

BEFORE THE  
FEDERAL MARITIME COMMISSION

November 29, 2022

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DOCKET NO. 22-31

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THOMPSON PIPE GROUP, INC.  
COMPLAINANT

v.

OMNI LOGISTICS LLC,  
RESPONDENT.

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**VERIFIED COMPLAINT PURSUANT TO 46 U.S.C. § 41301(a)**

Complainant TPG PRESSURE INC. (“Complainant” or “TPG”), by its undersigned attorneys, files this *Verified Complaint Pursuant To 46 U.S.C. § 41301(a)* (the “Complaint”) against Omni Logistics, LLC (“Respondent” or “Omni”), seeking reparations for injuries to TPG caused by Respondent’s unjust and unreasonable practices in connection with billing demurrage and other charges in violation of Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* as amended by the Ocean Shipping Reform Act of 2022 as applicable, and regulations thereunder including, but not limited to, 46 CFR part 545 and principles set forth in Interpretive Rule on Demurrage and Detention Under the Shipping Act, 46 CFR § 545.5.

**I. PARTIES**

1. TPG is a corporation organized under the laws of the State of Texas with a principal place of business at 1003 Macarthur Blvd, Grand Prairie, TX 75050, with an email address at [bmalkenhorst@thompsonpipegroup.com](mailto:bmalkenhorst@thompsonpipegroup.com).



2. The names and addresses of the attorneys representing Complainant are: (1) Tiffany N. Compres, FisherBroyles LLP, 1221 Brickell Avenue, Suite 900, Miami Florida, [tiffany.compres@fisherbroyles.com](mailto:tiffany.compres@fisherbroyles.com), and (2) Gene M. Burd, FisherBroyles LLP, 1200 G Street NW, Suite 800, Washington, D.C. 20005, [gene.burd@fisherbroyles.com](mailto:gene.burd@fisherbroyles.com).

3. Upon information and belief, Omni Logistics LLC (f/k/a Epic Freight Service) is a limited liability company organized under the laws of the State of Texas with a mailing address at 3200 Olympus Boulevard, Suite 300, Dallas, Texas 75019.

4. At all relevant times, Omni was and is a licensed non-vessel-operating common carrier (NVOCC), License No. 18469.

5. At all relevant times Omni was a “common carrier” within the meaning of the 46 U.S.C. § 40102(7) or “ocean transportation intermediary” within the meaning of 46 U.S.C. § 40102(17), subject to regulation by the Federal Maritime Commission (the “Commission”). The email addresses currently known for Respondent are [dkinney@omnilogistics.com](mailto:dkinney@omnilogistics.com) and [bheathcock@omnilogistics.com](mailto:bheathcock@omnilogistics.com).

## **II. JURISDICTION**

6. The Commission has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984.

7. This Complaint is being filed pursuant to 46 U.S.C. § 41301(a).

8. The Commission has personal jurisdiction over TPG as a “common carrier” as defined in 46 U.S.C. § 40102(7) and as a licensed “non-vessel-operating common carrier.”

9. Respondent's actions alleged herein constitute: (1) failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of TPG, in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§545.4 and 545.5; and (2) unreasonable refusal to deal or negotiate with TPG, in violation of 46 U.S.C. Section 41104(a)(10).

### **III. FACTUAL ALLEGATIONS**

10. TPG is a supplier and installation contractor of concrete, steel, fiberglass, and polymer pipes and structures, used for drainage, sanitary, pressure, and trenchless applications.

11. In 2021, TPG contracted Omni (while it was still known as Epic Freight Service) to provide carriage of containers from ports outside the United States to ports in the United States or to TPG's job sites in the United States through ports in the United States.

12. Omni provided its services on the basis of purchase orders TPG issued or quotations Omni issued. Both the purchase orders and quotations provided fixed prices for ocean freight and certain other charges.

13. Omni's quotations did not include information about "demurrage," as such term defined by 46 CFR § 545.5 or provide information as to where information about demurrage can be found.

14. Omni never informed TPG about its policies with respect to demurrage. Upon information and belief, Omni has no such policies.

15. For all relevant shipments, Omni conducted negotiations with the ocean carrier, including, but not limited to, providing information about the cargo and parties, such as the shipper

and consignee. TPG was not involved in such negotiations and had no prior knowledge of the identity of the ocean carrier and their policies with respect to demurrage.

16. In or about November 2021, Omni began issuing invoices to TPG that included demurrage charges that TPG found to be excessive. All of the invoices were issued by Omni or by its predecessor to TPG on their respective letterheads. Applicable bills of lading were issued by various entities, including by agents on behalf of unnamed principals.

17. An incomplete list of invoices subject to this Complaint is attached hereto as Exhibit A. TPG is in the process of gathering all necessary information and will submit a complete list of all invoices and bills of lading subject to the Complaint as soon as possible.

18. Omni's invoices and supporting documentation were utterly insufficient to enable TPG to assess the propriety of demurrage charges and to mitigate damages. In particular, Omni invoices and supporting documentation failed to include the following information:

- a. Date when the respective container was made available;
- b. The allowed free time;
- c. The start date of free time;
- d. The end date of free time;
- e. The applicable detention or demurrage rule on which the daily rate was based;
- f. The applicable rate or rates per the applicable rule;
- g. Appropriate contact information for questions or requests for mitigation of fees;  
And
- h. A statement that the charges are consistent with any of the Commission rules with respect to detention and demurrage.

19. Moreover, Omni provided its invoices to TPG with up to four months delay after the respective ocean carrier invoices were issued, making mitigation of damages practically

impossible. In some instances, Omni even demanded payment on invoices that had never been provided to TPG.

20. Incredibly, just before the filing of Complaint, Omni submitted TPG demurrage invoices for deliveries that took place in January 2022, which is a delay of nine months. Even being on notice of the dispute, these belated invoices did not include copies of supporting bills of lading and other documents explaining demurrage charges. Omni also failed to explain why it took it nine months to prepare and submit TPG demurrage invoices.

21. Furthermore, some invoices inexplicably included up to nine days of chassis charges, where TPG's records indicated that containers were returned on the same day as they have been delivered to the destination.

22. Despite the ongoing dispute regarding demurrage charges, and under objections, TPG paid in excess of \$860,000 for demurrage and other additional charges to Omni so that Omni would release the cargo.

23. The foregoing Omni practices began at the latest on or about November 2021 and lasted to at least October 2022 and applied to at least 227 containers.

24. Omni presently further demands that TPG pay an additional \$362,123.94 for alleged services and costs.

25. TPG repeatedly requested that Omni provide information supporting its charges, but Omni refused. Moreover, Omni terminated TPG's access to a shared internet location that hosted a file that tracked shipments and associated fees and costs. Accordingly, TPG is unable to verify the veracity of charges Omni has assessed.

26. In an attempt to resolve this matter, TPG, through its counsel, submitted to Omni a demand for documentation supporting its charges. However, Omni, responding through counsel, refused to do so and once again demanded payment of the allegedly outstanding balance of \$362,123.94.

#### **IV. VIOLATIONS BY OMNI**

##### **COUNT I – VIOLATION OF 46 U.S.C. § 41102(c)**

27. TPG realleges each allegation above as if fully set forth herein.

28. Omni is a common carrier or ocean transportation intermediary within the meaning of 46 U.S.C. § 40102.

29. Section 41102(c) requires a common carrier or ocean transportation intermediary “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.”

30. Section § 41102(c) applies to practices and regulations relating to demurrage and detention for containerized cargo. *See* 46 CFR § 545.5(b). For purposes of Section 545.5, 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.

31. The foregoing customary, continuous, and ongoing conduct by Omni in connection with its respective receipt, handling, storage, and delivery of the property of TPG constitutes a failure by Omni to establish, observe, and enforce just and reasonable practices relating to

receiving, handling, storing, and delivering the property of TPG and other shippers, in violation of 46 U.S.C. § 41102(c).

32. The Commission has adopted an interpretive rule to establish guidance for determining whether practices with respect to demurrage and detention are unjust and unreasonable. *See* Docket No. 19-05, 46 CFR § 545.5 (the “Interpretive Rule”). The Interpretive Rules, *inter alia*, provides that:

(c)*Incentive Principle*. 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 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.

\* \* \*

(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.

\* \* \*

(d) Demurrage and detention policies. 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.

33. The facts asserted in this Complaint establish that:

- a. Omni failed “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.
- b. Omni’s acts or omissions occurred on a normal, customary, and continuous basis.
- c. Omni practice was unjust and unreasonable, in violation of application laws and regulations.
- d. The practice or regulation is the proximate cause of the claimed loss.

**COUNT II – VIOLATION OF 46 U.S.C. § 41104**

34. TPG realleges each allegation above as if fully set forth herein.

35. 46 U.S.C. § 41104(a) prohibits commons carriers, either alone or in conjunction with any other person, from directly or indirectly:

- a. Assessing any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including subsection (c) of 46 U.S.C. § 41102 or part 545 of title 46, Code of Federal Regulations (or successor regulations). 46 U.S.C. § 41104(a)(14).
- b. Invoice any party for demurrage or detention charges unless the invoice includes information as described in 46 U.S.C. § 41102(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).

36. 46 U.S.C. § 41102(d) requires that invoices for demurrage or detention charges include the following accurate information:

- a. Date that container is made available
- b. The port of discharge.
- c. The container number or numbers.
- d. The allowed free time in days.
- e. The start date of free time.
- f. The end date of free time.



- g. The applicable detention or demurrage rule on which the daily rate is based.
  - h. The applicable rate or rates per the applicable rule.
  - i. The total amount due.
  - j. The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.
  - k. A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.
  - l. A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.
37. Invoices submitted by Omni failed to include information required by law.
38. Failure by Omni to include in the invoices information required by 46 U.S.C. § 41102(d) constitutes failure to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property as provided by 46 U.S.C. § 40102(c).
39. The facts asserted in this Complaint establish that:
- a. Omni failed "to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.
  - b. Omni's acts or omissions occurred on a normal, customary, and continuous basis.
  - c. Omni practice was unjust and unreasonable in violation of application laws and regulations.
  - d. The practice or regulation is the proximate cause of the claimed loss.

## V. CAUSATION

40. The foregoing alleged acts and omissions of Omni have directly and proximately injured TPG because TPG was forced to pay demurrage and other non-freight charges to Omni on the basis of unsubstantiated invoices, and Omni continues demanding that TPG pay additional charges on the basis of unsubstantiated invoices.

## **VI. COMPLAINANT'S DAMAGES**

41. TPG has been, and continues to be, actually and materially injured by Omni's continuous conduct in violation of the Shipping Act alleged herein.

42. Omni's violations alleged herein are causing direct, proximate, and ongoing financial damages to TPG in an amount already believed to exceed \$1,222,123 currently accruing, and to be further demonstrated in this proceeding.

## **VII. PRAYER FOR RELIEF**

**WHEREFORE**, TPG respectfully requests that the Commission require Omni to answer the charges made in this Complaint and prays for relief from the Commission as follows:

1. An Order, after due investigation pursuant to 46 U.S.C. Sections 41302 and 41303 and a hearing pursuant to 46 U.S.C. Section 41304, finding that Omni has violated 46 U.S.C. Section 41102(c) in connection with their respective receipt, handling, storage, and delivery of the property of TPG;
2. An Order (1) compelling Omni to cease and desist from violation of the Shipping Act and (2) putting in place lawful and reasonable practices to preclude Omni from demanding that TPG pay unsubstantiated and unlawful charges.
3. An Order requiring Omni to pay TPG reparations for the unlawful conduct alleged herein in an amount to be proven pursuant to 46 U.S.C. Section 41305, with interest pursuant to 46 U.S.C. Section 41305(a), TPG's reasonable attorneys' fees as "the prevailing party" pursuant to 46 U.S.C. Section 41305(e), and any other sum the Commission determines to be proper; and

4. Such other and further orders or relief as the Commission deems just and proper.

Dated: October 28, 2022  
Washington, D.C.

Respectfully submitted,

FISHERBROYLES LLP

By:     s/Tiffany N. Compres  
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*Counsel for Complainant  
Thompson Pipe Group, Inc.*

## VERIFICATION

Bezaad Basiri, General Manager-FRP Products of Thompson Pipe Group, Inc., pursuant to 28 USC §1746, hereby declares under penalty of perjury that he has read the foregoing Verified Complaint, and that the facts stated therein to the best of his knowledge, information, and belief is true and correct on information, belief, and upon information received from others.

Dated: October 28, 2022

A handwritten signature in black ink, appearing to read 'B. Basiri', is written over a horizontal line.

Bezaad Basiri,  
General Manager-FRP Products  
Thompson Pipe Group, Inc.,  
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3009, N. Laurel Ave.  
Rialto, CA 92377  
bbasiri@thompsonpipegroup.com

# **EXHIBIT A**

Invoice	Invoice	Invoice	Invoice	Invoice	Invoice	Invoice
1535503	1536231	1541871	32807	7203093	7204911	<b>7205142</b>
1535502	1536230	1541873	<b>1</b>	7203104	7204910	<b>7204003</b>
1535501	1536229	1541874		7203105	7204907	<b>7204004</b>
1535500	1536228	1541875		7203107	7204903	<b>7204005</b>
1535499	1536226	1541877		7203102	7209832	<b>7204012</b>
1535508	<b>5</b>	1541879		7203116	<b>5</b>	<b>7205135</b>
1535507		7210094		7203118		<b>7204006</b>
1535506		7210096		7203113		<b>7204007</b>
1535505		7210100		7203243		<b>7204015</b>
1535504		7210101		7203252		<b>7204018</b>
1536214		7210104		7203255		<b>7204002</b>
1536224		7210105		7203257		<b>7204181</b>
1536216		721106		7203244		<b>7205689</b>
1536221		1541880		7203251		<b>7204088</b>
1536222		1541881		7203256		<b>7204089</b>
1536223		1541882		7203253		<b>7204170</b>
1538417		1541883		7203247		<b>7204179</b>
1538418		1541884		7203245		<b>7205685</b>
1538419		<b>18</b>		7203246		<b>7205688</b>
1538420				7203254		<b>7205692</b>
1538421				7203250		<b>7210852</b>
1538422				7203249		7210850
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1538426				7203381		7210830
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