

BEFORE
THE FEDERAL MARITIME COMMISSION

DOCKET NO. 24-04

ICL USA, Inc.

vs.

Dependable Highway Express, Inc. and Mediterranean
Shipping Company, (USA) Inc. on behalf of Mediterranean
Shipping Company, S.A.,

VERIFIED ANSWER TO COMPLAINT

Respondent DEPENDABLE HIGHWAY EXPRESS, INC. (“Dependable”), in response to the Verified Complaint of Complainant ICL USA, Inc. (“ICL”) on file herein, admits, denies, and alleges as follows:

1. Dependable responds that Paragraph 1 contains legal conclusions to which no response is required. Dependable further lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 and therefore denies.

2. Dependable responds that Paragraph 2 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies.

3. Dependable responds that Paragraph 3 contains legal conclusions to which no response is required. Dependable further lacks knowledge or information sufficient to form a

belief as to the truth of the allegations contained in Paragraph 3 and therefore denies.

4. Dependable denies that it has ever acted as an entity which assessed per diem related charges while not qualified to do so as a motor carrier, ocean common carrier, and/or a marine terminal operator in violation of the Shipping Act. Dependable admits the remaining allegations of Paragraph 4.

5. Dependable responds that Paragraph 5 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint and therefore denies.

6. Dependable responds that Paragraph 6 contains legal conclusions to which no response is required. If any response is required, Dependable denies that the Commission has subject matter jurisdiction over the claims and causes of action alleged by Complainant against Dependable.

7. Dependable responds that Paragraph 7 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 and therefore denies.

8. Dependable responds that Paragraph 8 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and therefore denies.

9. Dependable admits that it performed port drayage services for ICL and invoiced ICL for its charges, including (among other charges) detention charges that were billed to Dependable by MSC Respondents and other VOCCs and paid by Dependable plus a 10% administrative fee for detention charges actually paid. Dependable denies the remaining allegations of Paragraph 9.

10. Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 and therefore denies.

11. Dependable denies Paragraph 11 to the extent that it alleges that ICL contracted with Dependable “solely” to perform the services alleged in Paragraph 11, and no other services.

12. Dependable admits that in July of 2023 it sued ICL and related companies in the United States District Court for the Central District of California (Case No. 2:23-cv-05484-DDP-E) to enforce payment of base dray freight charges, fuel surcharge, yard storage fees, chassis rental fees, demurrage and detention charges paid by Dependable, a 10% administrative fee for detention charges paid, contractual interest, and attorneys’ fees. Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 12 and therefore denies them.

13. Dependable responds that Paragraph 13 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 and therefore denies.

14. Dependable responds that Paragraph 14 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and therefore denies.

15. Dependable denies that it maintains its wholly-intrastate California port drayage “tariff” as a Federal Motor Carrier Safety Administration motor carrier. Dependable admits that the sections of its “tariff” quoted in Paragraph 15 are true and correct. Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 15 of the Complaint and therefore denies. Without limiting the generality of the foregoing, Dependable specifically denies that it is charging the 10% administrative fee on detention that it did not actually pay.

16. Dependable responds that Paragraph 16 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 and therefore denies.

17. Dependable responds that Paragraph 17 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 and therefore denies.

18. Dependable responds that Paragraph 18 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 and therefore denies.

FIRST CAUSE OF ACTION

19. Dependable denies the allegations of Paragraph 19 except those which it has admitted above.

20. Dependable responds that Paragraph 20 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint and therefore denies.

21. Dependable responds that Paragraph 21 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and therefore denies. Without limiting the generality of the foregoing, Dependable specifically denies that MSC Respondents have agreed to waive per diem charges in the amount of \$45,565.

22. Dependable responds that Paragraph 22 contains legal conclusions to which no

response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint and therefore denies.

23. Dependable responds that Paragraph 23 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint and therefore denies.

SECOND CAUSE OF ACTION

24. Dependable denies the allegations of Paragraph 24 except those which it has admitted above.

25. Dependable responds that Paragraph 25 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint and therefore denies. Without limiting the generality of the foregoing, Dependable specifically denies that it is charging the 10% administrative fee on detention that it did not actually pay.

26. Dependable responds that Paragraph 26 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint and therefore denies. Without limiting the generality of the foregoing, Dependable specifically denies that MSC Respondents have agreed to waive per diem charges in the amount of \$45,565.

27. Dependable responds that Paragraph 27 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint and therefore denies.

28. Dependable responds that Paragraph 28 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint and therefore denies.

29. Dependable responds that Paragraph 29 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint and therefore denies.

30. Dependable responds that Paragraph 30 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint and therefore denies. Without limiting the generality of the foregoing, Dependable specifically denies that MSC Respondents have agreed to waive per diem charges in the amount of \$45,565.

31. Dependable responds that Paragraph 31 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint and therefore denies.

32. Dependable responds that Paragraph 32 contains legal conclusions to which no response is required. If any response is required, Dependable lacks sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint and therefore denies.

RELIEF SOUGHT

33. Dependable denies that any relief should be awarded to ICL as contained in the Prayer for Relief.

SEPARATE AND AFFIRMATIVE DEFENSES

Without conceding that Dependable carries the burden on the following issues, Dependable asserts the below separate and affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

34. The Complaint, each and every cause of action contained in it, and all of it, fails to state facts sufficient to constitute a cause of action against Dependable.

SECOND AFFIRMATIVE DEFENSE

35. Dependable is informed and believes, and on that basis alleges, that ICL's claims are barred in whole or in part by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

36. ICL's own conduct, or the conduct of other entities and individuals, whether or not parties to this action, caused or contributed to ICL's alleged damages. This conduct comparatively reduces any percentage of liability attributed to Dependable, if it should be found that Dependable is liable, which it expressly denies.

FOURTH AFFIRMATIVE DEFENSE

37. That ICL failed to use and exercise caution for its own protection in that, among other things, ICL continued to freely and voluntarily place itself in a position so as to be exposed to a likelihood of damages despite being fully aware of the damages already incurred.

FIFTH AFFIRMATIVE DEFENSE

38. That conduct and circumstances outside the control of Dependable caused or contributed to ICL's alleged damages. This conduct comparatively reduces any percentage of liability attributed to Dependable, if it should be found that Dependable is liable, which it expressly denies.

SIXTH AFFIRMATIVE DEFENSE

39. That Dependable had no control over the detention charges assessed and properly

passed any VOCC-issued detention charges onto ICL, by transparently attaching true and correct copies of the VOCC detention invoices to its own invoices.

SEVENTH AFFIRMATIVE DEFENSE

40. The Dependable is informed and believes, and thereon alleges, that the damages alleged to have been suffered by ICL in the Complaint herein, if any, were proximately caused or contributed to by the acts or omissions of third parties other than Dependable (including, without limitation, ICL's own conduct). It is thus necessary that the proportion or degree of fault of each of said persons or entities, whether parties to this action or not, be judicially determined and that any judgment that might be rendered against Dependable be reduced in proportion to the degree of fault attributed to each and every third person or entity found liable to ICL herein. As against each such third person or entity, whether served or not served in this action, whose acts or omissions are found to have proximately caused or contributed in any fashion to the damages, if any, alleged to have been suffered by ICL herein, Dependable reserves the right to cross complain and/or move for judgment against each such person or entity.

EIGHTH AFFIRMATIVE DEFENSE

41. That, under the Commission's direct purchaser rule, ICL is not entitled to pursue damages against Dependable as it did not pay the challenged charges to Dependable.

NINTH AFFIRMATIVE DEFENSE

42. That any damages sustained by ICL were the result of a superseding intervening causation by an independent and unforeseeable force which broke the claim of causation.

TENTH AFFIRMATIVE DEFENSE

43. That ICL failed to mitigate damages.

ELEVENTH AFFIRMATIVE DEFENSE

44. To the extent ICL suffered any detriment, it was unavoidable.

TWELFTH AFFIRMATIVE DEFENSE

45. Each and every one of ICL's claims are time barred by the applicable statutes of

limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

46. Dependable is informed and believes, and on that basis alleges, that ICL, by ICL's acts and conduct, is estopped from alleging any and all claims as asserted in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

47. All of the risks, hazards, and dangers, if any, inherent in the subject incident were fully known, appreciated and understood by ICL, who nevertheless freely and voluntarily elected to assume and undertake such hazards, risks, and dangers, and thereby voluntarily assumed the risk of possible damage to ICL so that it is barred from any recovery it might otherwise have had.

FIFTEENTH AFFIRMATIVE DEFENSE

48. ICL has currently suffered no damages by the conduct alleged on the part of Dependable, rather ICL has merely asserted defenses to the claims by Dependable for payment for services rendered.

SIXTEENTH AFFIRMATIVE DEFENSE

49. Dependable reserves the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information regarding the claims and upon further investigation.

WHEREFORE, Dependable prays:

1. Judgment be rendered in favor of Dependable and against ICL;
2. That ICL takes nothing;
3. For attorneys' fees and the costs of suit; and

4. For such other and further relief as to this Court seems just and proper.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Williams", is written over a horizontal line.

Robert J. Williams
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Dated: March 29, 2024

ATTORNEYS FOR RESPONDENT

Dependable Highway Express, Inc.
2555 E. Olympic Blvd, Los Angeles, CA 90023
Email: michael.dougan@godependable.com

VERIFICATION

I, Michael Dougan, hereby verify as follows:

1. I am the Chief Financial Officer of Dependable Highway Express, Inc.
2. I am authorized to make this verification on behalf of Dependable Highway Express, Inc.
3. I hereby verify under penalty of perjury under the laws of the United States that the facts contained in the foregoing Verified Answer to Complaint are true and correct to the best of my knowledge, information and belief.



Michael Dougan

Dated: March 29, 2024

CERTIFICATE OF SERVICE

I certify that on the 29th day of March, 2024, a true and correct copy of the foregoing **VERIFIED ANSWER TO COMPLAINT** was served by email on all counsel of record in accordance with 46 CFR Part 502 and the Commission's Order of May 12, 2020.

ATTORNEY FOR RESPONDENT DEPENDABLE HIGHWAY EXPRESS, INC.



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