that even under its reading of the door terms, D&D charges “are the consignee’s responsibility in limited circumstances where a delay in the shipment was clearly and directly caused by the consignee (e.g., not ready to receive the shipment).” Brief at 14; SEA PFF at ¶ 277. This admission is consistent with the tariff and undermines the argument that ZIM was responsible for all demurrage charges under store-door terms. Moreover, while the parties agree that the “majority” of SEA cargo that ZIM transported “was moved on store door terms,” that implies that some of the SEA cargo was not shipped on store door terms and that SEA would have been responsible for delivering the cargo. ZIM PFF ¶ 42; SEA RPF ¶ 42.

SEA contends that “the shipments moved under ‘super all in’ rates” and that “Super all-in rates included among other things, motor carrier charges, terminal handling charges, and local charges.” Brief at 13. SEA cites to “PFF ¶ 23; CX_05288, Shpitzer Dep. Exhibit No. 6.” These cites do not support the statements made. CX 5288 is an email, stating that “US free time (ZDPE/ZDOE/ZDII/ZDOI) are calendar day.” This exhibit was discussed in Moshe Shpitzer’s deposition at CX 5234-54; however, the witness says: “I’m not really sure what he meant by all-in rates in this context.” CX 5238. Discussing the specific page cited, Mr. Shpitzer testifies:

Q. . . . What are those four things there? Do you know what those are?
ZDPE/ZDOE et cetera?

A. I’m not sure. I think it talks about demurrage and detention.

Q. Those codes, ZDPE, might be codes for demurrage and detention?

A. I don’t know.

CX 5253. Parties lose credibility when their citations do not support their allegations.

The second citation provided by SEA is PFF 23, which states: “SEA is not responsible for paying any local charges when the cargo arrives in the United States. *Id.*, Rapske Dep. Tr. 42:12-16.” SEA PFF ¶ 23. No CX citation is provided, but at CX 2214, Michael Rapske is asked “Is SEA responsible for paying any local charges here in the United States after the cargo arrives?” and he responds: “We are not under store door terms.” CX 2214.

In another section of the Shpitzer deposition, the super all-in concept is better explained. “Normally, all-in refers to ocean freight plus bunker together. Super all-in is ocean freight – is including everything, also the other surcharges, like OTHC, ISPS, all the applicable surcharges. That’s what a super all-in can include.” CX 5249. And when asked: “What are some examples of local surcharges in the destination country?” he responds: “Different countries have different surcharges. It can be fee delivery order fee, for example,” and then clarifies that: “Super all-in means that includes all the surcharges, including the manifested and the local surcharges.” CX 5251. Therefore, the evidence does not show that the super all-in rate includes demurrage and detention.

SEA also acknowledges that previously while “SEA would occasionally receive invoices for D&D charges those occurrences were rare.” Brief at 15; SEA PFF at ¶¶ 69, 68-76. SEA claims that “[b]eginning in 2021, ZIM began to assess exorbitant amounts of D&D against consignees for store door moves regardless of responsibility for the cause.” Brief at 15; *but see* Brief at 26

(“From 2020 onwards . . . ZIM began charging SEA dramatically increasing amounts for D&D charges”). SEA concludes that these demurrage and detention charges were due to unreasonable practices of ZIM and not some other cause, such as supply chain congestion.

ZIM responds that it “did not shift responsibilities to Samsung or change its demurrage and detention policies,” but rather “[a]ll that happened was that there was an increase in the amount of demurrage and detention charges due to increased cargo volumes and trade conditions. This increase in demand resulted in market conditions that Samsung found less than favorable.” Opposition at 26-27. ZIM also points out that SEA argues that ZIM changed its policies while also arguing that ZIM failed to make operational changes to deal with the pandemic. Opposition at 27.

Indeed, SEA eloquently describes the supply chain challenges, when arguing that ZIM should have changed its operations to better manage them, saying:

On March 11, 2020, the World Health Organization declared that COVID-19 was officially characterized as a pandemic. Because people were spending more time at home, there was a surge in demand for household appliances and other durable goods (*e.g.*, refrigerators, freezers, and washing machines). This increased demand resulted in manufactures and retailers, ramping up efforts to meet consumer demand, and some retailers were reporting a two-month backlog on goods. PFF at ¶ 18. Thus, SEA was clearly motivated and incentivized to move its goods quickly from the port, and relied on ZIM to be able to do so. PFF at ¶¶ 10-11, 18.

Because of this increased demand, ports were at full capacity and in some instances, vessels often had to anchor offshore and overflow locations had to be set up. PFF at ¶¶ 48-49, 314-315. This coupled with trucker shortages, port and terminal congestion, inclement weather and chassis shortages impacted the container industry. U.S. ports experienced increased dwell times, landslide bottlenecks, and continued chassis shortages well into 2022. PFF at ¶¶ 48-49, 51-52. Indeed, in an email from Mr. Goldman to Mr. Dotan, ZIM acknowledges this impact, suggesting that they need to “revisit [the] detention piece” as during that time, “the facilities and cargoes movement cannot be done because of congestion (w/housing, yards, terminals, ramps, etc)” and “these facilities are open but conveyance cannot happen.”

Brief at 46-47 (footnote omitted); *see also* RX 834 (“The epic surge that began in August continues today and the holidays are bringing increased limitations within the industry.”); CX 8282 (“Ports across the United States continued to face a variety of headwinds throughout the first half of 2022—from elevated dwell times for cargo ships and landside bottlenecks to chassis shortages.”).

The evidence shows ZIM waived, refunded, or offered to waive some demurrage and detention charges on SEA shipments. *See, e.g.*, CX 2919-20; CX 3045; RX 838; RX 914; RX 5; CX 3278-79. Indeed, throughout the 2020-2022 timeframe, the parties discussed responsibility for demurrage charges, with SEA sometimes accepting responsibility and ZIM sometimes accepting responsibility. CX 5986-87. And, the cargo holds discussed more below were all released prior to

SEA paying the original amount ZIM claimed was due, showing that the parties discussed and resolved their D&D disputes. Given the multitude of entities involved with timely deliveries and the COVID-era transportation challenges faced, determining fault is not an easy endeavor. As Mr. Smith stated when asked “whether or not SEA’s review practice changed” after the pandemic began, he responded “I don’t believe that the review process itself changed. The volume of charges that the review process had to go through changed dramatically.” CX 5986.

When reviewing invoices, SEA’s employees checked the rates, the container numbers, the in gate/out gate dates, and last free day. CX 2389-90; CX 2439. If ZIM was responsible for all demurrage under store-door shipments, this would not have been necessary. Moreover, the evidence shows regular requests by SEA for the LFD (last free day) and requests to pre-pull containers – moving them to less expensive storage – to avoid higher D&D charges. CX 2097-98 (“Prepulls are when the container would have to gate out to avoid demurrage or rail storage”); CX 2622 and CX 2731 (“I can’t afford to keep paying for the demurrages”). The evidence shows that at that time, SEA believed it would be charged D&D fees after the last free day and it actively worked to be informed of and lower those costs.

Both parties had complex processes that caused confusion and delay. As Ms. Fernando summarized:

Holding the loads will not resolve the issue, because the main issue here is the way ZIM’s AR team handling the SAMSUNG billing. We have a process and protocol to follow, and for your sure ZIM has its own process too. If ZIM’s AR team will not going to follow the billing process that our subsidiary established, then we are going to face the same problem always. The only resolution for this issue is that SAMSUNG and ZIM, needs to follow it’s respective process, to avoid any delay with the payment.

We have mentioned this so many times with your AR team especially with Elizabeth that we don’t review any invoices that doesn’t belong to our team. There are invoices that you have sent belongs to different subsidiaries and we are not the correct department nor help you with those invoices. Any Freight charges, you need to reach out to origin. Our loads are PREPAID by origin, any Freight issue, you need to reach out to them[.] SEA logistics, will review any accessorial charges but not Freight.

If you will check your summary, there are different subsidiaries invoices, please reach out to Sales team to assist you to find the correct department.

We, SEA team, would like to clean and assist ZIM with aging but we need to follow each other’s process and this will cover all the gray area of the process.

RX 159.

The invoice approval process at SEA was complex, starting with ZIM needing to determine whether to send charges for freight to the shipper, or for demurrage and detention charges to either the direct ship team or the inbound team. The SEA direct ship team would not review invoices that did not belong to their team, rather, they would return the invoice to ZIM. Ms. Fernando testified

that she would not send an invoice to the SEA team that should be handling it “[b]ecause this is not my task. It should be ZIM’s task to know where to send all the correct invoices.” CX 2442-43. After the correct SEA team verified and validated the amount for approval, then ZIM needed to send the invoice to SEA accounting for payment. CX 2444-45; CX 7208; CX 7218-19; CX 7226-27; CX 7199 (“Please send all the outstanding invoices to ADCInvoice@sea.samsung.com. Please provide approvals of email threads for the invoices. If you don’t have them, please see the below contacts for obtaining approval. Once you receive the approval from them, please forward that email thread along with the corresponding invoice(s) so I may validate and process.”). SEA’s choice of an inefficient, multi-step process for invoices contributed to delays in payments to ZIM.

SEA alleges that “decisions were being made by ZIM finance staff who were openly rebuffing SEA’s request for additional information and to align the billing process with the consignee.” Brief at 7. And indeed, the evidence shows that the first hold occurred, in part, due to confusion about the format of submitting demurrage charges, with “Samsung US and Korean still arguing” and SEA “requesting their own format for their internal (CFO’s) approval” and noting that “ZIM US CS Team used to reject to do because they can not do additional work for Samsung but keep on sending invoices only.” CX 7223; *see also* CX 7195-7201.

However, SEA does not point to any basis in the service contracts, tariffs, the Shipping Act, or elsewhere to find that ocean common carriers are required “to align [their] billing process with the consignee.” While carriers should provide sufficient information with their invoices to understand charges, it is not as clear whether carriers are required to provide information in a specific format or provide invoices to multiple email addresses in a multi-step process. This decision does not need to resolve that question as it is clear that many of the invoices were eventually sent pursuant to SEA’s preferred process.

ZIM’s invoices had frequent errors, invoices were sent to the wrong entity, and necessary information was not always included. For example, ZIM repeatedly billed SEA for charges belonging to other Samsung entities. These issues are discussed at length below, in section III.C.1.c.iii.(c)(1).

The evidence generally shows knowledgeable logistics staff from both SEA and ZIM contemporaneously evaluating and allocating fault for the D&D charges while managing extensive shipments with complex requirements. Although there were certainly errors, the parties made a good faith attempt to resolve disputes. Moreover, while SEA contested charges for many different reasons, SEA does not point to contemporaneous evidence that it disclaimed liability for any D&D charges at all or that it believed it was never responsible for these charges. To the contrary, there were instances when SEA acknowledged that the detention and demurrage charges were its responsibility to pay. *See, e.g.*, RX 682; RX 973; RX 1308; RX 1688-1714.

The incentive principle is not violated when the parties make a reasonable attempt to allocate D&D charges to the entity responsible for a delay. And while ideally the party billed for all charges is the party to the service contract, SEA has not established that it was unreasonable for ZIM to bill SEA for demurrage and detention where a large conglomeration of affiliated entities chose to separate billing so that the shipper paid freight while the consignee paid delivery expenses for the convenience of the shipper. Moreover, SEA’s general financial analysis regarding ZIM’s revenue and net profit is not evidence that these practices were unreasonable.

SEA alleges that “[c]harging the consignee of cargo under a though bill of lading, *i.e.*, store-door move, for inland D&D charges violates the Incentive Principle because the party being charged is not responsible for the inland movement.” Brief at 26. Certainly, ZIM should be incentivized to move cargo. However, as SEA acknowledges, some of the demurrage and detention charges were incurred due to SEA customers’ inability to accept the cargo. Brief at 14; CX 2248-51. In those situations, the charges would incentivize SEA and its customers to accept the cargo, which would incentivize the flow of cargo.

Regarding liability, SEA did not provide a shipment-by-shipment analysis of the containers that accrued damages, instead arguing that “ZIM’s conduct and practices applied to categories of shipments.” Reply at 60-61. SEA further contends that reparations were calculated on a shipment-by-shipment basis. Reply at 61. However, reasonableness “must be assessed alongside all other considerations and the specific factual circumstances of the case.” *TCW, Inc. v. Evergreen Shipping Agency (America) Corp. & Evergreen Line Joint Service Agreement*, Docket No. 1966(I), 2025 WL 516256, at *8 (FMC Feb. 13, 2025). SEA points to the Hapag-Lloyd case, stating that the undersigned “confirmed that there were no return appointments available during the days on which a trucking company attempted to return the containers within free time.” Brief at 11. However, a closer reading of the case will show that a violation was found only for the days “when there is evidence that sufficient appointments were not available” but that a violation was not found where there was no evidence regarding the availability of appointments. *Hapag-Lloyd, A.G.*, Docket No. 21-09, 2022 WL 1239377, at *2, *30 (ALJ Apr. 22, 2022) (FMC approved settlement, June 8, 2022). Therefore, providing sufficient evidence is critical.

Given that at least some of the D&D charges were the fault, and therefore responsibility, of SEA, it cannot be categorically found that all D&D charges on door/carrier haulage shipments should have been paid by ZIM. The evidence shows that ZIM was categorically responsible for paying the drayage costs, however, drayage is not at issue. SEA has not established that ZIM is responsible for all of the demurrage and detention charges incurred and has not provided a shipment-by-shipment analysis sufficient to determine why specific containers incurred demurrage and detention charges. SEA has not established that ZIM charging demurrage and detention on store-door delivery with carrier haulage was an unreasonable practice, therefore, these facts do not support a 41102(c) violation. Next, consideration is given to demurrage and detention charges imposed when customer nominated truckers were utilized.

(2) Preferred Truckers

SEA asserts that ZIM was responsible for acts and omissions of all truckers, arguing that neither the RFQ nor the service contracts “require” ZIM to use CNTs; responsibility to vet, pay, and manage CNTs rested with ZIM; and responsibility to manage, and liability flowing from, certain CNTs who failed to perform rested with ZIM. Reply at 32-49; *see also* Brief at 27-32.

ZIM contends that SEA is liable for acts and omissions of its CNTs, arguing that the use of the CNTs was mandatory; SEA’s CNTs failed to perform; and to the extent problems were caused by sub-contractors selected by and imposed on ZIM by SEA, those problems and the consequences thereof are lawfully and properly the responsibility of SEA. Opposition at 16-20.

The Commission has not directly addressed the role of preferred truckers, or CNTs, although they were utilized by Global Link in a prior proceeding. *Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, Docket No. 09-01, 2013 WL 9808669, at *15 (ALJ July 9, 2013), *aff'd* January 30, 2014 (Order Adopting Initial Decision).

SEA argues that ZIM treated door moves performed by preferred truckers the same as CY moves, where the ocean carrier's responsibility ends at the port. Brief at 2. However, there are no allegations that ZIM refused to pay the customer nominated truckers to deliver cargo to SEA customers' facilities – payment for which ZIM would not be responsible under a CY move. Rather, there is a dispute over demurrage and detention charges for delays, either delivering the containers or returning empty containers.

SEA does not have written transportation contracts with preferred truckers for the inland moves from the ZIM ports of discharge to SEA's customers or SEA warehouses. FOF 39. SEA nominated preferred truckers to be used by ZIM in moving SEA's containers based on their capacity and ability to deliver cargo for SEA. CX 2112; CX 2232; CX 2345-46. When ZIM relied on its own house truckers to complete cargo movements on behalf of SEA on store-door terms, ZIM was responsible for handling the movement of cargo from pickup points overseas to the United States end point. FOF 30.

With regard to the designation of trucking vendors for door/carrier haulage, the following provision appears in the service contracts in the record:

For shipments designated for pick up or delivery at any U.S. location or facility located outside the Port or Container Yard (i.e., "Door" pick up or delivery, also referred to as "Carrier Haulage"), Carrier [ZIM] shall normally nominate the Vendor to provide such services. If, upon Contract of the parties, the Merchant is to nominate the Vendor ("Preferred Trucker"), the following shall apply.

Compensation shall be as set forth at Appendix C, and shall be subject to review and/or change in accordance with subparagraph 12b (below).

Should Merchant's Preferred Trucker fail to accept a Transport Order within twenty-four (24) hours of issue, or fail to perform as ordered, Carrier shall nominate and provide instruction to an alternate Vendor; and

Any expense or charge in excess of the Compensation rate set forth at Appendix G, including demurrage, detention, or other storage fees, which accrue or are assessed as a result of the Merchant's nomination of a new or alternate Preferred Trucker, or as a result of the Preferred Trucker's failure to accept or perform a Transport Order, shall be to the account of the Merchant.

No. 12a in RX 1794, RX 1821-22, RX 1857, RX 1885, RX 1925; *but see* Reply at 10 n.9.

ZIM points to this language to argue that SEA's "responsibility for local charges such as demurrage and detention is also reinforced by the positions of the service contracts under which the cargo was transported." Opposition at 11 n.6. However, the quoted language does not say that responsibility for demurrage and detention is transferred to the consignee or cargo whenever a

preferred trucker is used. Rather, the language states that fees will be the responsibility of the merchant if they “accrue or are assessed as a result of the Merchant’s nomination of a new or alternate Preferred Trucker, or as a result of the Preferred Trucker’s failure to accept or perform a Transport Order.” FOF 15. Moreover, ZIM had the responsibility to nominate an alternate trucker within 24 hours, as the service contract states: “Should Merchant’s Preferred Trucker fail to accept a Transport Order within twenty-four (24) hours of issue, or fail to perform as ordered, Carrier shall nominate and provide instruction to an alternate Vendor.” *Id.*

Therefore, even under the service contract language pointed to by ZIM, ZIM would need to establish that the charges were accrued because a preferred trucker was nominated, failed to accept, or failed to perform. And, to properly charge SEA for a preferred trucker’s failure to perform, ZIM would need to show why it did not appoint an alternate trucker. The parties agree that if a preferred trucker “has been asked to move a SEA shipment and does not have the capacity to handle it, or if a chassis shortage arises, under store door moves, [ZIM] has the responsibility to procure another trucker to deliver the loads and does not need approval from SEA to do so.” SEA PFF at ¶ 40; ZIM RPF at ¶ 40. So, where the delay occurred because of a delay on ZIM’s part, for example, failing to provide a timely work order or to timely find an alternate, then ZIM would be responsible for any resulting demurrage and detention.

The parties dispute whether requirements in a 2021 RFQ were incorporated into the service contracts or apply to these shipments. The RFQ was issued by SEA affiliate Samsung SDS Co. Ltd. (“SDS”), whose requirements appear to have been incorporated into ZIM’s service contracts with Logitech Service Contract Nos. 7100171730 and 7100102863. RX 1852; RX 1870 at “Note 2;” RX 1918; RX 1939 at “Note 2.” It is not clear that the version of the RFQ in the record is the one referred to by these two service contracts, ZIM does not provide a witness to authenticate the RFQ or service contracts, and it is not clear which SEA shipments moved under these two service contracts. Although the foundation of these documents is weak, it is sufficient to admit them.

Under Section I, Samsung Electronics, the shipper of SEA containers, is identified as one of the Samsung Group companies covered under the RFQ. RX 33. Section III of the RFQ, at number 6, specifically states that “carriers are required to provide local delivery service with consignee’s preferred trucker if any.” RX 41. Under Section IV, the RFQ states regarding the Rate Structure that:

- Freight Rate should be in USD and all applicable surcharges must be included.
- Rate consists of (A) Ocean Freight + (B) Origin Charges + (C) Destination Charges
 - CY-CY : Subject to Destination Local Surcharges
 - CY-Door: Super All-in
 - BAF: FIXED
- Additional charges from carriers’ sub-contractors (such as trucker, terminal, depot) is to be included.
- Exception is applicable only where it’s Fre-in/out port

RX 42; *see also* RX 43. The RFQ, Section IV, at number 5, addresses detention and demurrage freetime, listing freetime conditions and the number of required days for demurrage and detention

at origin and destination, including for the USA. RX 46. The RFQ does not state that the super all-in rate included demurrage and detention but does require the use of preferred truckers, if any.

ZIM argues that SEA is liable for the acts and omission of its preferred truckers, although the issue is more specifically whether ZIM's practices in charging demurrage and detention where preferred truckers were utilized were unreasonable. It is not clear to the undersigned that this issue is resolved by considering whether the use of the preferred truckers was mandatory, who supervised the preferred truckers, or general liability principles. Indeed, it is not clear that demurrage incurred by preferred truckers should be treated differently than other demurrage charges. The focus should more properly be on why the demurrage charges were incurred.

SEA makes the troubling allegation that when a preferred trucker was utilized, ZIM unilaterally converted moves "from door terms to CY terms." Reply at 4. ZIM contends that it "did not have responsibility for demurrage, detention and storage charges when a CNT designated by SEA did not perform, the receiving warehouse did not timely accept containers or the customer failed to clear its cargo" and that "SEA's selection of a CNT shifted liability for demurrage and detention associated with the deficient performance or non-performance of a CNT on store door moves." ZIM RPF ¶¶ 45, 271.

A contemporaneous internal ZIM email "cautioned about the high risk of accepting non-preferred door moves given the high cost volatility, particularly to demurrage/storage." CX 2790. ZIM witness Moshe Shpitzer testified that in preferred trucker moves, demurrage and detention were similar to CY moves, with "cover for any additional cost by the customer" and ZIM is "covered against price changes and service failure." CX 5211-13. Another witness, Barbara Speight, explained how ZIM treated house and preferred trucker availability issues differently:

Q. Okay. What would be an example of ZIM trucker availability in this sense?

A. It's a ZIM house truck. So there's no preferred trucker involved. We've dispatched from a work order. We need them to pick cargo up, and they say we don't have the availability to pick this cargo up until X date, which I assume would be after the free time.

Q. Okay. In that scenario, that is ZIM's responsibility for resulting charges; is that correct?

A. Correct.

Q. If Samsung with its preferred trucker issues a work order at exactly the same time in exactly the same way and that preferred trucker has precisely the same lack of availability as a house trucker, that's -- the resulting charges, it's ZIM's position, or the consignees responsibility; is that correct?

A. Correct.

Q. Okay. From a -- what is the difference between those situations other than hiring of the preferred -- excuse me -- the designation of a preferred trucker; is that the only difference?

A. The difference is that, if it's a ZIM house trucker that has no availability, we have the ability to find a trucker that can deliver it sooner.

Q. Does ZIM not have that availability with respect to a preferred trucker arrangement?

A. No.

Q. Why is that?

A. Because the customer has stated, that's the only customer that can deliver their cargo.

CX 2925-26. This provides an example of when, because of SEA or its customers' requirements, alternates may at times not have been possible. However, it appears that ZIM presumed that when preferred truckers failed to perform, that the consignee was always responsible for demurrage and detention charges. This approach is not justified.

These statements suggest that ZIM improperly charged demurrage and detention to SEA for some shipments where preferred truckers were utilized. The service contracts ZIM points to and its tariff do not support assigning all demurrage and detention charges incurred by preferred truckers to the shipper or consignee. FOF 15. SEA alleges that ZIM's approach "was not made clear in the record, in real time over the past few years in dispute, by ZIM employees in emails, communications or actions" with SEA. Reply at 3-4. Using a preferred trucker should not convert a move from door terms to CY terms, especially without notice to the shipper and consignee.

Because the use of preferred truckers requires even greater coordination between the consignee and the carrier, it can be difficult to assign fault for particular delays and resulting charges. For example, certain SEA customers required the use of their preferred truckers. One customer required access to a portal which house truckers could not access on short notice. RX 1069-70; *see also* RX 967. If ZIM was responsible for demurrage or detention charges and nonetheless charged SEA solely because a preferred trucker was used, that would be unreasonable. However, SEA paints the evidence with a broad brush and it is not possible to make the distinction between when SEA's customer requirements caused the delay and when the delay was caused by ZIM.

There were occasions when demurrage accrued because preferred truckers failed to timely pick up containers, asserting inability resulting from the "backlog due to chassis shortage," due to "industry conditions," and due to "current port congestion, chassis shortage, vessel delays, limited terminal appointments, and limited empty return locations." RX 1968; RX 824; RX 1663-67. Generally, the evidence does not show that ZIM sought an alternate trucker. *But see*, RX 1969-70.

There were other times when actions of SEA or its customers led to delays. SEA sometimes failed to timely respond to requests for action needed for the processing of SEA's containers and requests to pay demurrage and detention charges on its containers. *See, e.g.*, RX 1023-25 (SEA ignoring emails from ZIM regarding approval of pre-pull and storage of its container); RX 1097-1100 (SEA failing to timely provide information needed for warehouse appointment); RX 1963-68 (SEA failing to respond to multiple emails from ZIM and CNTs to

confirm accrued charges prior to pick up of its containers); RX 1688-714 (ZIM DSG's repeated emails beginning May 26, 2021, advising SEA that approval for pre-pull and storage charges was needed to proceed with delivery); RX 1532-37 (emails from ZIM DSG to SEA starting November 12, 2021, to December 8, 2021, asking SEA to approve payment for accrued detention charges on SEA's containers).

The evidence does not show that SEA's use of preferred truckers changed the terms of door delivery or their "super all-in rate." The evidence also does not show that door delivery or the super all-in rate included *all* detention and demurrage charges. At least some of the demurrage charges were caused by SEA's delays or its customers' inability to accept containers or return empty containers timely. But some of the charges were caused by ZIM's failure to timely approve CNTs or find alternates. SEA seeks a refund of all of the D&D it was charged without a shipment-by-shipment analysis. Therefore, it is not possible to determine which charges are due to ZIM's unreasonable practices regarding preferred truckers. Moreover, it may well be that there is not documentation or other evidence that would show the cause of each delay. While these evidentiary issues impact whether reparations are available, they do not make ZIM's billing practice regarding customer nominated truckers reasonable. Accordingly, SEA has established that ZIM acted unreasonably when it presumed that SEA was responsible for demurrage and detention charges solely on the basis that a preferred or customer nominated trucker was utilized.

(b) Cargo Holds

SEA asserts that ZIM's use of finance and cargo holds violates the incentive principle, arguing that "ZIM used the finance holds to coerce collection of disputed invoices," the scope and frequency of holds was excessive," and ZIM's practice was not "fit and appropriate for the end in view" nor "tailored to meet its intended purpose." Brief at 4, 32-40.

ZIM contends that: the exercise of the lien was otherwise lawful; the *Adenariwo* decision is not applicable; the exercise of the lien rights was consistent with the incentive principle and the interpretative rule; the exercise of the lien rights was not excessive; the assessment of demurrage during the lien periods was reasonable; the liens were based on legitimate payment concerns; and SEA was chronically delinquent in paying ZIM. Opposition at 5-15.

SEA argues in reply that: the lawfulness of a carrier's lien is not at issue, ZIM's failure to establish reasonable practices and procedures in exercising its lien, i.e., finance holds, is at issue; ZIM's invocation of its lien rights does not excuse its conduct; *Adenariwo* is instructive and applicable here; ZIM's exercise of its lien rights did not promote freight fluidity; the charges that formed the basis of the finance holds were disputed charges or for unrelated entities; and ZIM's exercise of its lien rights was not consistent with the incentive principle and the interpretive rule.

During a cargo hold, ZIM would not release or deliver any containers. "Per ZIM all the below BLs are on hold due to Samsung has not paid the past due balances for other shipments." CX 2296. ZIM provides the following summary of the cargo holds, to which a column has been added for the number of containers involved:

Duration of Lien	Amount Outstanding on Date of Initiation	Amount Paid to Release Lien	Number of Containers
August 5-mid-August, 2020	\$143,225.26	\$36,710	70
May 27, 2021-June 30, 2021	\$857,914.64	\$510,975	200
September 27, 2021-October 16, 2021	\$943,708.14	\$638,870	150
January 11, 2022-March 17, 2022	\$1,538,200.64	\$119,615	600

Opposition at 8; CX 1570 (chart); CX 5349-51.

As an initial matter, SEA conflates the term “finance hold,” which is a credit suspension, with the term “cargo hold,” which suspends cargo delivery. These two separate actions were distinguished by ZIM as separate steps in the collection of receivables. *See, e.g.*, CX 3099, CX 4706. Given the finding below that cargo holds are unreasonable, it is not necessary to address the separate issue of finance holds, and whether it is unreasonable for ocean common carriers to decline under certain circumstances to advance demurrage and detention charges on behalf of shippers. *See, e.g.*, CX 7273, CX 7367.

Regarding the cargo holds, ZIM points to the expanded lien language in its service contracts, which states:

The Carrier, its servants or agents, shall have both a maritime and contractual lien on the goods or any part thereof, and the Carrier or its Agent shall have the right to sell such goods, whether privately or by public auction, upon reasonable notice to the Merchant, for all freight (including additional freight payable as is herein stipulated) primage, deadfreight, demurrage, detention, container demurrage, charges, salvage, average of any kind whatsoever, stamps, duties, fines or penalties. The lien hereby accorded may be exercised by the Carrier, its servants or agents notwithstanding that it or they may have parted with actual or constructive possession of the goods.

Opposition at 6 (citing ¶ 8 in RX 1792; RX 1819-20; RX 1855; RX 1883; RX 1922-23).

Commission law is clear that “transportation of cargo cannot be aborted or cargo held to coerce payment of debt for other shipments.” *Petra Pet, Inc. v. Panda Logistics Ltd.*, Docket No. 11-14, 2012 WL 11914703, at *22 (ALJ Aug. 14, 2012) (“*Petra Pet (ALJ)*”), *aff’d* 2013 WL 9808694 (FMC Oct. 31, 2013); *Tienshan v. Tianjin Hua Feng Transport*, Docket No. 08-04, 2011 WL 7144007, at *17 (ALJ Mar. 9, 2011), *admin. final* April 12, 2011 (“An NVOCC that holds cargo hostage to its demands for money allegedly owed for prior shipments violates section 10(d)(1).”). Similarly, Commission case law indicates that cargo cannot be held to obtain additional fees or to collect an unreasonable debt. *Corpco Int’l, Inc. v. Straightway, Inc.*, Docket No. 97-05, 1998 WL 940257, at *7 (FMC June 8, 1998) (“Straightway violated section 10(d)(1) of the Act by forcing its customer to pay additional transshipment costs to obtain the negotiable bill of lading necessary to effect the delivery of certain cargo.”); *Total Fitness Equipment, Inc. v. Worldlink Logistics, Inc.*, 1998 WL 940255 (FMC Dec. 10, 1998) (attempting to collect an unreasonable debt by refusing the release of cargo was a violation of 10(d)(1)).

Regarding maritime liens, there is clear and consistent precedent that disputes over unrelated shipments, cannot be used by a carrier as justification for refusing to release the cargo. As explained in *Bernard & Weldcraft*:

A carrier can withhold delivery of cargo to compel the shipper to pay freight money that is *lawfully* owed and has a cargo lien which the carrier can assert if necessary, which lien the carrier loses if it surrenders the cargo. Conversely, if a shipper or consignee induces the carrier to surrender the cargo and thus lose its lien, and thereafter refuses to pay the lawful freight money owed because the shipper or consignee has outstanding disputes with the carrier on earlier unrelated shipments, and withholds payment of the lawful freight as a means to coerce the carrier to settle the disputes on earlier unrelated shipments, the shipper or consignee has acted unlawfully, in violation of section 10(a)(1) of the 1984 Act. Thus, disputes over earlier unrelated shipments cannot be used by either a carrier or a shipper as justification for refusing to release the cargo or to pay lawful freight money.

Bernard & Weldcraft Welding Equip. v. Supertrans Int'l, Docket No. 02-12, 2003 WL 136313, at *14 n.14 (ALJ Jan. 8, 2003), admin. final Feb. 12, 2003 (emphasis in original; citations omitted); see also *Petra Pet (ALJ)*, 2012 WL 11914703, at *17 (a lien against cargo “cannot be applied . . . beyond the amount of freight stipulated in the bill of lading” (quoting *American Steel Barge Co. v. Chesapeake & O. Coal Agency Co.*, 115 F. 669, 672 (1st Cir. 1902))).

In *Adenariwo*, the Settlement Officer found a Section 41102(c) violation where the vessel-operating common carrier had refused to release a container based on storage charges assessed for another container. *Adenariwo v. BDP Int'l*, Docket No. 1921(I), 2013 WL 12618258 (SO Mar. 7, 2013) (“*Adenariwo (SO)*”), *aff'd* 2014 WL 13110647 (FMC Feb. 20, 2014), *partially aff'd on other grounds sub nom. Adenariwo v. FMC*, 808 F.3d 74 (D.C. Cir. 2015). In *Adenariwo*, the complainant alleged that pursuant to the order of vessel operating common carrier ZIM, a container “was unreasonably held by ZIM’s agent Lansal until payment for storage charges for a separate container shipment was made.” *Adenariwo (FMC)*, 2014 WL 13110647, at *1. In its opposition, “Zim pointed to the general lien clause in the terms and conditions of shipment, and said that its refusal to release the second shipment based on outstanding charges on a separate shipment was reasonable pursuant to its contractual rights.” *Adenariwo (FMC)*, 2014 WL 13110647, at *1. The Settlement Officer noted that “the Commission has stated that each bill of lading is a separate transaction under the Shipping Act” and therefore held that the law permitted ZIM “to exercise a valid maritime lien and hold a shipment based on the charges that accrued on the bill of lading covering that specific shipment.” *Adenariwo (SO)*, 2013 WL 12618258, at *6. The Settlement Officer held that ZIM violated 41102(c) because the “act of holding a shipment for an unrelated shipment’s charges is an unreasonable practice under the Shipping Act.” *Adenariwo (SO)*, 2013 WL 12618258, at *6.

The Commission affirmed the decision, stating:

The SO properly found that Zim violated § 10(d)(1) of the Shipping Act, 46 U.S.C. §41102(c), relying primarily on *Colgate Palmolive Co. v. The Grace Line*, 14 S.R.R. 600, 602 (FMC 1974), in which the Commission stated that “the merits of

each claim must be considered *in toto* and independent of claims under any other bill of lading.” The SO properly reasoned that, while the law permits carriers to exercise valid maritime liens and hold a shipment for charges that accrue on that specific shipment’s bill of lading, holding a shipment for charges unrelated to that shipment is unreasonable.

Adenariwo v. BDP Int’l, 2014 WL 13110647, at *1 (FMC Feb. 20, 2014) (“*Adenariwo (FMC)*”) (footnotes omitted). The Commission also affirmed an award of damages to Adenariwo, although the D.C. Circuit held that Adenariwo’s damages ought not to have been reduced by mitigation. *Adenariwo v. FMC*, 808 F.3d 74, 76 (D.C. Cir. 2015).

ZIM contends that the *Adenariwo* decision is not applicable because it “involved the assertion of a general lien clause in the terms and conditions of shipment” and “did not involve an expanded lien granted in a contract signed by the customer.” Opposition at 6. However, there is no indication in the *Adenariwo* decisions that the holding was related to the type of lien clause or whether the litigant had signed the contract. Moreover, here, SEA was the consignee and not a party to the service contracts. Additionally, as SEA points out, the *Adenariwo* decision shows that ZIM is a repeat offender.

The parties both agree that there were multiple holds imposed by ZIM on SEA. ZIM contends that charges “imposed on cargo that was delayed in transit by ZIM’s exercise of its contractual lien rights comply with the Shipping Act,” arguing that the contractual lien rights were otherwise lawful. Opposition at 4-5. SEA contends that a lawful cargo lien “first must have a proper factual basis to exercise it, and second must still be exercised lawfully” and that “ZIM did neither” as “ZIM exercised purported liens exceptionally broadly—e.g., on invoices for charges of other entities and on disputed invoices.” Reply at 11.

ZIM argues its expanded lien was lawful, relying on two cases involving insolvency of the shipper: *The Bird of Paradise*, regarding payment of freight where the charterer became bankrupt before the vessel arrived at port and *In re World Imports*, a bankruptcy proceeding where the NVOCC argued it was a secured creditor with a possessory maritime lien. Opposition at 5; *The Bird of Paradise*, 72 U.S. 545, 554 (1866); *In re World Imports Ltd.*, 820 F.3d 576 (3rd Cir. 2016). While these cases state that a maritime lien may be extended, modified, or excluded, they do not mention the Shipping Act. These cases do not address or overrule the Commission’s long-standing line of cases holding that cargo cannot be held to extract payment for amounts due on other shipments.

Moreover, the Commission has held that common carriers “do not have an unbounded right to contract for whatever they want. They are limited by the prohibitions of the Shipping Act, one of which is section 41102(c).” *TCW, Inc. v. Evergreen Shipping Agency (America) Corp. & Evergreen Line Joint Service Agreement*, Docket No. 1966(I), 2025 WL 516256, at *8 (FMC Feb.13, 2025) (quoting 85 Fed. Reg. 29638, 29648). Indeed, the failure to incentivize cargo movement, in violation of the Shipping Act, impacts others in the supply chain, beyond the parties to the service contract. Here, some of the cargo held did not even belong to SEA. CX 5735.

SEA contends that “ZIM’s finance holds froze the movement of cargo” in violation of the incentive principle, arguing:

Charging SEA new D&D Charges on containers that it unilaterally refused to move or release, including containers immediately put on hold upon vessel discharge, held through free time, and forced into demurrage on the sole basis of ZIM's alleged finance hold, did not, and could not, serve their "intended primary purposes as financial incentives to promote freight fluidity."

Brief at 36. Moreover, SEA asserts that "ZIM was chronically overcharging and under explaining, giving SEA very good reason to not pay the amounts ZIM was demanding because they were riddled with improper and disputed charges." Reply at 29.

ZIM's witness, Mr. Yaacoub, agreed that "by placing the cargo hold, that puts urgency to Samsung to pay for the demurrage and detention charges at the time." CX 3203-04. When asked whether he thought "implementation of cargo hold incentivize[s] the movement of cargo or containers," he answered "No." CX 3204; *see also* CX 5482 ("Q. So the point here is that the hold, the cargo hold was effective in incentivizing this particular customer to pay? A. That is correct."); CX 3193. Thus, the cargo holds were used as to obtain overdue payments but did not incentivize the flow of cargo.

ZIM responds that the exercise of the lien rights was consistent with the incentive principle and the interpretative rule and that "by releasing cargo without payment, ZIM was promoting the flow of cargo." Opposition at 7-9. ZIM asserts that "the issue of whether Samsung complied with its customary responsibilities should be considered in assessing the reasonableness of the cargo liens" and that SEA was "chronically delinquent." Opposition at 7, 14-15. The evidence shows, however, that the amounts listed as outstanding on the date of initiation of the liens were not accurate. For example, for this first cargo hold, ZIM sought payment for 130 invoices, of which, SEA contested over half on the basis that the amount was wrong (3rd summary), additional information was needed (1st summary), or it was not their shipment (4th summary). CX 7207-8. Additional information was ultimately provided and/or payment approved for about eighty percent of the 130 containers. *Id.* Notably, the two oldest invoices were not SEA's shipments, although there were approved shipments over a year old. CX 7211; CX 7216. Perhaps more importantly, it appears that the amounts sought were for containers that had been delivered while the hold applied to containers that were en route.

For the second cargo hold, SEA had to repeatedly request invoices or additional information so they could be reviewed. CX 7248; CX 7274-83. For the third cargo hold, SEA requested additional information, stating: "We can not review the charges without detail. Please provide the detail BOL, container, charge type, starting and end if charge are for demurrage/detention so we can review for the appval and payment. Seem like some of them are not for Samsung Electronics America." CX 7370. An October 4, 2021, email from SEA shows that of the \$1,335,861.81 at issue, SEA approved \$629,825; identified as not for SEA \$502,895.04; listed over/short payments as -21,908.23; and had pending to review \$222,050. CX 7368. Therefore, about 64% were approved or pending, while about 37% were for a different entity. Ultimately, SEA paid \$638,870 to release the cargo hold. CX 1570.

For the fourth cargo hold, SEA disputed charges, stating that:

- **\$291K** → has been paid to **ZIM** yet we keep receiving these invoices over and over again, please confirm if you received the payment or not.
- **\$120K** → we need More Information (Charge type, LFD, Start/End date) in order to complete approval for Invoice Amount
- **\$397K** → invoices were rejected, we need container information in order to check that these charges belong to SEA. We tried using info from column J “Reference Key 2” but these are showing as invalid containers from our system.

CX 7415-16.

SEA argues that the exercise of the lien rights was excessive in part because some of the outstanding amounts were not payable by SEA. Brief at 15. ZIM asserts that the exercise of the lien rights was not excessive and the consignee of cargo can be held liable for charges even if it is not responsible for paying freight to the carrier; the service contracts between ZIM and Samsung’s affiliate make the consignee jointly and severally liable for payment of freight charges, dues, taxes, per diem, collection fees, or charges and/or other expenses in connection with the goods; and even the Samsung affiliates contracting with ZIM acknowledged Samsung’s responsibility for paying ZIM. Opposition at 9-10.

The evidence shows that holds were imposed, in part, due to overdue charges that were not owed by SEA or that another entity’s cargo was held. See below, section III.C.1.c.iii.(c)(1). Additionally, SEA frequently reminded ZIM of SEA’s procedures, including billing the consignee and sending approved invoices to accounting. *See, e.g.*, CX 2470; RX 159-62.

The evidence does not support ZIM’s contention that “one of those affiliates acknowledges that Samsung is delinquent in its payments to ZIM.” Opposition at 10 (citing CX 7471). However, that page includes an August 2, 2022, email that states: “As we emailed below email, We, Samsung SDS is a totally different entity and separately operated company from Samsung Electronics. In order to minimize further impact, we appreciate that ZIM urgently releases our customer’s cargo from the hold. Once again, our cargos are not related to Samsung Electronics.” CX 7471-72. It also includes an August 3, 2022, email from SDS America which states that “[w]e are totally a different entity from Samsung Electronics. Please release all the containers belong to our customers.” CX 7471. While these emails acknowledge the hold, they are clearly indicating that non-SEA cargo is being held.

ZIM also points to an email where “Samsung SDS offers to pay past due amounts owed by Samsung.” Opposition at 11 (citing CX 2286). This October 1, 2021, email from Joy Lee of Samsung SDS to ZIM states:

I lead non-Samsung business team. As you might have got reported from Adrienne, we have total of 90 boxes that are on hold due to Samsung Electronics long standing payment.

Our cargo has nothing to do with Samsung electronics and we are under a different division but since the on-hold impact is too harsh for us, we are committing that if Samsung Electronics do not make a payment until Thursday

next week Oct 7, SDS on behalf of SEA will make full payment on Oct 8th. You have our commitment on this.

Like I made a promise to Adrienne, i did make a payment of \$280K yesterday and you have my words. Please trust me.

Again Samsung SDS will make whole amount paid by Oct 8th 2021 if SEA do not make payment by Oct 7th 2021 and this is business commitment. Please support my team so we can keep our valuable business. Your help is vital.

FYI we are under discussion with SEA for this issue. Would appreciate your feedback or we can discuss over the [phone] as well.

CX 2286 (emphasis added); *see also* CX 7410; CX 5735. Again, while this email acknowledges the hold, it also clearly indicates that ninety containers of non-SEA cargo is being held.

ZIM contends that SEA was chronically delinquent in paying ZIM and the liens were based on legitimate payment concerns. Opposition at 14-15. ZIM points to evidence that shows the amount outstanding and that ZIM is waiting for response from SEA regarding demurrage and per diem charges.” RX 152; RX 743. Unlike other customers, SEA was not listed as “high risk,” “bad payment history,” “recommend immediate suspension,” or “nonresponsive.” RX 152; ZIM RPF ¶ 264; Reply at 16 n.17. Other evidence shows that at times, ZIM’s records showed significant amounts in arrears for over ninety days. *See, e.g.*, CX 2285; CX 5717. While the evidence does show that SEA and other Samsung entities were frequently late in paying ZIM, the evidence also shows that SEA had a legitimate basis to question some of the charges it received from ZIM.

SEA asserts:

ZIM Headquarters began to pressure ZIM U.S. to collect D&D charges from consignees, including, as shown in ZIM’s own communications and testimony, in situations where ZIM knew invoicing was not proper; charges and invoices were disputed; and in a manner that did not consider (meaningfully or at all) whether such changes and their collection of D&D was consistent with the FMC’s incentive principle.

Brief at 50.

The evidence shows that ZIM was aware that at times, consignees did not receive invoices for demurrage and detention. For example, on November 17, 2021, an internal ZIM email stated: ZIM’s CEO reviewed “overdue balances in the US” and decided to “implement[] the process for holding cargo and blocking shippers for customers with overdue demurrage and detention in the US.” CX 5651.⁵ A few days later, on November 19, 2021, an internal ZIM email was sent, stating: “We got so many customers feedback that their CNEE do NOT got our invoice for

⁵ SEA’s Appendix marks part of this page as confidential. This quote was included in SEA’s PFF and therefore has already been made public. SEA PFF ¶¶ 108, 206.

DEM/DET at destination, or they already arranged the payment but still in our outstanding.” CX 5647.⁶ Although these examples did not reference SEA shipments, it shows that ZIM had a practice of not timely providing invoices and that there was pressure to collect. Moreover, internal ZIM records do not seem to distinguish between overdue amounts that are valid and overdue amounts that are disputed or missing information.

Additionally, prior to the January 2022 cargo hold, ZIM’s Head of Strategic Accounts sent an internal email stating: “We are threatening to hold one of our most profitable customers – who do not have credit with ZIM – but they are claiming not to have all invoices to issue payment.” CX 8863. Imposing a hold on SEA for invoices owed by different entities, when invoices have not been issued, or information not provided does not promote freight fluidity because unrelated containers are delayed. Moreover, it is excessive as there are other avenues to collect debts that are owed. And, imposition of holds when an entity has not been invoiced, does not have sufficient information, or is not the entity that owes the debt is not fit and appropriate to the end in view.

SEA has established that ZIM failed to implement reasonable practices and procedures in implementing cargo holds. SEA has shown a practice of imposing cargo holds based, in part, on charges for other entities and disputed invoices. While ZIM has a right to place a maritime lien on cargo, that right is not unfettered. ZIM contends that the assessment of demurrage during the lien periods was reasonable, however, if the lien itself is not supported by the facts, it is not reasonable. Moreover, Commission caselaw is clear that containers should not be held for amounts due for other containers. Therefore, the cargo holds were unreasonable and any demurrage incurred due to the unreasonable holds is also not reasonable. SEA has established that ZIM’s cargo holds were unreasonable and that this element of section 41102(c) is met.

(c) Billing Practices

SEA asserts that ZIM’s billing practices are unreasonable and its dispute resolution process is faulty; ZIM made no changes to its policy to address supply chain issues during the pandemic; ZIM’s invoicing shortfalls contribute to spiraling D&D; and ZIM’s practices and regulations regarding empty returns is unjust or unreasonable. Brief at 42-54.

ZIM contends that its policies and procedures were reasonable; ZIM has meaningful dispute resolution policies and procedures; ZIM provided employees with Shipping Act training; ZIM had publicly available dispute resolution procedures; SEA’s arguments with respect to ZIM’s policies are inconsistent and without merit; ZIM’s invoicing practices were reasonable; and SEA’s empty container returns argument is without merit. Opposition at 20-29.

(1) Invoicing Accuracy

SEA asserts that:

(1) ZIM is requiring payment for D&D charges without first evaluating whether ZIM or SEA is actually responsible for payment of the charges; (2) ZIM cannot satisfy the requirement that it certify that “the common carrier’s performance did

⁶ SEA’s Appendix marks this entire page as confidential. This quote was included in SEA’s Brief and therefore has already been made public. Brief at 39 n.52.

not cause or contribute to the underlying invoiced charges”; and (3) the obligation to arrange marine terminal cargo release under a through bill of lading is ZIM’s obligation, not SEA.

Brief at 2, 28-29. SEA further alleges that “ZIM repeatedly issued incorrect invoices, billed the wrong entities, and failed to provide the necessary information to validate the charges.” Brief at 5.

ZIM contends that its invoicing practices were reasonable, asserting that failure on the part of a carrier to follow the most efficient possible policies and procedures does not constitute unreasonableness and that Samsung has not demonstrated that it received and was asked to pay any of the allegedly delinquent invoices sent by ZIM in November of 2021. Opposition at 28.

Mr. Clava, a ZIM witness, testified about how charges are generated:

Q. How can ZIM be sure that all of its D&D charges are accurate? [Objection]

A. To my understanding, our D&D invoicing process is systemically driven based on primarily our tariffs and the charges therein. If there’s contractual exceptions, those also get updated in our system to be systemically invoiced per agreements and/or tariff.

CX 4603.

ZIM’s publicly available tariff does not suggest that it is responsible for all demurrage charges, but rather, that charges incurred “under circumstances beyond the control of the carrier” are passed on to the cargo. CX 8927. A ZIM witness testified that: “If it’s not the customer’s fault, we don’t charge.” CX 2905; *see also* CX 4169 (“If it’s not available for pickup, then Zim should not be charging it. It has to be available.”).

SEA contends that ZIM issued D&D charges “assuming – without verification of any kind – their validity” and points to testimony at CX 4597-98 and CX 4627; however, that testimony only states that ZIM agrees that invoices should be accurate, and that once invoices are issued, any corrections are made retroactively. Brief at 59 (citing CX 4597-98 and CX 4627). This does not suggest that in the first instance ZIM was not attempting to issue accurate billing. Rather, it is only once the invoice is issued that those charges are disputed. The evidence shows significant problems with ZIM’s invoicing practices because of billing the wrong party, delays in sending invoices, and inaccuracies or missing information, although there is not sufficient evidence here to find that the problems rise to the level of an unreasonable practice.

ZIM sometimes billed SEA for charges belonging to other entities. For example:

- ZIM sought payment for invoices which SEA stated: “Those invoices doesn’t belong to us. Kindly review and send it to the correct department.” CX 7209 (August 5, 2020, 4th summary).
- “There are invoices that you have sent belongs to different subsidiaries and we are not the correct department nor help you with those invoices.” RX 159 (March 24, 2021, email from SEA).

- SEA asked ZIM to check rejected invoices, “they are not Samsung Electronics America shipments and we can not tell who is the correct team for approval.” CX 7275 (June 23, 2021).
- “I lead non-Samsung business team. As you might have got reported from Adrienne, we have total of 90 boxes that are on hold Our cargo has nothing to do with Samsung electronics and we are under a different division.” CX 2286 (October 1, 2021, email from Samsung SDS).
- SEA shows that of the \$1,335,861.81 at issue, SEA identified about 37% as “Not for SAMSUNG ELECTRONICS AMERICA” please check and make sure to send the invoice to correct team (\$502,895.04). CX 7368 (October 4, 2021, email from SEA) (emphasis omitted).
- Chart showing “Rejected: Not SEA Cntr” of \$ 182,400. RX 919 (January 21, 2022) and RX 1639 (February 7, 2022, follow-up email). “Not SEA Shipment SEA/SDS and HQ to check with correct Samsung team.” CX 7414-15 (February 24, 2022) (emphasis omitted).
- Executive introduced as “EVP at Samsung SDS HQ, Head of Logistics Services for Samsung Electronics” states on “behalf of Samsung Logistics,” regarding ten containers, that: “This Factory is a separate business legal entity and is NOT related with DEM pending issue.” CX 5735 (February 25, 2022).
- “ZIM has not releasing numerous containers which belong to our [Samsung SDS] customers” and “We, Samsung SDS is a totally different entity and separately operated company from Samsung Electronics. . . . Once again, our cargos are not related to Samsung Electronics,” and “We are totally a different entity from Samsung Electronics. Please release all the containers belong to our customers.” CX 7471-72 (August 2, 2022, and August 3, 2022, emails from Samsung SDS).

There are many Samsung entities mentioned in the record with very similar names, which was confusing. Indeed, one Samsung executive contacted ZIM and was introduced as “EVP at Samsung SDS HQ, Head of Logistics for Samsung Electronics. On behalf of Samsung Logistics” CX 5735. At other points, Samsung itself referred to the related parties: “We, SDS/Samsung Electronics/all related parties” CX 7410. SEA was able to identify when it was not the right entity and it is likely that many of those errors were corrected prior to SEA issuing payments.

ZIM was aware that at times, consignees did not receive invoices for demurrage and detention. For example, on February 16, 2021, an internal ZIM email identified billing issues including “Manual billing process delayed due to increase in volumes” and suggested as the resolution requirement that: “Zim systems are not set up to execute the manual and special invoicing requirements agreed to within the service contracts. IT enhancements are needed to eliminate/reduce the amount of manual effort spent to invoice according the customer’s requirements. These enhancements will also help to reduce the delays and errors.” CX 5628. ZIM was, therefore, working to remedy their billing issues.

Similarly, on November 19, 2021, an internal ZIM email was sent, stating: “We got so many customers feedback that their CNEE do NOT got our invoice for DEM/DET at destination, or they already arranged the payment but still in our outstanding.” CX 5647. On January 28, 2022, prior to the January 2022 cargo hold, ZIM’s Head of Strategic Accounts sent an internal email stating: “We are threatening to hold one of our most profitable customers – who do not have credit with ZIM – but they are claiming not to have all invoices to issue payment.” CX 8863.

SEA often had to request additional information or objected that billing was inaccurate. A March 24, 2021, email from SEA’s Maria Fernando to ZIM’s Adrienne Martin states: “Please provide the container # also on the summary. I put some charges that I did review from May 2020, these were disputed invoices due to incorrect computation[.] Please review because until now, the amount is not changed.” RX 159. On September 29, 2021, SEA sent ZIM an email stating: “We can not review the charges without detail. Please provide the detail BOL, container, charge type, starting and end if charge are for demurrage/detention so we can review for the appval and payment. Seem like some of them are not for Samsung Electronics America.” CX 7370-71. As discussed above, for this first cargo hold, ZIM sought payment for 130 invoices and SEA contested over half on the basis that the amount was wrong or additional information was needed. CX 7207-8 (1st and 3rd summary). For the second cargo hold, SEA had to repeatedly request information about the invoices so they could be reviewed. CX 7274-83.

While the evidence shows substantial billing problems, the evidence does not show that this was ZIM’s practice. Rather, it shows that ZIM struggled to manage customer-specific invoice requirements and procedures during a very busy period. As discussed above, SEA’s process was multi-step and complex, contributing to delays. ZIM was working to improve its billing practices and frequently made corrections and waived charges. While there are many errors, these facts do not support finding that ZIM had an unreasonable practice of issuing inaccurate invoices.

The evidence does not support finding that ZIM has a practice of imposing demurrage and detention charges when it is at fault for delays. Moreover, the record shows instances where ZIM waived charges, suggesting that they were not imposing charges on SEA for all detention and demurrage, but rather making shipment-based distinctions. While ZIM’s calculation for which charges were its fault and which charges were SEA’s fault may not have been perfect, the evidence does not support finding that ZIM failed to consider fault when imposing demurrage charges or that the billing errors were systemic or so prevalent as to be an unreasonable practice. However, ZIM risks violating OSRA if this level of inaccurate billing continues.

(2) Dispute Resolution

SEA asserts that ZIM does not have meaningful dispute resolution policies and procedures, and ZIM does not provide guidance or training on FMC regulations, the Shipping Act, or the Interpretive Rule. Brief at 4, 42-46.

ZIM contends that it has meaningful dispute resolution policies and procedures, ZIM provided employees with Shipping Act training, and ZIM had publicly available dispute resolution procedures. Opposition at 20-25.

In reply, SEA alleges that ZIM has no meaningful dispute resolution process; ZIM did not provide company-wide, uniform training on FMC regulations, the incentive principle, the Shipping Act, or OSRA; and ZIM's dispute resolution website lacked necessary details, and the demurrage committee—not publicly available or accessible by customers—is merely a business unit to drive up the bottom line. Reply at 50-55.

When determining the reasonableness of a carrier's demurrage and detention practices, the Commission has specified facts that it will consider.

The Commission may consider in the reasonableness analysis the existence, accessibility, content, and clarity of policies implementing demurrage and detention practices and regulations, including dispute resolution policies and practices and regulations regarding demurrage and detention billing. In assessing dispute resolution policies, the Commission may further consider the extent to which they contain information about points of contact, timeframes, and corroboration requirements.

46 C.F.R. § 545.5(d). Moreover, the Commission has recognized that to ensure cargo fluidity, "it is important that dispute resolution process and procedures be: (a) clearly established; (b) made available on public webpages; and (c) include information about who – which person or organizational unit – should be contacted to discuss and resolve any demurrage and detention disputes that arise." FMC Fact Finding Investigation No. 28 Final Report, 2018 WL 6791232, at *19 (FMC Dec. 3, 2018).

ZIM points to its demurrage policy published in its tariff; however, that policy does not specifically address demurrage disputes. Opposition at 20-21; *see* ¶ 8 in RX 1792, RX 1819-20, RX 1855, RX 1883, RX 1922-23. ZIM has a website with dispute information and a checklist for disputes, as well as three separate email address for different types of disputes. Opposition at 21; Brief at 43. ZIM only considers invoices as formally contested if they are submitted through the formal dispute process. CX 3199-3200.

The evidence shows that ZIM established an email address for customers to submit billing disputes. The record includes ZIM emails with language stating: "All dispute(s) request should be forwarded directly to the Zim Dispute Request Desk. (dispute-request.us@zim.com)." CX 7227-28; RX 846. The record reflects that SEA submitted some disputes to ZIM's dispute system. RX 148-49. Moreover, in internal communications, ZIM recognized as an issue "Collectors not researching actual root cause of past dues or disputes received by customer" and identified as the solution: "Collectors research and understand root cause of customer's past dues as well as an disputes received from customers. It should be the collectors responsibility to do all of the research on the account before approaching sales." CX 7377-78. Thus, ZIM was aware of issues and attempting to improve its dispute resolution process.

ZIM currently provides a template for submitting disputes and clearly identifies one email address for claims related to freight, detention, and rail disputes, and another email address for demurrage in port only. RX 1908. It is not clear that this process was in place during the time of these shipments and the evidence does not show that SEA went through a formal ZIM dispute process, except for a few shipments.

The record demonstrates that more typically, SEA disputed the ZIM charges with the ZIM staff who sent the invoices. *See, e.g.*, RX 1252-54 (Ms. Fernando disputing demurrage for TCKU4650617 asserting that error resulting in delay of pick up was due to fault by ZIM/UPS and the trucker, Harvest, not by SEA); RX 1052 (Ms. Fernando indicating that charges accrued because ZIM rejected SEA's preferred trucker at the last minute); RX 838-40 (Disputing ZIM invoices as not reflecting the correct free time. ZIM conceded that the invoices were incorrect and stated that it would clear the charges and deliver the shipments.); RX 685-94 (SEA disputing the charges on the basis that ZIM did not advise it of the last free day).

ZIM had an internal demurrage committee that reviewed disputed charges. CX 3883. Customers could not submit disputes directly to the committee, rather, a ZIM employee had to submit a dispute on a customer's behalf. CX 4899; CX 3090; CX 3895. Moreover, there is no written policy to determine how disputes were decided and it appears that waivers were primarily considered for commercial purposes. CX 3885. While helpful, such an appeal process is not required by the Shipping Act. *See* 85 Fed. Reg. 29638, 29661 (May 18, 2020).

The evidence shows that ZIM could improve its dispute resolution process. Specifically, ZIM's tracking of overdue amounts did not account for disputed charges. Therefore, as discussed above, ZIM imposed cargo holds when a significant number of the overdue amounts were contested, for example because they were for a different entity. This was a recurring problem, with ZIM billing SEA for significant amounts of charges that should have been billed to a different entity.

In addition, some employees were not aware of the incentivizing principle. *See, e.g.*, CX 3007-08; CX 3894-95; CX 4136. However, there were other ZIM employees who testified that they did receive training. Opposition at 22-23; CX 3176-79; CX 4401-02; CX 4866-69. The evidence does not support a finding that the training provided is unreasonable.

The evidence does not support a finding that ZIM's dispute resolution process was unreasonable. There were multiple ways that charges could be disputed. Information about how to dispute charges was provided to SEA. And ZIM did, in fact, consider such disputes and grant waivers or correct charges. Under these facts, the evidence does not show that ZIM's practice was unreasonable.

(3) Empty Container Returns

SEA asserts that ZIM practices and regulations regarding empty returns are unjust or unreasonable. Brief at 53-54; Reply at 58. ZIM contends that SEA's empty container returns argument is without merit. Opposition at 29-30.

SEA contends that "ZIM's conduct resulted in container processing and handling delays at SEA's warehouses and client delivery locations, as well as delays in container and equipment returns, resulting in further detention charges and injuries" and that these delays should not have resulted in charges to SEA. Brief at 53, SEA PFF ¶¶ 58-64.

ZIM contends that "it is not the responsibility of the ocean carrier to notify the motor carrier of when the delivered container is empty and ready for return – that is the responsibility of

the consignee” and “detention is primarily a function of how quickly the consignee can unload the container.” Opposition at 29.

Detention refers to charges for returning empty containers after the free days. As ZIM suggests, this requires that the cargo be unloaded and the container made available for return. The parties discuss the testimony of Jeung Choi, SEA Director of Logistics, who testified:

Q. . . . Now, if a container is with a customer and is empty and ready to be returned -- I just want to close the loop on this so I understand your testimony. If a CNT, which had been recommended by ZIM fails to pick up the empty and return it to the ocean terminal before the expiration of free time, who is responsible for detention in that scenario?

A. Would definitely be ZIM because you said recommended by ZIM.

Q. Oh, okay. Sorry. I'll rephrase that. If you have a CNT recommended by SEA and that CNT fails to pick up an empty container and return it to the ocean terminal before the expiration of free time, who is responsible for the detention that accrues in that scenario?

A. It'd still be ZIM because the carrier has the responsibility to check whether it's an empty and return those containers on time to the terminal. However, in cases where the customer had not unloaded the container yet, that would be a different story.

Q. If the customer hadn't loaded [sic] the container on time and free time expired, who is, in your view, responsible for detention in that scenario?

A. It can be a multitude of cases, but, assuming there was no terminal restrictions for empties, assuming that the carrier had the capacity to return this within a day and it was unloaded after the last free day and the unload caused the number of detention days, that would be the customer's responsibility. However, in cases where the carrier was not checking whether the empty or long load was accurate or whether the terminal had restrictions or if the carrier just didn't have capacity and delayed the returns, this would be a responsibility with ZIM.

CX 2125-26. However, this argument is a red herring as the evidence does not show whether specific containers were not returned timely because the containers were not empty, which would be the responsibility of SEA, or because of actions of ZIM. So, regardless of Mr. Choi's understanding, the evidence is not sufficient to establish whether ZIM's practices regarding container returns were unreasonable. SEA does not point to evidence in the record of a practice of ZIM to unreasonably delay returning containers. Accordingly, the empty container return practices are not found to be unreasonable.

Therefore, SEA has established that ZIM acted unreasonably when it presumed that SEA was responsible for demurrage and detention charges solely on the basis that a preferred or customer nominated trucker was utilized and that ZIM had an unreasonable practice of imposing cargo holds. The unreasonable element is met for these two practices.

iv. Normal, Customary, and Continuous Basis

SEA asserts that “the regulations and practices alleged clearly satisfy the normal, customary and continuous standard under Section 545.4(b)” and that the “harm alleged does not relate to a single discrete incident but rather to a large number of shipments and for extended periods of time.” Brief at 21. ZIM does not contest this element. The evidence shows that the allegations relate to regulations and practices that were part of ZIM’s normal, customary, and continuous practices. Therefore, this element is met for the cargo holds and CNT billing practices.

v. Proximate Cause

SEA asserts that it has established proximate cause, stating:

During the period of 2020 to 2022, ZIM began assessing exorbitant D&D charges against SEA. The D&D charges related to store door moves of which SEA was not responsible. ZIM, as the carrier, was responsible for both the ocean and inland transportation, and should have only assessed D&D charges for instances where SEA was the direct and proximate cause of the delay. Moreover, due to ZIM’s collection and billing practices, SEA was placed on multiple finance holds, which resulted in additional charges. Due to ZIM unjust and unreasonable regulations and practices, SEA incurred charges in the amount of \$10.8 million and paid those amounts. Accordingly, ZIM’s practice and regulations were the proximate cause of the loss.

Brief at 55 (footnote and citation omitted).

ZIM contends that SEA has failed to demonstrate that ZIM’s alleged conduct was the proximate cause of harm, arguing that violations should be shown on a shipment-by-shipment basis, it is not clear which violations caused which charges, SEA’s expert failed to address the causation issue, and SEA’s witness “admitted there were situations in which Samsung would be liable for additional inland charges, including demurrage and detention.” Opposition at 30-35.

The proximate cause issue only needs to be resolved for the practices found to be unreasonable above, that is, ZIM’s imposition of cargo holds and shifting liability for demurrage and detention when preferred truckers were utilized.

During the cargo holds, ZIM did not deliver SEA’s cargo. Therefore, any demurrage and detention charges incurred during this timeframe proximately caused the damage, which is those charges. The method used to calculate the amount of reparations is discussed below in section III.C.5. SEA has established the element of proximate cause and all of the elements necessary to establish a violation of section 41102(c) for the cargo holds.

The other unreasonable practice regarding preferred truckers proximately caused *some* of the demurrage and detention in the record. However, the record also shows that some of the CNT detention and demurrage charges were properly billed to SEA. SEA brought this proceeding and has the burden of proof. Therefore, proximate cause is met for some of the charges, but it is not possible to determine for which ones or how many. While proximate cause is met for liability purposes, when it comes to reparations, there is not sufficient evidence to award damages for

these violations. Therefore, SEA has established a violation of section 41102(c) for ZIM's billing of some preferred trucker cargo and for ZIM's cargo holds.

Next, the allegations of retaliation, refusal to deal, and invoicing are addressed, before reaching reparations. SEA states that these "violations overlap and collectively and independently are the cause of the charges and damages at issue in this proceeding." Brief at 13.

2. Section 41104(a)(3)/41102(d): Retaliation

SEA asserts that "ZIM violated section 41102(d) because it repeatedly implemented finance holds against SEA or another entity for amounts allegedly owed even when in dispute or were inaccurately levied." Brief at 55-56; Reply 65.

ZIM contends that:

Samsung does not allege that ZIM refused it cargo space accommodations. Samsung does not allege that ZIM exercised its lien rights because Samsung patronized another carrier or because Samsung had filed a complaint against ZIM. Thus, the only basis upon which a finding of retaliation could be found is that ZIM resorted to an unfair or unjustly discriminatory action for "any other reason."

Opposition at 38. ZIM further contends that ZIM's actions were the lawful exercise of contractual lien rights and SEA did not engage in any of the protected conduct that the Commission indicated is to be included within the meaning of "any other reason." Opposition at 38-39.

Prior to OSRA in 2022, Section 41104(a)(3), stated:

(a) IN GENERAL.—A common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not— ...

(3) retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

46 U.S.C. § 41104(a)(3), previously section 10(b)(3). Post-OSRA 2022, the retaliation provision is found at 41102(d), which states:

(d) RETALIATION AND OTHER DISCRIMINATORY ACTIONS.—A common carrier, marine terminal operator, or ocean transportation intermediary, acting alone or in conjunction with any other person, directly or indirectly, may not—

(1) retaliate against a shipper, an agent of a shipper, an ocean transportation intermediary, or a motor carrier by refusing, or threatening to refuse, an otherwise-available cargo space accommodation; or

(2) resort to any other unfair or unjustly discriminatory action for—

(A) the reason that a shipper, an agent of a shipper, an ocean transportation intermediary, or motor carrier has-(i) patronized another carrier; or (ii) filed a complaint against the common carrier, marine terminal operator, or ocean transportation intermediary; or

(B) any other reason.

46 U.S.C. § 41102(d)(1).

The Commission recently issued the Statement on Retaliation “to clarify that it will interpret 46 U.S.C. § 41104(a)(3) – the anti-retaliation provision – broadly to effectuate Congress’s intent that shippers feel free to air their grievances to the Commission, and to address new shipping practices and new forms of retaliation.” Statement of the Commission on Retaliation, Docket No. 21-15, 3 F.M.C.2d 201, 2021 WL 9204128 (FMC Dec. 28, 2021) (“Statement on Retaliation”). Common carriers are prohibited from retaliating against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resorting to other unfair or unjustly discriminatory methods, because: the shipper has patronized another carrier, the shipper has filed a complaint, or for any other reason. Statement on Retaliation, 3 F.M.C.2d at 207. Double damages may be available for a violation of the anti-retaliation provision. 46 U.S.C. § 41305(c).

The Commission has explained that the “for any other reason” language includes other ways a shipper might bring unlawful activity to the Commission’s attention:

Section 41104(a)(3) contains two types of shipper activity that are specifically protected: patronizing another carrier and filing a complaint. Filing a complaint refers to filing a sworn complaint alleging a violation under 46 U.S.C. § 41301(a). The statute also, however, protects shippers from being retaliated against “for any other reason.” The Commission interprets “any other reason” to mean that protected activity under § 41104(a)(3) includes other ways that shippers may bring allegations of unlawful activity to the Commission, such as participating in Commission investigatory or enforcement efforts, commenting on a rulemaking, or using CADRS’ dispute resolution procedures. This interpretation is consistent with congressional intent as set forth in the Alexander Report and with the important role shippers serve in assisting the Commission with its mission. Further, providing information to Commission investigators and enforcement attorneys, seeking assistance from CADRS, and commenting on Commission rules and notices fall within same class of conduct as filing a complaint.

Statement on Retaliation, 3 F.M.C.2d at 207 (footnote omitted).

The Commission concluded the policy statement with an example, stating:

A complainant must show that a carrier engaged in prohibited conduct (refusing cargo space accommodations or other unfair or unjustly discriminatory methods), with respect to a protected entity (shipper), because the protected entity engaged in protected activity (patronizing other carriers, filing a complaint, or other activities of the same class).

Statement on Retaliation, 3 F.M.C.2d at 209.

This section will focus on the last element regarding whether the protected entity, SEA, engaged in protected activity such as patronizing other carriers, filing a complaint, or other activities of the same class.

Section 41104(a)(3) states that a common carrier may not retaliate against a shipper “because the shipper has patronized another carrier, or *has filed a complaint, or for any other reason.*” 46 U.S.C. § 41104(a)(3) (emphasis added). The Commission has indicated that “protected activity includes not only filing a complaint with the Commission but also participating in Commission investigatory or enforcement efforts, commenting on a rulemaking, or using CADRS’ dispute resolution procedures.” Statement on Retaliation, 3 F.M.C.2d at 201.

SEA does not directly address this element, but states that “ZIM violated section 41102(d) because it repeatedly implemented finance holds against SEA or another entity for amounts allegedly owed even when in dispute or were inaccurately levied.” Brief at 56. In the record, the first mention by SEA to ZIM regarding filing a Shipping Act complaint was not until September 23, 2022, after the last cargo hold. RX 16-17.

There are no allegations that either the finance or cargo holds were implemented because SEA patronized other carriers, filed a complaint, or otherwise aired their grievance with the Commission. Rather, at most, SEA may be arguing that they were penalized for disputing charges with ZIM. However, SEA provides no legal support for finding that disputing a charge with a carrier is sufficient to establish retaliation under the Shipping Act. Moreover, SEA does not point to any evidence showing that the cargo holds were put into place as retaliation for disputing charges. Accordingly, the record does not support a finding of retaliation.

3. Section 41104(a)(10): Refusal to Deal

SEA asserts that ZIM’s actions constitute a refusal to deal, arguing:

ZIM’s utilization of finance holds to force payment of disputed charges, in addition to being a violation of Section 41102(c), constitutes an unreasonable refusal to deal. ZIM refused to address disputed invoices or provide additional necessary or requested information and instead, unreasonably placed cargo on hold to force payment from SEA, without actually having to address invoice disputes. Moreover, as reflected above in the August 2020 “Hold their cargo!!! 😊 😊” email, instead of responding to SEA’s request for additional information regarding charges, ZIM instead opted to implement a finance hold.

Brief at 57. Specifically, SEA argues that ZIM unreasonably refused to deal by:

- Refusing to provide adequate information in response to requests for information on disputed invoices and charges;
- Failing to properly provide inland transportation arrangements by not appointing alternative inland trucking, and in response to requests to use alternative or house truckers, refusing to do so; and

- Employing abusive finance hold collection practices to refuse to make cargo available for delivery and also form a basis for a finding of retaliation.

Brief at 5. In reply, SEA states that “ZIM repeatedly refused to engage in discussion related to the amounts allegedly owed and instead utilized Finance Holds to induce payments.” Reply at 65-66.

ZIM contends that it did not refuse to deal with SEA; SEA points to a notice of proposed rulemaking instead of settled law; and that “ZIM did in fact waive/refund (or offer to waive) demurrage and detention charges relating to Samsung shipments when doing so was warranted under ZIM’s legally compliant policy.” Opposition at 39-40.

Section 41104(a)(10) stated, during the relevant timeframe, that : “(a) IN GENERAL.—A common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not— ... (10) unreasonably refuse to deal or negotiate.” 46 U.S.C. § 41104(a)(10); previously section 10(b)(10), and before OSRA 1999, section 10(b)(12). *See Canaveral Port Authority - Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate*, Docket No. 02-02, 29 S.R.R. 1436, 2003 WL 723336, at *5 n.6 (FMC Feb. 24, 2003). OSRA 2022 changed this section to add an example: “(10) unreasonably refuse to deal or negotiate, including with respect to vessel space accommodations provided by an ocean common carrier.” 46 U.S.C. § 41104(a)(10). After this proceeding was filed and briefed, the Commission issued a final rule regarding the Definition of Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier, and an announcement of the effective date. 89 Fed. Reg. 59648 (July 23, 2024); 90 Fed. Reg. 30 (Jan. 2, 2025); 46 C.F.R. § 542.1.

Failing to arrive at favorable terms – or any terms at all – following a negotiation is not a refusal to deal or negotiate. *Canaveral*, 2003 WL 723336, at *18 (citing *Seacon Terminals, Inc. v. Port of Seattle*, Docket No. 90-16, 26 S.R.R. 886, 899, 1993 WL 197325 (FMC Apr. 14, 1993)). The Commission has found that a common carrier should “refrain from ‘shutting out’ any person for reasons having no relation to legitimate transportation-related factors.” *New Orleans Stevedoring Co. v. Bd. of Commissioners of the Port of New Orleans*, Docket No. 00-11, 29 S.R.R. 1066, 1070, 2002 WL 33836158 (FMC June 28, 2002), *aff’d sub nom. New Orleans Stevedoring Co. v. FMC*, 80 Fed. Appx. 681 (D.C. Cir. 2003). The Commission has stated that “in determining reasonableness, the agency will look to whether a marine terminal operator gave actual consideration to an entity’s efforts at negotiation.” *Canaveral Port Authority*, 2003 WL 723336, at *18. “Refusals to deal or negotiate are factually driven and determined on a case-by-case basis,” although the ultimate burden of persuasion remains with the complainant to show that the refusal to deal or negotiate was unreasonable. *Canaveral Port Authority*, 2003 WL 723336, at *13, *18.

SEA must establish that ZIM refused to deal or negotiate with SEA to be successful in this claim. SEA does not provide any legal support that the utilization of finance or cargo holds constitutes an unreasonable refusal to deal under these facts, although they point to the “Hold their cargo!!! ☺ ☺” email in support of their arguments. Brief at 57. ZIM asserts that there was no refusal to deal and it did waive and refund some charges. Opposition at 40.

As demonstrated by the findings of fact which summarize just some of the emails exchanged between the parties, there was regular communication between them. At times, both parties failed to prioritize responding to the other party's process or concerns. *See, e.g.*, CX 7223-25; RX 159-60. This is not a situation where an entity imposed a hold and then refused to communicate. In fact, during the holds, the evidence shows that the parties continued to discuss the amounts due and that ZIM released the holds without obtaining the original amount sought. While the communication between the parties may not have been as frequent or fruitful as SEA wanted, the evidence does not show that it was not in good faith. Therefore, the record does not establish that ZIM refused to deal with SEA.

4. Section 41104(a)(15): Invoicing

SEA asserts that certain ZIM invoices violated OSRA's new guard posts as to invoicing without required information under section 41104(a)(15), arguing that "evidence establishes that ZIM has failed to provide all of the above required information in its D&D invoices," ZIM issued D&D charges without verifying their validity, and ZIM's policy of assessing D&D charges for store-door moves is in violation of section 41104(a)(15). Brief at 57-59.

ZIM contends that SEA only presents one example, that practices and charges were lawful and reasonable, and that these sections only would apply to invoices issued after June 16, 2022. Opposition at 40-41.

In reply, SEA argues that an invoice with six containers did not list the actual container available date. Reply at 66-67.

Section 41104(a)(15) was adopted in 2022 as part of OSRA and applies to charges assessed after June 16, 2022. This section states:

(a) IN GENERAL.—A common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not— ...

(15) invoice any party for demurrage or detention charges unless the invoice includes information as described in subsection (d) showing that such charges comply with-

(A) all provisions of part 545 of title 46, Code of Federal Regulations (or successor regulations); and

(B) applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled "Interpretive Rule on Demurrage and Detention Under the Shipping Act" (or successor rule); ...

(d) DETENTION AND DEMURRAGE INVOICE INFORMATION.-

(1) INACCURATE INVOICE.-If the Commission determines, after an investigation in response to a submission under section 41310, that an invoice under subsection (a)(15) was inaccurate or false, penalties or refunds under section 41107 shall be applied.

(2) CONTENTS OF INVOICE.-An invoice under subsection (a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:

- (A) Date that container is made available.
- (B) The port of discharge.
- (C) The container number or numbers.
- (D) For exported shipments, the earliest return date.
- (E) The allowed free time in days.
- (F) The start date of free time.
- (G) The end date of free time.
- (H) The applicable detention or demurrage rule on which the daily rate is based.
- (I) The applicable rate or rates per the applicable rule.
- (J) The total amount due.
- (K) The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.
- (L) A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.
- (M) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

46 U.S.C. § 41104(a)(15), (d).

SEA broadly asserts violations of these sections in the introduction of its brief, stating that ZIM failed to provide certain minimum information on invoices between June 17, 2022, and December 31, 2022. Brief at 5. However, it is not clear which specific invoices are at issue, as SEA only points to one invoice which it argues is for an unrelated entity. Brief at 58 (citing SEA00112539, which is CX 7492). This July 12, 2022, invoice, for shipments prior to OSRA being adopted, lists seven containers from six bills of lading. For three containers, the free time start date was May 22, 2022, while for the other four containers, the free time start date was May 23, 2022. However, the end free time/start calculate date is the same: May 27, 2022. May 22, 2022, was a Sunday, and SEA asserts that it could not have picked up the container on that day as the port was closed. However, the free time ended the same day as the containers that were listed as available on Monday.

The document at CX 7493 has the same "Init.Ref.Doc" number and a cover sheet that says it is for the July 12, 2022, invoice. It states "Free days period calendar: **Business Days**" suggesting that it only charged free days for business days. CX 7493. This page also states that free time is for days 1-4. CX 7493. The invoice shows that SEA was provided four free business days whether the containers were listed as available on Sunday or Monday. CX 7492. Therefore, it does not appear that SEA lost a free day or was charged anything additional due to the container availability date being listed as Sunday instead of Monday. This was an invoice sent just as OSRA was being implemented. These facts do not support finding a violation.

SEA also contends that although the invoice provided an email address for disputes, that "ZIM has failed to establish meaningful dispute resolution practices" and that ZIM did not

sufficiently verify the charges. Brief at 60. SEA does not provide any new evidence or argument about these concerns, which were addressed above. As discussed above, the evidence does not support finding a violation of section 41104(a)(15). However, the record reflects that prior to OSRA, ZIM frequently did not include all of the information required by 46 U.S.C. § 41104(d) in its invoices, leading to requests from SEA for more information and delaying SEA's payments to ZIM. *See e.g.*, CX 7407; CX 7415-16; RX 159. If these practices continue, they could lead to a finding of a violation.

5. Reparations

SEA seeks “at a minimum, the principal amount of \$10.8 million in direct damages and over \$1.4 million in additional costs” which it alleges it incurred as a result of ZIM's violations. Brief at 60. SEA's expert report provides in Exhibit 1 a list of inland transportation charges paid by SEA on ZIM Shipments, in Exhibit 9 lists a “sub-set of Exhibit 1 data to laser focus on the finance hold charges,” and in Exhibit 10 provides a total of demurrage charges related to three cargo holds. Brief at 60. SEA argues that ZIM does not dispute the amount of SEA's damages and that ZIM's data actually shows higher amounts. Brief at 61. SEA relies on its expert, Mr. Gregory Smith. CX 5784-5815.

ZIM contends that SEA has failed to prove damages with reasonable certainty, arguing that “it has included ALL amounts paid over a three-year period for various charge categories despite acknowledging that there are circumstances in which it is responsible for the charges and acknowledging that any charges for which it is responsible are nonetheless included in the reparations being sought.” Opposition at 36. Moreover, ZIM contends that SEA's expert did not make any adjustments for charges that were the responsibility of SEA. *Id.* ZIM relies on its rebuttal expert, Mr. Ricardo Zayas. CX 6500-7146.

In reply, SEA states that “ZIM is able to reference that SEA's harm arises in part from over 10,000 charges on 2,800 containers because SEA produced detailed records in support of those charges;” that “no evidentiary challenge has been made in this proceeding to the sufficiency and certainly of the basis or calculation of the harm SEA alleges;” and the evidence is not contested. Reply at 59.

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). Complainants bear the burden of proving that they are entitled to reparations. *MAVL Capital Inc. v. Marine Transport Logistics, Inc.*, Docket No. 16-16, 2022 WL 2209421, at *3 (FMC June 10, 2022). “As the Commission has explained: ‘(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.’” *Id.* (citations omitted). Reparations will only be awarded based on actual damages. “Actual damages means ‘compensation for the actual loss or injuries sustained by reason of the wrongdoing’ which complainants must show to a reasonable degree of certainty.” *Id.* (quoting *Cal. Shipping Line, Inc. v. Yangming Marine Transport Corp.*, Docket No. 88-15, 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.” *Id.*

The statements of the Commission in *California Shipping Line Inc.* and the other cited cases are in the mainstream of the law of damages as followed by the courts, for example, regarding the principle that the fact of injury must be shown with reasonable certainty, that the amount can be based on something less than precision but something based on a reasonable approximation supported by evidence and by reasonable inferences, the principle that the damages must be foreseeable or proximate or, in contract law, within the contemplation of the parties at the time they entered into the contract, the fact that speculative damages are not allowed, and that regarding claims for lost profits, there must be reasonable certainty so that the court can be satisfied that the wrongful act caused the loss of profits.

Tractors & Farm Equipment Ltd. v. Cosmos Shipping Co., Docket No. 81-57, 26 S.R.R. 788, 798-99 (ALJ Nov. 23, 1992), admin. final, Dec. 31, 1992.

SEA's expert identifies thirteen different types of charges but does not identify the cause of the charges. So, his report breaks charges down based on if they were demurrage, equipment detention, rail storage, etc. CX 6210. But the record does not include a breakdown of the cause of charges, for example, warehouse unable to accept delivery, driver or chassis unavailability, or work order not issued timely. Without knowing the cause of the delays, it is not possible to apportion the damages beyond what was negotiated by the parties at the time.

SEA's expert report discusses the pre-pandemic process by which SEA contested payments and engaged in a "reconciliation with ZIM."

Before the supply chain disruptions that started during the COVID-19 pandemic, SEA would occasionally receive invoices from ZIM for extra inland transportation charges such as demurrage or detention after a container had been delivered to its destination. When this happened, SEA personnel would evaluate the charges to determine if there was some reason why SEA caused the charges, given that ZIM was responsible for all transportation through delivery to the inland destination. If SEA determined that it was responsible for causing the charge (for example, if SEA's customer wasn't able to accept delivery, and SEA communicated that the container should remain at the terminal beyond the "free" period), it would either send payment or include the charge as part of a reconciliation with ZIM.

CX 5793-94 (footnote omitted). SEA asserts that this process changed but the evidence shows that the parties continued to negotiate who should be responsible for charges.

Moreover, for many of the improper charges, especially the ones which should have been billed to a different entity, SEA was able to check and contest those charges, so many of them did not end up being paid. For the charges that were paid, it is unclear which ones were due to ZIM's unreasonable practices regarding preferred truckers. As discussed above, SEA seeks reparations for all of the demurrage and detention charges, without making any effort to subtract the charges for which it was responsible. The evidence does not support such a broad reparations award, especially as it is clear that there were times when demurrage was incurred because SEA's customers' warehouses were not able to take delivery, SEA's customer insisted on a preferred

trucker who was not available, SEA failed to respond timely to questions, or other causes for which SEA would be responsible. Therefore, no reparations are awarded for the unreasonable practice of shifting liability for demurrage and detention charges to SEA solely on the basis that a preferred trucker was utilized.

Accordingly, the focus for reparations is on the unreasonable cargo holds. ZIM's expert only addressed the cargo holds once in his report, stating that "Smith's knowledge of pandemic related delays and corresponding increases in charges is evidenced by his discussion of so-called 'cargo holds.'" CX 6518. Mr. Zayas does not make any arguments specific to the calculation of damages from the cargo holds.

SEA relies on its damages expert, Mr. Gregory Smith, who provides a list of the shipments impacted by the cargo holds in Exhibit 9 of his report and a summary of the total demurrage charges in Exhibit 10. CX 5784-6248. Mr. Smith calculates damages for three hold periods, corresponding to the second cargo hold (May 27, 2021, to June 30, 2021), the third cargo hold (September 27, 2021, to October 11, 2021), and the fourth cargo hold (January 11, 2022, to March 17, 2022). CX 6073. SEA's expert does not include the first, August 2020, cargo hold, although a reason is not provided. There is not sufficient evidence in the record to award reparations for that first cargo hold. His analysis "included charges with activity dates up to one month after the holds were lifted to more fully capture the impact of the cargo holds." CX 5810.

The Smith Exhibit 9 chart includes the container number, the bill of lading number, a description of the charge, the amount, the posting date, the invoice date, and the activity date. CX 5932-44. Only demurrage charges are included in this calculation. *Id.* Ideally, requests for reparations would include additional information including the departure and arrival ports. However, the evidence presented is sufficient to identify specific containers for which SEA seeks reparations for the demurrage charges.

In Exhibit 11, Mr. Smith utilized "the data produced by ZIM [which] yields a higher amount of demurrage charges related to the cargo holds at \$4.9 million." CX 6075; CX 6246. Mr. Smith states:

I am able to determine that the primary reason the total demurrage and detention amounts reported by ZIM are higher than those reported by SEA is that there are charges paid by SEA for hundreds of containers and bills of lading reported by ZIM ("Missing Charges") that do not show up in the SEA reporting. Given that the amounts reported by ZIM were paid by SEA, it appears that when SEA extracted the inland transportation charges from its SAP system, it somehow did not identify the Missing Charges as being associated with ZIM shipments.

CX 6071. The SEA data is more reliable than the ZIM data as SEA's expert witness is able to clearly indicate which containers are included. Therefore, the demurrage totals in Exhibit 10 are relied on instead of the demurrage totals in Exhibit 11, based on the ZIM data.

In SEA's brief, it states that "ZIM's data provides that SEA incurred \$5.2 million in demurrage charges related to finance holds." Brief at 8, 61. This is more than the number calculated by SEA's expert using the SEA data or the ZIM data. The evidence includes a chart

created by ZIM's Mr. Yaacoub, which identifies four cargo hold periods, and identifies demurrage, rail storage, and detention and handling for each period. CX 1570. There is limited information in the record about how these numbers were compiled. The total amount of demurrage, \$3,802,918, is within 5 percent of the amount calculated by SEA's expert witness, in part because it includes one additional timeframe. *Compare CX 1570 with CX 6245.* There is not sufficient foundation to rely on Mr. Yaacoub's numbers but they do serve to corroborate SEA's expert's calculations on damages. Mr. Yaacoub's chart also includes columns for rail storage, totaling \$502,331, and detention and handling, totaling \$897,019, that are not included in SEA's expert's calculation of demurrage charges related to the cargo holds. There is not sufficient evidence in the record to include the damages for rail storage. Moreover, the cargo holds did not prevent SEA from returning containers, so detention is not awarded.

Many of ZIM's criticisms of Mr. Smith's report are focused on the portions seeking reparations for all charges incurred. Opposition at 36. However, because the imposition of any demurrage or detention was not found to be a violation, these portions of the reparations sought are not considered. Rather, the focus is on demurrage charges that were incurred due to the cargo holds. Indeed, ZIM's opposition brief does not specifically address reparations sought due to the cargo holds, or Smith's Exhibits 9 or 10.

SEA's loss analysis assumes liability and does not include any adjustment or consideration of inland transportation charges, which may be the responsibility of SEA. CX 5987; CX 5999-6000. So, for example, the damages analysis would not account for instances where SEA's customer was unable to accept delivery of a container. However, during the cargo holds, SEA was blocked from obtaining delivery of any of its containers. Therefore, failures to pick up containers were, in the first instance, the fault of ZIM. Whether or not SEA's customer was able to accept delivery or had other constraints is not relevant as ZIM had decided to hold all of SEA's cargo. Therefore, during the cargo holds, ZIM bears responsibility for the containers not leaving the port.

Similarly, delays caused by supply chain disruptions, lack of chassis, unavailability of truckers, or other potential causes of delays do not need to be deducted from the amount of demurrage charged during the cargo holds as the primary cause of the demurrage was the cargo hold itself. There is no way to determine whether the containers would have been delivered timely had ZIM not imposed the cargo hold. Therefore, any efforts to deduct demurrage caused by any of those potential other reasons would be speculative.

ZIM also asserts that there is a lack of clarity about when SEA's claim for damages begins. However, the reparations addressed here are for three specific timeframes: the second cargo hold from May 27, 2021, to June 30, 2021; the third cargo hold from September 27, 2021, to October 11, 2021; and the fourth cargo hold from January 11, 2022, to March 17, 2022. These dates, combined with the list of containers impacted, are sufficient to identify an appropriate timeframe. Moreover, although the evidence shows that the third cargo hold ended on October 6, 2021, the additional five days used by SEA's expert is permissible, especially as cargo released earlier would not have incurred additional demurrage charges.

SEA's analysis includes demurrage charges for thirty days after the hold period ended. The Smith report states:

I understand that once the cargo holds were lifted, SEA (and ZIM – the party responsible for inland transportation of the containers) would not be able to immediately remove the containers from the terminals. Once a hold is lifted, arrangements have to be made for the inland transportation, as well as for the payment of newly added demurrage during the hold, which often further delay the process. As one example related to the 2022 cargo hold, on February 9, 2022, SEA asked ZIM to urgently release the hold for four containers, which it did not. Harvest Transport had indicated to SEA that if it was not able to pick up this container on the next day, the next appointment would not be until the second week of March. This indicates that a change in schedule can easily create a delay of over a month.

CX 5809-10, ¶ 50 (footnotes omitted).

ZIM and its expert, Mr. Zayas, do not object to this thirty-day period. While it is longer than typically provided for free time, there would be a higher than typical number of containers needing transport. For containers that were picked up earlier than thirty days, the demurrage charges would only include the actual days the container was in demurrage, as demurrage would not be charged once the container is picked up. The thirty-day period, or thirty-five days for the third cargo hold, is supported by the record as a reasonable timeframe for demurrage due to the cargo holds. In future cases, greater detail regarding the shipments for which damages are sought would be helpful.

ZIM alleges that SEA currently owes ZIM approximately \$2 million in charges; however, that amount is not substantiated and ZIM does not suggest that it should impact the reparations amount. *See* Brief at 14; RX 2.

The reparations that SEA seeks as part of its additional loss, including additional personnel costs, additional facilities/terminal costs, and lost profits such as sales cancellations are not supported by the evidence. To be properly supported, there would need to be evidence showing that these costs were actual damages caused by the Shipping Act violation. The evidence does not link these additional costs to shifting liability for customer nominated trucker demurrage and detention or the cargo holds found to be unreasonable practices that violate section 41102(c).

Accordingly, SEA has established that reparations are appropriate for the containers listed in Smith Exhibit 9 for the cargo hold periods and amounts listed in Smith Exhibit 10. CX 5932-44. The date for calculating interest will run from the beginning date of each cargo hold, as that is when the containers started to be held and damages started to accrue.

Therefore, SEA has established that it is entitled to reparations:

- from May 27, 2021, for the amount of \$650,835;
- from September 27, 2021, for the amount of \$755,472; and
- from January 11, 2022, for the amount of \$2,274,032;

for a total reparation amount of \$3,680,339.

IV. ORDER

Upon consideration of the record herein, the arguments of the parties, the findings and conclusions set forth above, and the determination that ZIM violated the Shipping Act section 41102(c) as discussed above, it is hereby

ORDERED that SEA's Complaint alleging that ZIM violated the Shipping Act be **GRANTED**. It is

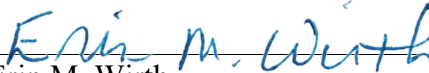
FURTHER ORDERED that ZIM is ordered to pay SEA reparations in the amount of \$650,835, with interest on the reparations award running from May 27, 2021. It is

FURTHER ORDERED that ZIM is ordered to pay SEA reparations in the amount of \$755,472, with interest on the reparations award running from September 27, 2021. It is

FURTHER ORDERED that ZIM is ordered to pay SEA reparations in the amount of \$2,274,032, with interest on the reparations award running from January 11, 2022. It is

FURTHER ORDERED that any other pending motions or requests be **DISMISSED AS MOOT**. It is

FURTHER ORDERED that this proceeding be **DISCONTINUED**.


Erin M. Wirth
Chief Administrative Law Judge