

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

SEAFair USA LLC, *Complainant*

v.

STERLING CONTAINER LINE LTD. AND ATLANTIC FORWARDING LTD., *Respondents*.

DOCKET NO. 22-34

Served: April 15, 2024

ORDER OF: Alex M. CHINTELLA, *Administrative Law Judge*.

INITIAL DECISION¹

I. INTRODUCTION

A. Overview

This proceeding began on December 15, 2022, when the Federal Maritime Commission (“Commission” or “FMC”) issued a notice of filing of complaint and assignment, indicating that Complainant SeaFair USA, LLC (“SeaFair”) had filed a complaint against Respondents Sterling Container Line Ltd. (“Sterling”) and Atlantic Forwarding Ltd. (“Atlantic”). The complaint alleges that Respondents violated 46 U.S.C. §§ 41102(a), 41102(c), 41104(a)(4)(A), and 41104(a)(2)(A) regarding their practices and the billing and payment of charges on shipments of cargo, including the provision of services in the liner trade that are not in accordance with the rates, charges, classifications, rules, and practices contained in Sterling’s tariff. On December 26, 2022, Respondents filed an answer denying the allegations and raising affirmative defenses.

In or around May 2021, Respondents engaged SeaFair as their destination agent, in which capacity SeaFair provided document turnover and destination services in the United States for shipments carried under Sterling’s house bills of lading issued by various branch offices of Atlantic, acting as agent for Sterling. In exchange for the document turnover services, Respondents paid SeaFair \$55 per bill of lading. As part of its destination services, SeaFair collected destination charges related to steamship lines, associated terminals, and logistics companies from the consignees and their forwarding agents associated with the shipments. SeaFair alleges that Respondents failed to pay certain document-turnover fees and that, in those instances where SeaFair was not able, through reasonable efforts, to obtain payment of

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.

destination charges from consignees, it is entitled to reimbursement for those fees from Respondents pursuant to the indemnification provision of its terms of service.

Since commencement of this action, Respondents have paid the outstanding document-turnover fees to SeaFair. SeaFair now seeks an order directing Respondents to cease and desist from violating the Shipping Act, a civil penalty of not less than \$25,000, and an order directing Respondents to indemnify SeaFair against any payments owed to Mediterranean Shipping Company, S.A. (“MSC”) for outstanding destination charges that have been billed to SeaFair. SeaFair also seeks reparations in the form of interest on the late document-turnover fee payments and attorneys’ fees incurred in connection with claims made by SeaFair against Respondents’ surety for the unpaid document-turnover fees and reimbursement of uncollected destination charges.

According to Respondents, the root cause of the dispute is not their refusal to reimburse SeaFair, but SeaFair’s disorganized billing practices, which prevented SeaFair from timely collecting destination charges from consignees. Respondents’ position is that they engaged SeaFair to collect destination charges and so had no obligation to pursue payment from the consignees for the purpose of reimbursing SeaFair for charges it should have billed to consignees directly.

As explained below, SeaFair has not established that Respondents violated the Shipping Act. Respondents’ refusal to indemnify SeaFair for unpaid destination charges did not involve any fraud or concealment for the purpose of obtaining transportation at less than applicable rates. It does not constitute provision of service at rates different from those set forth in Sterling’s tariff, nor does it constitute an unfair or unjustly discriminatory practice. Finally, SeaFair has not established that Respondents have failed to establish, observe, and enforce just and reasonable regulations and practices with respect to payment of document-turnover fees or collection of destination charges.

B. Procedural History

On December 15, 2022, the Commission issued a notice of filing of complaint and assignment initiating this proceeding. On December 26, 2022, Respondents filed an answer. A scheduling order was issued on January 18, 2023 and the parties began discovery. On June 26, 2023, an order was issued denying SeaFair’s motion to compel, noting that discovery had closed and that no further motions related to discovery would be permitted.

The next day, SeaFair filed a motion to amend its complaint and for an extension to the scheduling order. On July 6, 2023, the motion to amend was denied and the briefing schedule was modified. On July 28, 2023, SeaFair filed its brief, proposed findings of fact, and appendix. On August 28, 2023, Respondents filed their opposition brief, proposed findings of fact, appendix, and response to proposed findings of fact. On September 12, 2023, SeaFair filed its reply brief and a response to Respondents’ proposed findings of fact, along with a supplemental appendix.

On September 22, 2023, Respondents filed a motion for leave to file a sur-reply and supplement the record. The case was reassigned to the undersigned on October 4, 2023, and leave to file a sur-reply was granted on October 10, 2023. Respondents filed their sur-reply and supplemental appendix on October 20, 2023.

C. Arguments of the Parties

SeaFair asserts that: Respondents are obligated to pay the document-turnover fees; SeaFair is not responsible for paying the MSC charges and is entitled to contractual or common-law indemnification from Respondents for the MSC charges; Sterling is obligated to collect unpaid destination charges from its shippers and reimburse SeaFair; SeaFair is not responsible for collecting destination charges; and Respondents' failure to pay document-turnover fees, refusal to indemnify SeaFair, and failure to collect destination charges violated the Shipping Act. Opening Brief of SeaFair USA LLC ("Brief") at 11-20; SeaFair USA LLC's Reply Brief ("Reply") at 21-34.

Respondents contend: SeaFair was obligated to collect destination charges from the third-party consignees on Sterling house bills of lading; enforcement of SeaFair's indemnification provision is a contractual issue outside the Commission's jurisdiction; the alleged conduct does not constitute a Shipping Act violation; SeaFair abandoned its claim for unpaid destination charges and the dispute over document-turnover fees is moot; and the dispute results from SeaFair's lack of organization, which led third-party consignees and their agents to be confused by SeaFair's unclear and untimely invoicing. Opposition Brief of Respondents ("Opposition") at 14-35; Respondents' Sur-Reply ("Sur-Reply") at 10-16

D. 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 that 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.

SeaFair alleges that MSC is not willing to redirect its unpaid invoices to Sterling after repeated requests. Brief at 13. SeaFair argues that since it is not a shipper, consignee, nor a person having beneficial interest in the cargo and does not have a direct contractual relationship with MSC, MSC's invoicing of SeaFair could violate the Shipping Act. *Id.* SeaFair also alleges that MSC, through subsidiaries, owns 96% of Atlantic and Sterling's shares. *Id.* In its opening brief, SeaFair makes no further argument regarding this purported relationship. To the extent SeaFair is seeking reparations for MSC's purported violations of the Shipping Act, this issue is not properly before the Commission because MSC is not a party to this proceeding.

Respondents point out that SeaFair is identified as the consignee on certain MSC bills of lading but stops short of arguing that SeaFair is directly responsible for the destination charges as a shipper, consignee, or person having a beneficial interest in the cargo. Opposition at 15-16. SeaFair argues that these bills of lading are counterfactual. Reply at 31. Given that the parties appear to concede the general nature of their arrangement with respect to each other and to the shipments at issue, and the fact that MSC is not a party to this proceeding, I have not made any factual findings about the accuracy of who MSC has identified as a "merchant" or "consignee" on each of the MSC bills of lading and invoices that comprise SeaFair's claim.

II. FINDINGS OF FACT ("FOF")

1. Complainant SeaFair USA LLC ("SeaFair") is a Florida limited liability company with its principal place of business at 3740 West 104th Street, Suite 16, Hialeah Gardens, FL 33018.
2. Respondent Sterling Container Line Limited ("Sterling") is a company organized under the laws of Hong Kong with its principal place of business at Flat/Rm 722, 7/F, Metroplaza, Tower 2, 223 Hing Fong Road, Kwai Fong, N.T., Hong Kong. Sterling is a foreign Non-Vessel-Operating Common Carrier ("NVOCC") registered with the Federal Maritime Commission ("FMC") under no. 016481. The bond is held by United States Fire Insurance Company ("USFIC").
3. Respondent Atlantic Forwarding Ltd. ("Atlantic") is a company organized under the laws of Switzerland with its principal place of business at Grosspeteranlage 29, 4052 Basel, Switzerland. Atlantic is an ocean transportation intermediary; it is not registered with FMC.
4. Sterling's tariff states: "Carrier does not operate terminals at origin or destination. Except as otherwise provided in tariff rate items, all shipments will be subject to the origin and destination terminal charges assessed by the underlying ocean carrier, including demurrage charges, whose vessel will be clearly identified on bills of lading." SFOB-APP-18-0024.
5. In or around May 2021, Respondents engaged SeaFair to act as their destination agent, including to handle document turnover and destination services, in the United States for shipments carried under Sterling's house bills of lading ("HBLs") issued by various branch offices of Atlantic who were acting as agents of Sterling. SeaFair Proposed Finding of Fact ("SF-PFF") 10; *see also* Complainant's Appendix 19.

6. Pursuant to the agreement between Respondents and SeaFair, SeaFair's compensation for the document turnover service was \$55 per bill of lading. Respondents were billed and paid the document turnover fees for shipments not subject to this complaint. *See* Brief at 3 and Respondent's Response to Complainant's Statement of Facts at 3.
7. Destination services included collection of charges related to steamship lines, associated terminals, and logistics companies from the consignees and their forwarding agents associated with the shipments issued under Sterling HBLs. *Id.*
8. On March 1, 2022, SeaFair filed a claim with Sterling's surety, USFIC, pursuant to 46 C.F.R. § 515.23(b), copying Respondents, based on allegedly unpaid (or partially paid) invoices. SFOB-APP-03-0001 - SFOB-APP-03-0003; SFOB-APP-03-0009 - SFOB-APP-0116; SFOB-APP-04-0001. The invoices consist of various unpaid destination charges and unpaid \$55 documentation-turnover charges. SFOB-APP-05-0001 - SFOB-APP-05-0017. The demand totaled \$138,422, which included \$1,975 in attorneys' fees. The claim references a February 19, 2022 demand letter from SeaFair to Respondents, but this letter is not part of the record.
9. On March 9, 2022, Atlantic paid \$115,417.05 based on certain invoices provided by SeaFair. RX-APP-03-014.
10. On March 21, 2022, Respondents wrote in response to SeaFair's demand, disputing 29 remaining invoices. Respondents made various arguments, including that certain charges lacked authorization evidence (Invoice Nos. MIAD048089 and MIAD048805). RX-APP-03-001 to RX-APP-03-007
11. Respondents argued that invoice MIAD047333 was duplicative. *Id.*
12. Respondents argued that certain charges were not applicable to the shipments at issue (MIAD048384, MIAD048385, MIAD048392, and MIAD048409). *Id.*
13. Respondents had not been able to verify certain invoices (MIAD048551, MIAD048994, MIAD048991, MIAD048988, MIAD048552, MIAD048553, MIAD048557, MIAD048554, MIAD048555, and MIAD048556). *Id.*
14. Respondents further claimed that certain invoices included charges for terminated shipments (MIAD048505, MIAD048511, MIAD048512, MIAD048513, MIAD048527, MIAD048528, MIAD048533, MIAD048534, MIAD048535, MIAD048540, MIAD048542, and MIAD048544). *Id.*
15. Finally, Respondents claimed that certain invoices listed in the claim had not been received. *Id.*
16. By August 3, 2022, some of the disputed invoices had been resolved. For five of the invoices (MIAD048089, MIAD048384, MIAD048385, MIAD048392, and MIAD048409), SeaFair issued a credit. SFOB-APP-06-002 - SFOB-APP-06-0008

17. For four of the invoices (MIAD047333, MIAD048994, MIAD048991, and MIAD048988), the consignee has since paid the invoice. *Id.*
18. Respondents approved six of the invoices (MIAD048551, MIAD048552, MIAD048557, MIAD048554, MIAD048555, and MIAD048556) for payment. *Id.*
19. The parties continued to dispute the invoices that included allegedly terminated shipments. *Id.* The remaining disputed invoices for document-turnover fees totaled \$8,920.
20. Respondents also identified one invoice (MIAD048805) that they insisted SeaFair should collect from the consignee, who had not yet paid. *Id.*
21. In an August 3, 2022 letter to Respondents, SeaFair rejected the argument regarding collecting charges directly from consignees. SeaFair cited its Terms and Conditions of Service. These terms and conditions are hyperlinked in SeaFair's emails and provide, in relevant part:

1. Definitions.

- (a) "Company" shall mean SEAFAIR USA, LLC, its subsidiaries, related companies, agents and/or representatives;
- (b) "Customer" shall mean the person for which the Company is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives;
- (c) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;
- (d) "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier";
- (e) "Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, custom brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise."

2. Company as Agent. The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export documentation on behalf of the Customer and other dealings with Government Agencies: as to all other services. Company acts as an independent contractor.

11. Indemnification/Hold Harmless. The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the importation or

exportation of customers merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

12. C.O.D. Cash Collect Shipments. Company shall use reasonable care regarding written instructions related to "Cash/Collect" on "Deliver (COD.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall have not liability if the bank or consignee refuses to pay for the shipment.

SFOB-APP-06-0020; SFOB-APP-21-0001; see also emails from SeaFair, e.g., SFOB-APP-22-0002.

22. In the same August 3, 2022 letter to Respondents, SeaFair requested payment for an additional \$327,033.52. SFOB-APP-06-0009.
23. Part of the new request consists of documentation fees in the amount of \$5,500. *Id.*
24. The remainder of the new request consists of destination charges that SeaFair sought from Respondents on the basis that it was "contractually entitled to reimbursement pursuant to its Terms and Conditions of Service or, in the alternative, common law indemnity" *Id.*
25. Some of the invoices attached to SeaFair's August 3, 2022 letter (e.g. MIAD049832) contain the note: "Destination charges as per attached statement. Consignees failed to pay despite reasonable efforts by destination agent SeaFair USA LLC to...[the remainder of the sentence is cut off on the invoices]." SFOB-APP-06-0060.
26. Other invoices underlying the new request simply note charges for detention and carrier processing fees. SFOB-APP-06-0061.
27. Despite its statement in the August 3, 2022 letter that the destination charges at issue in the additional claim "were paid by SeaFair on behalf of Atlantic Forwarding and/or Sterling," they in fact consist of charges owed to Mediterranean Shipping Company, S.A. ("MSC") which have not been paid. *See* Respondent Appendices 9 and 10.
28. The underlying MSC invoices, which represent the destination charges at issue in this complaint, are for per diem, wharfage, congestion surcharges, chassis usage, and other

charges accrued between July 2021 and February 2022. SeaFair Appendix 10; SFOB-APP-08-0010 - SFOB-APP-08-0029.

29. SeaFair attempted to collect these unpaid MSC destination charges from Respondents' shippers between approximately December 9, 2021 and April 19, 2023. *See generally*, SFRB-APP-02-0001 - SFRB-APP-02-1758.
30. On October 14, 2022, SeaFair filed a second claim with Sterling's surety seeking to recover the charges identified in the August 3, 2022 letter. SFOB-APP-08-002. In this claim, SeaFair asserted that it is "contractually entitled to reimbursement pursuant to its Terms and Conditions of Service, or, in the alternative, under common law indemnity."
31. In response to the second surety claim, on November 28, 2022, Respondents asserted that they had already accepted the document-turnover invoices and would pay the outstanding fees in the amount of \$5,500 (Invoice Nos. MIAD049648, MIAD049649, and MIAD049650), but rejected the claim for \$321,533.52 in destination charges. Respondents requested additional supporting information including copies of bills of lading, the underlying details of the destination charges, and proof of payment. RX-APP-07-001 - RX-APP-07-004
32. On August 28, 2023, Respondents made a payment of \$14,420 to SeaFair for outstanding document-turnover fees. RX-APP-12-001.

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 was obligated to hear allegations particular to the Shipping Act, even were 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). The Commission has jurisdiction over Shipping Act claims even if a related proceeding is

underway. *Id.* 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. *Id.* While breach of contract claims are resolved in court or as otherwise agreed by the parties, a claim for violation of the Shipping Act may only be resolved by the Commission.

The essence of the parties’ disagreement is that SeaFair believes its terms and conditions of service require Respondents to pay the outstanding MSC invoices since it has been unable to collect those destination charges from Respondents’ shippers. Respondents believe SeaFair is responsible for collecting the charges, and the reason it has not been able to do so is because it is disorganized. As discussed in section III.B below, this is primarily an argument over an alleged breach of contract. The Commission does not have jurisdiction to resolve this aspect of the dispute, and so this decision is limited to addressing the arguments and evidence regarding violations of the Shipping Act. The parties’ agreement, and their arguments regarding that agreement, are discussed to the extent necessary to distinguish the Shipping Act claims, which must be addressed in this proceeding, from the breach of contract claims, which may not be.

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.*, 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). 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. Discussion

1. Section 41102(a) – Use of unjust means to obtain transportation at less than the rates that would otherwise apply.

SeaFair’s first claim is that Respondents violated 46 U.S.C. § 41102(a) by knowingly and willfully withholding payment to their destination agent, SeaFair, for money SeaFair advanced on their behalf to Mediterranean Shipping Company, S.A. (“MSC”), thereby attempting to obtain ocean transportation for property at less than the charges that would otherwise apply. Brief at 16. Section 41102(a) provides:

- (a) Obtaining transportation at less than applicable rates.--A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any

other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

46 U.S.C. § 41102(a).

A § 41102(a) claim requires proof of three elements: (1) knowing and willful conduct; (2) through which, either “directly or indirectly,” by means of the actions enumerated in the statute or through “any other unjust or unfair device or means;” (3) respondent obtained or attempted to obtain ocean transportation at lesser rates. *Muhammad Rana v. Michelle Franklin, d.b.a. "The Right Move," Inc.*, Docket No. 19-03, 2022 WL 1744905 at *7-9 (FMC May 25, 2022). The first element – knowing and willful conduct – is established if the respondent had “knowledge of the facts of the violation” and acted either intentionally or with “reckless disregard, plain indifference, or purposeful or obstinate behavior akin to gross negligence.” *Rose Int’l, Inc. v. Overseas Moving Network, Int’l*, FMC Docket No. 96-05, 2001 WL 865708, at *47, *59 (FMC June 1, 2001) (citations omitted).

SeaFair contends that “[b]y not settling the MSC charges, Sterling and Atlantic have knowingly and willfully obtained ocean transportation for property at less than the rates or charges that would otherwise apply.” Brief at 16. Respondents acknowledge that they did not pay the MSC charges, but correctly argue that SeaFair has not presented sufficient evidence from which to conclude their failure was knowing or willful within the meaning of the statute. The MSC charges, consisting of per diem, wharfage, congestion surcharges, and chassis usage fees, were billed to SeaFair between July 2021 and February 2022. FOF 27-28. But there is no evidence that Respondents became aware of the MSC charges until SeaFair made a demand for reimbursement in an August 3, 2022 letter regarding a claim previously filed against Sterling’s surety for unpaid document-turnover fees. FOF 22. And as noted on SeaFair’s invoices, SeaFair had previously tried to collect from the third-party consignees directly (“Consignees failed to pay despite reasonable efforts by destination agent SeaFair USA LLC ...”). FOF 25. I do not find that Respondents “willfully” failed to pay charges when those charges were initially billed to other parties and then presented for the first time in connection with a claim against Sterling’s surety.

Even if Respondents actions were willful, Seafair also fails to establish the second and third elements of a § 41102(a) claim. The second element requires that a respondent used false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means to obtain ocean transportation at less than otherwise applicable rates. *Rana v. Franklin*, 2022 WL 1744905 at *7-9. Here, SeaFair does not allege that Respondents engaged in false billing, misclassification of cargo, or any other conduct specifically enumerated in § 41102(a), so the question is whether Respondents’ actions may be considered any “other unjust or unfair device or means” within the meaning of statute.

“[F]raud or concealment is a necessary ingredient in the proof of an unjust or unfair device or means . . . It is such fraud or concealment that in fact makes the practice unjust or unfair. Whether an act constitutes an unfair or unjust device . . . depends on its similarity to false billing, false classification or the other prohibited conduct.” *United States v. Open Bulk Carriers*,

727 F.2d 1061, 1064 (11th Cir. 1984). Knowingly making claims that one knows or should know are false supplies the required element of fraud or concealment. *Id.* at 1065.

By itself, a failure to pay ocean transportation charges does not establish the second element of a § 41102(a) claim, because that alone does not establish that fraud or deceit were used to avoid paying the applicable rates. 46 C.F.R. § 545.2; *see also Open Bulk Containers*, 727 F.2d at 1064 (openly combining cargos to obtain lower rates and reduce deadfreight penalties was not an unjust or unfair device). Further, showing that a respondent was deceitful or dishonest in some respect unrelated to obtaining or attempting to obtain lower rates is not sufficient – fraud or concealment must be the means by which the respondent obtained or tried to obtain lower rates. *Open Bulk Containers*, 727 F.2d at 1064.

SeaFair has not presented any evidence of fraud or concealment on the part of Respondents. SeaFair has established that Respondents have refused to pay the MSC charges described in SeaFair’s second claim against Sterling’s surety, in which SeaFair asserted that it is “contractually entitled to reimbursement pursuant to its Terms and Conditions of Service, or, in the alternative, under common law indemnity.” FOF 30. But this constitutes a failure to pay ocean transportation charges of the sort that does not support a § 41102(a) claim. Rather, the refusal to pay was openly communicated in a response letter to SeaFair, in which Respondents acknowledged the accuracy of the invoices for document-turnover fees but disputed the destination charges, requesting additional supporting information including copies of bills of lading, the underlying details of the destination charges, and proof of payment. FOF 31.

The third element is established by showing that respondent obtained or tried to obtain ocean transportation for less than the otherwise applicable rates or charges. *OC Int’l Freight*, Docket No. 12-01, 2014 WL 5316336, at *6 (FMC July 31, 2014). The evidence does not support a conclusion that Respondents’ dispute of the MSC destination charges was an attempt to obtain ocean transportation for less than applicable rates. The evidence shows that Respondents engaged SeaFair as their destination agent in part for the purpose of collecting the applicable charges from their shippers – an action inconsistent with an intent to circumvent such charges. FOF 5 and 7. Respondents did not bill these charges to their shippers themselves because SeaFair did so, and there is no evidence Respondents were even aware of the unpaid charges until SeaFair filed a claim with Sterling’s surety. FOF 22, 24, 25, and 27-30. SeaFair has failed to meet its burden of proof with respect to each element of its § 41102(a) claim, which is therefore denied.

2. Sections 41104(a)(2)(A) and 41104(a)(4)(A) – The filed rate doctrine and unfair or unjustly discriminatory practices

SeaFair also claims that Sterling’s failure to settle the MSC charges and bill their shippers for those charges constitutes provision of services to their customers at rates or charges lower than their tariff in violation of 46 U.S.C. § 41104(a)(2)(A). And since the non-paying customers have paid less than the customers who paid the destination charges, SeaFair further alleges that Respondents’ actions are unfair and unjustly discriminatory in violation of 46 U.S.C. § 41104(a)(4)(A). The relevant portion of the statute provides:

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

* * *

(2) provide service in the liner trade that is—

(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title; or

* * *

(4) for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates or charges;

46 U.S.C. § 41104(a).

The basis of SeaFair’s claim is that when Sterling’s customers refused to pay MSC’s destination charges, SeaFair was entitled to indemnification from Sterling pursuant to the indemnification provision of SeaFair’s Terms and Conditions of Service; and by not settling the MSC charges and not billing its customers for the corresponding charges, Respondents have provided services to the non-paying customers at rates or charges lower than the customers who did pay the destination charges, thereby providing services at rates or charges lower than Sterling’s tariff, and in a manner that is unjustly discriminatory. Brief at 17-19. Section 41104(a)(2)(A) encompasses the Commission’s filed rate doctrine, which is applicable to both tariff rates and service contract rates.

In describing the filed rate doctrine, the Commission has confirmed that the doctrine holds that a carrier must charge the rates duly filed under law in the carrier’s tariffs and if those rates are reasonable under the applicable law the carrier must charge them notwithstanding misrepresentations by carriers’ agents, ignorance of the filed rates by the shippers, or virtually any other defense that shippers could raise against the carriers’ demands for payment of the duly filed tariff rates. *Total Fitness Equipment, Inc. v. Worldlink Logistics, Inc.*, Docket No. 1831(F), 1998 WL 940255, at *4-5 (FMC Dec. 10, 1998); *petition for review denied per curiam* 203 F.3d 54 (table) (D.C. Cir. 1999). A violation of the Shipping Act can be found despite the filed rate doctrine. That is, there are substantive violations that may arise in the context of, but apart from, filed rate collections. *Id.* at *10.

Sterling’s tariff states: “Carrier does not operate terminals at origin or destination. Except as otherwise provided in tariff rate items, all shipments will be subject to the origin and destination terminal charges assessed by the underlying ocean carrier, including demurrage charges, whose vessel will be clearly identified on bills of lading.” SFOB-APP-18-0024. This tariff rule is applicable to the shipments carried by MSC (the VOCC or “underlying ocean carrier”) and the MSC charges for which SeaFair is seeking indemnification (“destination

terminal charges...including demurrage charges”) – Sterling’s shippers are responsible for the origin and destination terminal charges assessed by MSC pursuant to Sterling’s tariff. But it does not follow that, simply because some shippers have not paid these charges, Respondents have violated the Shipping Act. Respondents engaged SeaFair to act as their destination agent, including to handle document turnover and destination services in the United States for shipments carried under Sterling’s HBLs issued by various branch offices of Atlantic who were acting as agents of Sterling. Pursuant to this agreement, SeaFair billed Respondents’ shippers, and attempted to collect the unpaid MSC invoices. That is, through their agent SeaFair, Respondents did bill their shippers in accordance with their tariff.

SeaFair has not cited any authority in support of its theory that a carrier’s failure to successfully collect a charge made pursuant to a tariff or service contract results in a violation of § 41104(a)(2)(A). This approach would seem to expose a carrier to a Shipping Act violation whenever a shipper failed to pay an invoice. In fact, there is no evidence that Respondents directly billed any of their shippers for any destination charges at issue – that was SeaFair’s role. And SeaFair has presented no evidence that Respondents even had knowledge of the unpaid destination charges until SeaFair filed a claim with their surety.

Similarly, with respect to §41104(a)(4), SeaFair’s approach would expose carriers to Shipping Act violations whenever a shipper failed to pay a charge on the basis that shippers who had paid their invoices were thereby unjustly discriminated against. This is not a situation where Respondents selected certain shippers and declined to bill them for certain destination charges as a way of conferring a commercial advantage. Again, it was SeaFair that invoiced Respondents’ shippers for the MSC destination charges, and there is no evidence Respondents even became aware of the charges until the surety claim.

Whether SeaFair is entitled to contractual or common law indemnification arising out of the shippers’ non-payment is essentially a breach of contract claim. 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). But 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. *Id.* While breach of contract claims are resolved in court or as otherwise agreed by the parties, a claim for violation of the Shipping Act may only be resolved by the Commission.

SeaFair’s arguments with respect to its § 41104(a) claims are premised on its terms and conditions of service, which provide:

11. Indemnification/Hold Harmless. The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys’ fees arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability,

loss, damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

12. C.O.D. Cash Collect Shipments. Company shall use reasonable care regarding written instructions related to "Cash/Collect" on "Deliver (COD.))" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall have not liability if the bank or consignee refuses to pay for the shipment.

SFOB-APP-06-0020. *See also* Brief at 13-14, 17-8; Reply at 11-12, 21-22, 32 (making arguments based on the above terms). A claim for contractual indemnification, or for common law indemnification, is not the type of claim over which the Commission has jurisdiction. *Cf. Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, Docket No. 09-01, 2011 WL 7144008, at *12 (FMC Aug. 1, 2011) (Commission did not have jurisdiction to decide a crossclaim based on breach of a stock purchase agreement and state law in the absence of any alleged Shipping Act violation on the part of the crossclaim defendant). SeaFair may be correct that Respondents' failure to collect from their shippers or pay MSC's outstanding charges is a violation of the terms and conditions Respondents agreed to, but without evidence supporting a Shipping Act violation, SeaFair cannot obtain relief in this proceeding:

[The] Commission does not exercise the authority of a court of law or of equity. We administer and enforce the requirements of the Shipping Act and related Acts. When pleadings come before us in which violations of the Act are heavily veiled in common law pleadings it becomes difficult to distill the activities alleged to be in violation of the Act from those which indicate the possible violations of some common law obligation.

European Trade Specialists, Inc. v. Prudential-Grace Lines, Inc., 19 F.M.C. 148, 151 (FMC 1976). In such instances, the Commission will review the entire record to identify those facts that relate to violations of the Shipping Act that may be properly resolved in this forum. *Id.*

There is no dispute that MSC billed SeaFair for destination charges related to shipments on Sterling HBLs, that some of Sterling's shippers have failed to pay those charges, that SeaFair tried, but was unsuccessful in collecting those charges, and that Respondents have not paid the MSC charges themselves or pursued their shippers for the unpaid charges. Whether this constitutes a breach of their agreement, or otherwise entitles SeaFair to a common law or equitable remedy such as indemnification or unjust enrichment, it not a question I have authority to answer. The evidence shows that Respondents did bill their shippers in accordance with their tariff, through their agent SeaFair, whom they engaged for that purpose. The record therefore does not support a conclusion that they have provided service not in accordance with the rates and charges in their tariff pursuant to § 41104(a)(2). As to the remaining issue – who is responsible for further collection activities or ultimate payment – that is a matter of agreement

between SeaFair and Respondents that is not properly part of this proceeding. The evidence also shows that Respondents did not bill any of their shippers directly, and that Respondents were not aware of the unpaid MSC destination charges prior to SeaFair's surety claim. The record therefore does not support a conclusion that Respondents unfairly discriminated with respect to service pursuant to a tariff pursuant to § 41104(a)(4).

3. Section 41102(c) – Failure to establish and enforce just and reasonable regulations and practices.

SeaFair also alleges a violation of 46 U.S.C. § 41102(c) in that Respondents (1) failed to pay document-turnover fees, (2) failed to indemnify SeaFair in accordance with SeaFair's Terms and Conditions of Service, and (3) failed to recover unpaid destination charges from their shippers after SeaFair was unable to collect. Brief at 19.

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, 64479 (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.

As to the first element, the term *ocean transportation intermediary* means an ocean freight forwarder or a non-vessel-operating common carrier. 46 U.S.C. § 40102(20); 46 C.F.R. § 515.2(m). “The term ‘non-vessel-operating common carrier’ means a common carrier that - (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier.” 46 U.S.C. § 40102(17); 46 C.F.R.

§ 515.2(m)(2). To be an NVOCC on a particular shipment, an entity must meet the Shipping Act's definition of "common carrier" on the shipment.

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). There appears to be no dispute that Sterling is an NVOCC and was acting as a common carrier with respect to the shipments at issue in SeaFair's complaint, with Atlantic acting as its agent. Nor does there appear to be any dispute that the document-turnover fees and destination charges are connected with receiving, handling, storing, or delivering property.

The issue is whether SeaFair has presented sufficient evidence to conclude that Respondents' failure to pay document-turnover fees, indemnify SeaFair against MSC's destination charges, or collect unpaid charges from its shippers occurred on a normal, customary, and continuous basis and were unjust or unreasonable.

First, SeaFair has not presented sufficient evidence to conclude that Respondents' failure to pay document-turnover fees was its customary practice, or that it was unreasonable. In its statement of facts, SeaFair asserted that: "Pursuant to the agreement between Respondents and SeaFair, SeaFair's compensation for the document turnover service is \$55 per bill of lading. The existence of the agreement is evidenced by Respondents being billed and paying the document turnover fees for shipments not subject to this lawsuit." Brief at 3. If the course of dealing between the parties is sufficiently unambiguous to establish an agreement to pay a specific amount of money for a specific set of services – and SeaFair is correct that it is – it is difficult to conclude that the same course of dealing establishes a customary refusal to pay for those services at all.

The only unpaid document-turnover fees about which any evidence has been presented are those that are the subject of the two claims SeaFair filed with Sterling's surety. On the first claim, filed March 1, 2022, the total combined unpaid document-turnover fees and destination charges were \$136,447 (the total claim was \$138,422, which included \$1,975 in attorneys' fees). FOF 8. Eight days after the claim was filed, Sterling paid Atlantic \$115,417.05, disputing the remaining balance reflected on 29 invoices that constituted a mix of destination charges and document-turnover fees. FOF 9-10. Respondents later approved six of the document-turnover-fee invoices (MIAD048551, MIAD048552, MIAD048557, MIAD048554, MIAD048555, and MIAD048556) for payment, but continued to dispute the invoices that included allegedly terminated shipments. FOF 18-19. In their November 28, 2022 response to the second surety claim, Respondents asserted that they had already accepted the document-turnover invoices and would pay the outstanding fees in the amount of \$5,500 (Invoice Nos. MIAD049648, MIAD049649, and MIAD049650). FOF 31. These circumstances do not demonstrate a customary, unjust refusal to pay document-turnover fees – at most, they demonstrate a delay in

paying certain document-turnover fees, including some fees that may have been legitimately disputed.

As to the second unfair practice alleged by SeaFair – Respondents’ failure to indemnify SeaFair against MSC’s destination charges – there is similarly insufficient evidence to conclude this is unjust or unreasonable within the meaning of the statute or that it occurred on a normal, customary, and continuous basis. Indeed, there are only two instances of failure to indemnify for which evidence has been presented, and those instances are in connection with the first and second surety claims. While SeaFair notes that the underlying invoices were billed over a period between July 2021 and February 2022, there is no evidence that Respondents customarily refused to indemnify SeaFair during throughout that time period – the evidence shows that the unpaid destination-charge invoices, about which Respondents apparently had no contemporaneous knowledge, were presented in two claims. On March 1, 2022, SeaFair filed its first claim with Sterling’s surety, USFIC, pursuant to 46 C.F.R. § 515.23(b), which included claims for unpaid destination charges. FOF 8. As previously discussed, Respondents paid some charges but disputed 29 remaining invoices. FOF 9-10. It is not clear from the evidence what percentage, if any, of Respondents’ \$115,417.05 payment reflected unpaid destination charges. Respondents made various arguments concerning the disputed invoices, including that certain charges lacked authorization evidence, were duplicative, or included charges not applicable to the shipments at issue. FOF 10-15. For some invoices, SeaFair issued a credit. FOF 16. For others, the consignee paid the invoice. FOF 17. For these invoices at least, Respondents’ refusal to indemnify SeaFair against the unpaid charges – either because they were incorrect or because they were appropriately paid by the shippers – appears reasonable.

SeaFair’s second surety claim for \$327,033.52 consisted mostly of the unpaid MSC destination charges at issue in this proceeding, with SeaFair again claiming it was “contractually entitled to reimbursement pursuant to its Terms and Conditions of Service or, in the alternative, common law indemnity.” FOF 22, 24. Respondents argue that SeaFair’s failure to collect these charges is not the result of any action on their part, but of SeaFair’s disorganized and confusing billing practices.

In support of this, Respondents point to a July 14, 2021 email from an Atlantic affiliate to SeaFair’s Michael Andres, Branch Manager, that was critical of SeaFair’s services. Atlantic’s complaints included SeaFair’s failure to pay MSC demurrage charges on time, unspecified customer complaints, failure to answer calls, untimely container releases, and inadequate customer assistance. SFOB-APP-22-0002-0003. Mr. Andres responded on July 27, 2021, generally acknowledging these issues. *Id.* Respondents allege that SeaFair ultimately terminated Mr. Andres, along with two other SeaFair employees identified as Import Coordinators, and in September 2021 filed a lawsuit against them in the United States District Court for the Southern District of Florida, alleging a variety of federal and state trade secret violations. *See SeaFair USA, LLC v. Michael Andres, Helen Madrid, Samuel Salva, Michael Andres CHB, Inc.*, Case: 1:21-cv-23406 (September 22, 2021)). Respondents attempt to tie these issues to this proceeding by pointing out that each of the 20 MSC MBLs identified by SeaFair at SFOB-APP-12-0001 – SFOB-APP-12-0380 (produced for the purpose of showing that SeaFair was listed on these MBLs as agent for SeaFair, not as the shipper or consignee; see Brief at 6 and 12) were issued between June and August of 2021, with 18 listing Michael Andres as the main SeaFair point of contact.

Respondents also provide a limited selection of emails detailing consignee complaints directed to SeaFair alleging lack of MBL or container numbers on invoices, attempting to collect charges that consignees had already paid directly to MSC, and late or unclear invoices. Opposition at 9-10; RX-APP-06-001 – RX-APP-06-014. SeaFair of course disputes that its billing practices were disorganized. Reply at 12-14. I did not make any factual findings regarding these allegations of disorganization at SeaFair because Respondents did not tie the customer complaints to specific disputed charges that are at issue in this proceeding, relying instead on the overlapping time period – but this is insufficiently precise for me to be able to determine that the complaints about SeaFair’s practices are relevant. Nor is the volume of complaints sufficiently large in relation to the total number of shipments as to give rise to an inference (although this seems to be what Respondents suggest) that disorganization permeated the entire SeaFair operation such that the accuracy of its billing is generally questionable. I have summarized this dispute over SeaFair’s billing practices only to reinforce my assessment that the dispute between the parties is essentially a contractual one. SeaFair argues that its terms and conditions require Respondents to pursue unpaid MSC invoices from its shippers and reimburse or indemnify SeaFair for any amounts paid to or demanded by MSC. Respondents in turn argue that SeaFair has not adequately fulfilled its obligations as destination agent pursuant to the parties’ agreement.

And standing on its own, the indemnification provision of SeaFair’s terms and conditions is insufficient to support a conclusion that Respondents’ refusal to indemnify is unreasonable or unjust. Indemnity claims are unripe until the alleged indemnitee's liability has been fixed by a judgment or settlement. *Window Specialists, Inc. v. Forney Enterprises, Inc.*, 26 F. Supp. 3d 52, 57 (D.D.C. 2014). 27. And despite its claim in the complaint that the destination charges at issue here consist of charges advance by SeaFair on behalf of Respondents’ shippers, they in fact consist of charges owed to MSC which have not been paid or settled. FOF 27. Given the uncertainty of the amounts owed, I do not find that it is unreasonable for Respondents to refuse to pay SeaFair pursuant to the indemnity provision. Whether their failure to pay is a breach of SeaFair’s terms and conditions is not a question I can answer in this proceeding. For the reasons stated in section III.B.2. above, common law indemnity and breach of contract claims are not properly part of this proceeding because the Commission’s jurisdiction is limited to claims arising under the Shipping Act.

Similarly, the evidence does not support a finding that Respondents’ refusal to collect charges directly from their shippers was unjust or unreasonable. Respondents engaged SeaFair to act as their destination agent, which services included collection of the destination charges billed by MSC. FOF 5, 27. SeaFair attempted to collect these unpaid MSC destination charges between approximately December 9, 2021 and April 19, 2023. FOF 29. It is of course accurate to say that Respondents did not collect the MSC destination charges. But where the parties had agreed that SeaFair would undertake collection of destination charges, and where there is apparently no explicit agreement (or course of dealing) regarding the circumstances under which Respondents would do so, there is no evidentiary basis to conclude their refusal pursue delinquent accounts here is unreasonable. While it is possible that SeaFair has a breach of contract claim, given its terms and conditions, or some other common law or equitable remedy, its claim is only viable under a Shipping Act theory if it satisfies the elements of the statute. As between SeaFair and Respondents, the rights and obligations with respect to collection of destination charges pursuant to their agreement is, again, a matter of interpretation of their contract. There is insufficient

evidence to conclude that Respondents' actions were a customary practice that was unjust or unreasonable within the meaning of §41102(c).

4. Conclusion

As explained above, SeaFair has not established a violation of 46 U.S.C. § 41102(a) because there is no evidence that Respondents used fraud or concealment to obtain ocean transportation at rates less than would otherwise apply. Its claims under §§ 41104(a)(2)(A) and 41104(a)(4)(A) fail because the evidence shows that Sterling did bill its shippers in accordance with its tariff through its destination agent, SeaFair, and there is no indication that Respondents unjustly discriminated against certain shippers. Finally, the evidence does not support a finding that Respondents have failed to establish and observe just and reasonable regulations and practices pursuant to § 41102(c). The parties' dispute arises out of an alleged breach of their agreement, and the evidence does not support a Shipping Act violation.

Because a violation of the Shipping Act is not established, it is not necessary to reach the issue of damages. However, even if SeaFair had established a violation, it is not clear that it would be entitled to the remedies it seeks. For example, typically, civil penalties under 46 U.S.C. § 41107 are awarded in proceedings initiated by the Commission's Bureau of Enforcement. *See, e.g., Hapag-Lloyd, A.G. and Hapag-Lloyd (America) LLC – Possible Violations of 46 U.S.C. § 41102(c)*, 4 F.M.C.2d 53, 96-97 (ALJ April 22, 2022). Civil penalties are payable to the United States Government, not to individual complainants. 46 U.S.C. § 41107.

Respondents argue that SeaFair abandoned its reparations request. While I do not find this to be the case, I do note that SeaFair's evidentiary presentation as to which MSC destination charges it has advanced, which are still due, and the exact amount of those fees is not clear. In its complaint, SeaFair sought reparations in the amount of \$335,953.52, consisting of unpaid amounts from the first and second surety claims. Complaint at ¶ 32. SeaFair claimed this amount included unpaid document-turnover fees and destination charge it had already paid. Complaint at ¶¶ 7-9, 15, and 19. But in its brief, SeaFair backtracks from this assertion, saying only that it has "incurred liabilities," and requesting an order that Respondents settle the MSC charges directly with MSC or through paying SeaFair. In its proposed findings of fact, SeaFair states the unpaid destination charges total \$294,283.88, the amount owed to MSC. Brief at 5. But this does not match the amount shown in the MSC statement of account for SeaFair (\$307,136.88). SFOB-APP-9-0001. And the spreadsheets supporting the summary statement of account add up to yet a different amount (\$264,276.88). Complainant Appendices 9.1-9.5. Since I have not found a violation, I have not attempted to tally the 2,860 pages of underlying MSC invoices. SFOB-APP-10-0001 – SFOB-APP-10-0001 – SFOB-APP-10-2860. I point out this uncertainty to note that, if I had found a Shipping Act violation giving rise to an entitlement to reparations, I would likely not be able to calculate the appropriate amount based on the record currently before me. 46 U.S.C. § 41305(b) (the Act requires the Commission to "direct the payment of reparations to the complainant for actual injury caused by a violation of this part"); *see also MAVL Capital Inc. v. Marine Transport Logistics, Inc.*, No. 16-16, 2022 WL 2209421, at *3 (F.M.C. June 10, 2022) (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).

IV. ORDER

Upon consideration of the record herein, the arguments of the parties, and the findings and conclusions set forth above, it is hereby

ORDERED that SeaFair's Complaint be **DENIED**. It is

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

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

Alex M. Chintella
Administrative Law Judge