

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 23-06

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COAST CITRUS DISTRIBUTORS D/B/A  
OLYMPIC FRUIT & VEGETABLE;  
AMAZON PRODUCE NETWORK, LLC;  
REFIN TROPICALS, S.A.; JW FRESH S.A.;  
SEMBRIOS DE EXPORTACION SEMIBRIEXPORT, S.A.;  
AND BRESSON S.A.,

CLAIMANTS

V.

NETWORK SHIPPING LTD., INC.,

RESPONDENT.

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RESPONDENT'S ANSWER TO COMPLAINT

The above-named respondent, for answer to the complaint in this proceeding states:

1. As to paragraph 1 of the complaint, the allegations are denied for lack of information to justify a belief therein.
2. As to paragraph 2 of the complaint, the allegations are denied for lack of information to justify a belief therein.
3. As to paragraph 3 of the complaint, the allegations are denied for lack of information to justify a belief therein.

4. As to paragraph 4 of the complaint, the allegations are denied for lack of information to justify a belief therein.
5. As to paragraph 5 of the complaint, the allegations are denied for lack of information to justify a belief therein.
6. As to paragraph 6 of the complaint, the allegations are denied for lack of information to justify a belief therein.
7. As to paragraph 7 of the complaint, the allegations are denied for lack of information to justify a belief therein.
8. As to paragraph 8 of the complaint, the allegations are denied for lack of information to justify a belief therein.
9. As to paragraph 9 of the complaint, the allegations are denied for lack of information to justify a belief therein.
10. As to paragraph 10 of the complaint, the allegations are denied for lack of information to justify a belief therein.
11. As to paragraph 11 of the complaint, the allegations are denied for lack of information to justify a belief therein.
12. As to paragraph 12 of the complaint, the allegations are denied for lack of information to justify a belief therein.
13. As to paragraph 13 of the complaint the allegations are denied for lack of information to justify a belief therein.
14. Respondent admits the allegations in paragraph 14.
15. Respondent admits that it is a common carrier within the meaning of 46 U.S.C. § 40102(7) but except as so admitted, denies each and every allegation in paragraph 15 of the Complaint.

16. Respondent admits the allegations in paragraph 16 of the Complaint.
17. Respondent admits that Fresh Del Monte was and is engaged in the production, distribution, and marketing of fresh produce but, except as so admitted, denies each and every allegation of paragraph 17 of the Complaint.
18. Respondent admits that NWS (not NSS) was and is the ocean logistics arm of Fresh Del Monte, but except as so admitted, denies each and every allegation in paragraph 18.
19. Respondent admits that pursuant to the Shipping Act of 1984 (46 U.S.C. §§40101 et seq.) the FMC has subject matter jurisdiction over violations of the Shipping Act. However, Respondent submits that the allegations made in the Complaint are a thinly veiled attempt to have their cargo claims avoid NWS's bill of lading, including the jurisdiction clause, and to avoid the statute of limitations of the Carriage of Goods by Sea Act (46 U.S.C. 1300 et seq.) ("COGSA").
20. Respondent denies that the injuries alleged by Complainants are caused by violations of 46 U.S.C. §§41102(c) and 41104(a) but are cargo claims that are barred by the statute of limitations of the United States Carriage of Goods by Sea Act.
21. Respondent admits the allegations in paragraph 21.
22. Respondent denies the allegations in paragraph 22.
23. As to paragraph 23 of the complaint, the allegations are denied for lack of information to justify a belief therein.
24. As to paragraph 24 of the complaint the allegations are denied for lack of information to justify a belief therein.
25. As to paragraph 25 of the complaint the allegations are denied for lack of information to justify a belief therein.
26. As to paragraph 26 of the complaint the allegations are denied for lack of information to

justify a belief therein.

27. As to paragraph 27 of the complaint the allegations are denied for lack of information to justify a belief therein.

28. As to paragraph 28 of the complaint the allegations are denied for lack of information to justify a belief therein.

29. Respondent admits that when containers arrived in Port Hueneme NWS would unload them from the vessel and mount them on chassis.

30. This paragraph does not require a response from Respondents.

31. Respondent admits that at Port Hueneme, NWS customarily provided chassis, however except as so admitted Respondents deny each and every allegation in paragraph 31.

32. As to paragraph 32 of the complaint the allegations are denied for lack of information to justify a belief therein.

33. As to paragraph 33 of the complaint the allegations are denied for lack of information to justify a belief therein.

34. Respondent denies the allegations in paragraph 34 and notes the alleged quote supports NWS's defense as it states that Network is leveraging Fresh Del Monte's resources not that Fresh Del Monte is leveraging Network's resources.

35. As to paragraph 35 of the complaint the allegations are denied for lack of information to justify a belief therein.

36. As to paragraph 36 of the complaint the allegations are denied for lack of information to justify a belief therein.

37. As to paragraph 37 of the complaint the allegations are denied for lack of information to justify a belief therein.

38. As to paragraph 38 of the complaint the allegations are denied for lack of information to

justify a belief therein.

39. Respondent denies the allegations in paragraph 39.

40. Respondent denies the allegations in paragraph 40.

41. Respondent denies the allegations in paragraph 41.

42. Respondent denies the allegations in paragraph 42.

43. Respondent denies the allegations in paragraph 43.

44. As to paragraph 44 of the complaint the allegations are denied for lack of information to justify a belief therein.

45. Respondent admits that Complainants, through counsel sent NWS a demand for damages but except as so admitted denies each and every allegation in paragraph 45. The extent of counsel's communications with respect to their demand for damages is attached as Exhibit 1.

46. Respondent denies the allegations in paragraph 46.

47. Respondent admits that FisherBroyles LLP has signed the Complaint, but except as so admitted denies each and every allegation in paragraph 47.

48. This paragraph does not require a response from Respondents.

49. Respondent admits the allegation in paragraph 49.

50. Respondent denies the allegations in paragraph 50.

51. Respondent denies the allegations in paragraph 51.

52. Respondent denies the allegations in paragraph 52.

53. Respondent denies the allegations in paragraph 53.

54. This paragraph does not require a response from Respondents.

55. This paragraph does not require a response from Respondents.

56. As to paragraph 56 of the complaint the allegations are denied for lack of information to justify a belief therein.

57. As to paragraph 57 of the complaint the allegations are denied for lack of information to justify a belief therein.
58. Respondent denies the allegations in paragraph 58.
59. Respondent denies the allegations in paragraph 59.
60. Respondent denies the allegations in paragraph 60.
61. Respondent denies the allegations in paragraph 61.
62. This paragraph does not require a response from Respondents.
63. This paragraph does not require a response from Respondents.
64. As to paragraph 64 of the complaint the allegations are denied for lack of information to justify a belief therein.
65. As to paragraph 65 of the complaint the allegations are denied for lack of information to justify a belief therein.
66. Respondent denies the allegations in paragraph 66.
67. Respondent denies the allegations in paragraph 67.
68. Respondent denies the allegations in paragraph 68.
69. Respondent denies the allegations in paragraph 69.
70. This paragraph does not require a response from Respondents.
71. This paragraph does not require a response from Respondents.
72. As to paragraph 72 of the complaint the allegations are denied for lack of information to justify a belief therein.
73. As to paragraph 73 of the complaint the allegations are denied for lack of information to justify a belief therein.
74. Respondent denies the allegations in paragraph 74.
75. Respondent denies the allegations in paragraph 75.

76. Respondent denies the allegations in paragraph 76.
77. Respondent denies the allegations in paragraph 77.
78. Respondent denies the allegations in paragraph 78.
79. Respondent denies the allegations in paragraph 79.
80. Respondent denies the allegations in paragraph 80.

NWS categorically denies any allegations that may have been made in any unnumbered, prefatory, ancillary, or conclusory paragraphs.

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a cause of action upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

The allegations in the Complaint are a vexatious and frivolous attempt to use the Federal Maritime Commission to litigate alleged cargo damage claims after the Carriage of Goods by Sea Act statute of limitations has run.

#### **THIRD AFFIRMATIVE DEFENSE**

The alleged incident and property damage underlying the Complaint was caused as a result of Complainant's own fault, neglect, action, and/or omissions which either eliminates or otherwise reduces their recovery.

#### **FOURTH AFFIRMATIVE DEFENSE**

The alleged incident and property damage underlying the Complaint was caused as a result of the fault, neglect, action and/or omissions of a third party or parties.

#### **FIFTH AFFIRMATIVE DEFENSE**

The alleged damage to the cargo was caused by pre-existing conditions such that the cargo was not shipped onboard NWS vessels in good order and condition.

**SIXTH AFFIRMATIVE DEFENSE**

The alleged damage was unrelated to Respondents activities as alleged in the underlying the Complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

Complainants failed to mitigate its damages, if any.

**EIGHT AFFIRMATIVE DEFENSE**

The alleged incidents occurred due to the pandemic and/or when there were severe shortages of chassis and trucks on the U.S.W.C. and not as a result of any actions by Respondents.

**NINTH AFFIRMATIVE DEFENSE**

Complainants' damages, if any, which Respondent specifically denies, were the result of a superseding and/or intervening cause or causes or the result of an unavoidable and / or inevitable events precluding the Complainant from recovering damages against Respondent.

**TENTH AFFIRMATIVE DEFENSE**

The damages for which the Complainant alleges are cargo damages due to delay. These damages must be resolved pursuant to the applicable contracts, the NWS bills of ladings.

**ELEVENTH AFFIRMATIVE DEFENSE**

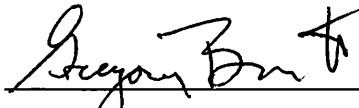
The Complaint as alleged by Complainants is frivolous and Respondent seeks all costs, including attorney fees it has expended to defend this action pursuant to 46 C.F.R. §502.254.



**WHEREFORE**, Defendant, Network Shipping Ltd., prays that its Answer to the Verified Complaint of Complainants be deemed good and sufficient and that after due proceedings are had, the Complaint be dismissed with prejudice and with all costs, including attorney fees, charged to Plaintiff.

Dated this 12<sup>th</sup> day of September 2023.

Respectfully submitted,

By:   
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