

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 23- 01  
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SAMSUNG ELECTRONICS  
AMERICA, INC.,  
COMPLAINANT,

v.

SM LINE CORPORATION,  
RESPONDENT.

**VERIFIED COMPLAINT**

Complainant Samsung Electronics America, Inc. (“Complainant” or “SEA”), by its undersigned attorneys, files this Verified Complaint against Respondent herein, alleging violation of the Shipping Act of 1984, 46 U.S.C. § 40101, *et. seq.* (the “Shipping Act”) as follows:

**I. COMPLAINANT**

1. Complainant SEA is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 85 Challenger Road, Ridgefield Park, New Jersey, 07660-2118.



## **II. RESPONDENT**

2. Respondent SM Line Corporation is a global ocean carrier with its corporate office at SM R&D Center, #78, Magokjungang 8-ro, Gangseo-gu, Seoul 07803, Korea, conducting business in the U.S. under SM Line Corporation, with its principal corporate office at 1750 East Northrop Boulevard #140, Chandler, Arizona 85286 (“SM Line”). SM Line is a vessel operating “ocean common carrier” as that term is defined by 46 U.S.C. § 40102(7) and (18) and is subject to regulation by the Federal Maritime Commission (the “FMC” or “Commission”).

## **III. JURISDICTION**

3. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act.

4. This Complaint is being filed pursuant to 46 U.S.C. § 41301. SEA is seeking a cease and desist order and reparations for injuries caused to it by Respondent due to its violations of the Shipping Act.

5. The FMC has personal jurisdiction over SM Line as a “common carrier” and a vessel operating “ocean common carrier” as defined in 46 U.S.C. § 40102(7) and (18).

6. Respondent’s actions alleged herein constitute failures to establish, observe, and enforce just and reasonable practices related to receiving, handling, storing, and delivering the property of SEA, in violation of 46 U.S.C. § 41102(c) (unreasonable practices); 46 U.S.C. § 41104(a)(15) (invoicing without required information); and 46 U.S.C. § 41104(a)(14) (unreasonable charges).

#### IV. PRELIMINARY STATEMENT

7. SEA, a pioneering electronic products company incorporated in the United States in 1978, offers home appliances, phones, tablets, smartwatches, mobile accessories, mobile audio, televisions, monitors, and computer products to the American public.

8. The American public relies on SEA goods for its everyday personal and business needs.

9. SEA provides its consumer goods to the American public online through Samsung.com, through retailers like Best Buy, The Home Depot, and Lowe's, and through distributors.

10. In order to meet the needs of the American public, SEA has relied on transportation companies like SM Line to carry its goods to inland destinations throughout the United States.

11. Part of the appeal of working with an experienced transportation company like SM Line is its offering of a full range of services from arrangements overseas to the final destination at SEA distribution centers, and customers inland, otherwise known as inland transportation or "store door" delivery. Under store door terms, the ocean carrier issues a bill of lading or sea waybill indicating the marine port at which a container is discharged and an inland "place of delivery" to which the ocean carrier undertakes to transport the container after the container is discharged from the vessel at the port.

12. SM Line markets its full range of shipping services to shippers like SEA in personal meetings, at conferences, and publicly on its website.

13. Regarding its inland transportation services, SM Line states on its website that "SM Line focuses on establishing a comprehensive logistics transportation network worldwide to create

value-added logistics services.” Further, “[w]ith the need to deliver value-added logistics services, SM LINE operates a comprehensive network of logistics and intermodal services around the globe.”<sup>1</sup>

14. SM Line markets its ability to arrange and coordinate multiple inland transportation providers as part of its store door services, stating: “[e]ach shipment is tracked and monitored by our branch office in Phoenix, Arizona. Also, transportation to inland is based on usage of modernized rail terminals run by top-class rail companies. Particularly, UP-Global IV, the most advanced rail terminal handles cargoes with first-rate service by integrating rail and truck transportation, distribution and warehousing in one place.”<sup>2</sup>

15. As set forth in more detail below, SEA relied on SM Line for store door transportation of goods to the U.S. in ocean shipping containers but SM Line fell far short of its claims, responsibilities and obligations.

16. Beginning in approximately late-2020 to mid-2021, SM Line began repeatedly failing to properly perform its obligations for inland transportation to the inland destinations.

17. Aware of challenges with intermodal transportation logistics, SM Line continued to transport SEA goods on store door terms under through bills of lading or sea waybills for inland delivery in the U.S. during 2021 and 2022 and during that time repeatedly failed to properly perform its inland transportation obligations, exposing SEA to unreasonable costs, charges, delays, and other harms.

18. As a result of SM Line’s unreasonable practices, SEA has been forced to pay excessive and unlawful charges incurred by SM Line—known as “demurrage and detention”

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<sup>1</sup> [https://www.smlines.com/en/inland\\_01.php](https://www.smlines.com/en/inland_01.php)

<sup>2</sup> *Id.*

charges—and has been forced to undertake and perform the ocean carrier’s inland transportation responsibilities in order to continue to import its products sold to American consumers.

19. SEA is apparently not alone in facing this exploitative behavior. Demurrage and detention charges and practices have risen so exponentially high that the Biden Administration highlighted the concern in a press release and fact sheet on February 28, 2022, titled “Lowering Prices and Leveling the Playing Field in Ocean Shipping.”<sup>3</sup>

20. On March 1, 2022, President Biden highlighted escalating freight and demurrage and detention costs in his State of the Union address, noting that prices were raised “by as much as 1,000% ...” and as such, the President announced “a crackdown” on practices that result in “overcharging American businesses and consumers.”<sup>4</sup>

21. Separately, the FMC has long raised concerns with a host of unjust and unreasonable demurrage and detention practices, and the FMC is advancing efforts to promote complaints and adjudicate wrongdoing, as the full scope of the unlawful practices concerning demurrage and detention in the last two years becomes known.

22. Just recently, FMC chairman Dan Maffei is reported to have addressed significant concerns about unlawful practices, particularly in regard to cargo holds and credit holds exacerbating charges against shippers. In a March 8, 2023, article by Tomer Raanan in *Lloyd’s List*, addressing the issue at the *Journal of Commerce’s* recent TPM Conference, reporter Raanan observed: “[m]any shippers complained that carriers levied these charges on them without providing any information related to them and left them with little ability to dispute them. Some

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<sup>3</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-lowering-prices-and-leveling-the-playing-field-in-ocean-shipping/>.

<sup>4</sup> <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/03/01/remarks-of-president-joe-biden-state-of-the-union-address-as-delivered/>.

have also complained that ocean carriers refused to give them their cargo unless they paid the charges, essentially holding the cargo hostage. ‘The whole detention and demurrage system is very complicated. I think it took a long time for it to get to a situation where in my view, it wasn’t performing its central aspect of keeping cargo moving,’ [FMC chairman Dan] Maffei said. ‘When it is used to pad the rates without looking like it’s padding the rates, then it becomes a distortion of the market.’”<sup>5</sup>

23. As explained in further detail below, SEA has dealt with and continues to face manifestly unjust and unreasonable charges and practices in connection with inland transportation arrangements that are the responsibility of SM Line under its “store door” shipments.

24. Notwithstanding that SM Line is responsible for the inland transportation to the named place of delivery on the sea waybill under store door terms, SM Line has forced SEA to pay demurrage and detention charges that were not the responsibility of SEA and which has required SEA to undertake significant ocean carrier responsibilities in order to facilitate the inland movement of its cargo, including arranging for inland trucking and paying SM Line’s inland terminal charges without reimbursement from SM Line.

25. The amount of these demurrage and detention charges is staggering and presents a material threat to SEA’s ability to provide its products to American consumers, and has made it necessary to bring this Complaint.

26. As a result of SM Line’s conduct, SEA has sustained serious and substantial injuries and monetary damages, including paying erroneous demurrage and detention charges, which continue to be tabulated and accrued as of the filing of this Complaint.

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<sup>5</sup> <https://lloydslist.maritimeintelligence.informa.com/LL1144193/US-shipping-reform-changed-what-FMC-is-all-about>

## V. FACTUAL ALLEGATIONS

27. SEA is the consignee of cargoes of home goods shipped to the U.S. in ocean shipping containers (“SEA Containers”) by SM Line.

28. SM Line transported SEA Containers under through bills of lading, or sea waybills, from the overseas locations through U.S. ports and on to designated U.S. inland locations (commonly known as “store door” terms).

29. Under through bills of lading and sea waybills, SM Line is responsible as the common carrier for both (1) the ocean carriage of the SEA Containers to a U.S. port, and (2) the inland carriage of the SEA Containers to the U.S. inland locations, generally SEA warehouses or directly to SEA customer locations.

30. The inland movement of containers under store door terms is also commonly referred to as “carrier haulage” because the ocean carrier is responsible for the inland movement via rail and/or truck drayage to the named place of delivery and the provision of chassis to move the SEA Containers.

31. In contrast to carrier haulage, under “CY” (container yard) or “port-to-port” terms, the inland movement of containers is commonly referred to as “merchant haulage” because the shipper or consignee is responsible for the inland movement from the port to the final inland destination.

32. In store door shipments, SM Line is responsible for arranging and paying for the inland movements, and for ensuring the removal of containers from U.S. marine and intermodal terminals and the delivery of containers to the designated inland locations.

33. In store door shipments, costs and charges relating to delays in the timely removal of containers from terminals (generally known as “demurrage” charges) should be borne by SM Line, not a consignee like SEA.

34. In store door shipments, costs and charges relating to delays in the timely delivery of containers (and chassis) to the designated inland locations and ultimately the return of empty containers and equipment to SM Line’s possession or control at SM Line’s designated location (generally known as “detention” or “per diem” charges) should be borne by SM Line, not the shipper or consignee, when the delays result from matters for which (1) SM Line is responsible (e.g., delays in equipment return caused by ocean carrier empty return restrictions or limitations), and/or (2) SM Line bears the responsibility for the underlying transportation delays (e.g., delays in equipment return caused by problems performing inland drayage services, such as subcontracting adequate trucking, and/or availability of chassis the ocean carrier is responsible to provide).

35. Since before 2020, SM Line has transported SEA Containers under “store door” terms to the U.S. from various overseas locations, through numerous U.S. ports (including Seattle, Tacoma, Los Angeles, and Long Beach), to numerous inland locations throughout the U.S.

36. During 2021, and since though the date of this Complaint, SEA has been invoiced and paid substantial amounts of demurrage and detention charges and other drayage-related charges in connection with SM Line’s “store door” transportation of SEA Containers.

37. Beginning in approximately late-2020 to mid-2021, SM Line began repeatedly and chronically failing to properly perform its inland transportation obligations, including failing to timely remove SEA Containers from U.S. marine and intermodal terminals and failing to timely deliver SEA Containers to their designated inland locations.



38. During that same period, SM Line began charging SEA dramatically increasing amounts for alleged demurrage and detention charges resulting from SM Line's inland transportation failures.

39. When asked to explain the reason for asserting the charges on SEA, SM Line proffered various excuses relating to alleged chassis shortages, trucker shortages, inclement weather, and port and terminal congestion matters, which were neither within the control of SEA nor the responsibility of SEA under the store door terms.

40. Based on information and belief, substantial sums of demurrage and/or rail storage accrued and were charged to SEA on SEA Containers at inland rail terminals during periods that SEA Containers were not available for pick up from such inland terminals, including for SEA Containers that were not mounted on chassis upon arrival at wheeled inland terminals, were mis-mounted, grounded, or were otherwise not available for pick up during the period such charges accrued.

41. When asked to mitigate, cancel, or waive charges for which SEA was not responsible and on the basis that SM Line was responsible for such inland charges under store door terms, in some instances early on SM Line waived charges but ultimately SM Line refused to mitigate, cancel, or waive such charges.

42. In addition to charging SEA for inland transportation costs and charges resulting from SM Line's failures to perform under store door terms, SM Line's billing practices and policies caused further injuries to SEA:

- a. SM Line's invoices and billing information routinely lacked adequate information to determine the basis for the individual demurrage and detention charges;

- b. Based on information and belief, SM Line assessed charges against SEA Containers without consideration of SM Line's responsibility (or SEA's absence of responsibility) for the circumstances resulting in such demurrage and detention charges; and
- c. SM Line failed to have or engage in an adequate or meaningful dispute resolution process for demurrage and detention charges.

43. SM Line's conduct also 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.

44. Based on information and belief, as a result of SM Line's unjust and unreasonable practices and other unlawful conduct, SEA was repeatedly charged detention and/or per diem in connection with empty containers and chassis when SM Line failed to provide reasonable opportunity to return such equipment without incurring additional charges, including inadequate availability of return locations, and inadequate and/or inaccurate information concerning return locations.

45. As a result of SM Line's wrongful conduct, SEA incurred serious and substantial injuries and monetary damages, including paying improper charges for demurrage and detention, with charges continuing to be tabulated and accrued as of the filing of this Complaint.

## VI. VIOLATIONS OF THE SHIPPING ACT

### COUNT I

#### VIOLATIONS OF 46 U.S.C. § 41102(c)

##### **Unjust and Unreasonable Practices in Handling Property**

46. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

47. Section 41102(c) prohibits a common carrier or marine terminal operator from failing to “establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.”

48. Respondent SM Line is an ocean common carrier as defined by the Shipping Act.

49. Respondent’s foregoing practices and procedures relating to the assessment of demurrage and detention are directly related to receiving, handling, storing, or delivering SEA’s property.

50. Respondent’s foregoing practices and procedures relating to the assessment of demurrage and detention have been occurring on a normal, customary, and continuous basis, involving since 2020 in excess of 4,500 individual demurrage type charges and in excess of 10,000 detention type charges.

51. Respondent’s foregoing practices and procedures relating to the assessment of demurrage and detention are unjust and unreasonable in violation of § 41102(c).

52. Respondent’s foregoing practices and procedures relating to the assessment of demurrage and detention are the proximate cause of SEA’s claimed injury and damages.

53. The following practices and procedures relating to the assessment of demurrage and detention are specifically unjust and unreasonable in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5:

- a. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers moving under store door terms for reasons that are not within SEA's control;
- b. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers when SM Line is responsible for the pickup from the port, movement to the inland place of delivery, and return of the SEA Containers;
- c. continuing to book new SEA Containers under store door terms without taking adequate steps to address increasing delays and costs incurred in securing timely intermodal movement of SEA Containers;
- d. assessing demurrage and detention charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers without a meaningful practice or procedure to first determine responsibility for such charges (under store door terms or otherwise);
- e. assessing demurrage charges on SEA for costs and charges in the inland intermodal transportation of SEA Containers accrued during periods that SEA Containers were not available for pickup from Marine Terminals and from Inland Terminals (under store door terms or otherwise);

- f. failing to provide SEA with adequately detailed billing information and/or invoices related to demurrage and detention charges to permit SEA to meaningfully understand and/or contest the charges;
- g. refusing to extend free time and/or mitigate, waive, or reduce demurrage or detention charges that were not SEA's responsibility;
- h. failing to have or employ an adequate dispute resolution policy or practice with regard to demurrage and detention charges;
- i. assessing demurrage and detention charges on SEA as consignee for costs and charges of delays in the inland intermodal transportation of SEA Containers moving under store door terms that serve no incentivizing principle and do not promote freight fluidity because SEA is not responsible for the inland portion of the transportation;
- j. assessing detention charges for equipment return delays that were SM Line's responsibility and for delays arising because SM Line did not provide adequate opportunity to return containers; and
- k. refusing release of SEA Containers without payment of charges that were not SEA's responsibility.

## **COUNT II**

### **VIOLATIONS OF 46 U.S.C. § 41104(a)(15) - OSRA – Invoices without Information**

54. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

55. As amended by OSRA, 46 U.S.C. § 41104(a)(15) provides that a "common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not...invoice any

party for demurrage and detention charges unless the invoice includes information as described in subsection (d) [referring to 46 U.S.C. § 41104(d)].”

56. Based on information and belief, SM Line itself, or in conjunction with a subcontractor or others on behalf of SM Line, sought to invoice and/or charge for demurrage and detention charges on and after the effective date of OSRA without including the information necessary to comply with 46 U.S.C. § 41104(d).

57. Issuing such invoices, without proper information, would be in violation of 46 U.S.C. § 41104(a)(15).

58. In addition to other penalties and remedies, the issuance of such invoices would trigger 46 U.S.C. § 41104(f), which provides that “[f]ailure to include the information required under subsection (d) of an invoice with any demurrage or detention charge shall eliminate any obligation of the charged party to pay the applicable charge.”

### **COUNT III**

#### **VIOLATIONS OF 46 U.S.C. § 41104(a)(14) – OSRA – Unreasonable Charges**

59. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

60. As amended by OSRA, 46 U.S.C. § 41104(a)(14) provides that a “common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not...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).”

61. As alleged in each of the Counts above, on information and belief, SM Line's practices and actions in connection with assessment of demurrage and detention charges in and after Q2 2022 (after the effective date of OSRA) would also violate 46 U.S.C. § 41104(a)(14).

#### **VII. CAUSATION AND INJURY TO COMPLAINANT**

62. As a result of Respondent's violations of the Shipping Act, Complainant has sustained serious and substantial injuries and monetary damages, including paying erroneous detention and demurrage charges, and other damages. SM Line's unreasonable and unlawful conduct is continuing, and SEA continues to sustain injury and damages.

#### **VIII. ALTERNATIVE DISPUTE RESOLUTION**

63. SEA has unsuccessfully attempted to resolve this matter with Respondent prior to filing this Verified Complaint. Considering statements made by Respondent and consequent noncooperation in resolving this matter, SEA did not seek to use the FMC's alternative dispute resolution process prior to filing this Verified Complaint.

64. For the same reasons stated above, Complainant has not had any preliminary consultations with the FMC's Dispute Resolution Specialist regarding the availability of alternative dispute resolution under the FMC's ADR program (46 C.F.R. § 502.64).

#### **IX. REQUEST FOR ORAL HEARING**

65. Complainant requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capitol Street, NW, Washington, D.C. 20573-0001.

## **X. PRAYER FOR RELIEF**

WHEREFORE, Complainant respectfully requests that Respondent be required to answer the charges in this Complaint, and that after thorough investigation that the FMC issue an Order:

1. Requiring Respondent to pay Complainant reparations for the unlawful conduct described above, along with interest and Complainant's attorneys' fees and costs as described in 46 U.S.C. § 41305;
2. Requiring the payment of any other amounts that the FMC deems appropriate;
3. Ordering that Respondent cease and desist from the unlawful conduct;
4. Providing Complainant such other and further relief that the FMC deems is just and proper.



Dated: April 14, 2023

Respectfully Submitted,

**HOLLAND & KNIGHT LLP**

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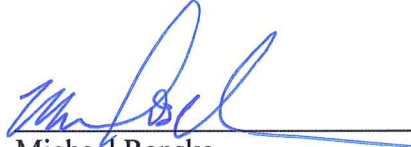
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**VERIFICATION**

I, Michael Rapske, am Vice President, Logistics of Complainant Samsung Electronics America, Inc. and hereby declare and attest under penalty of perjury that I have read the foregoing Verified Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: April 13, 2023

  
Michael Rapske

SAMSUNG

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