



**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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Docket No. 24-14

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AIRBOSS DEFENSE GROUP, LLC,

COMPLAINANT,

v.

FEDEX TRADE NETWORKS TRANSPORT & BROKERAGE, INC.,  
MEDITERRANEAN SHIPPING COMPANY S.A. and MEDITERRANEAN  
SHIPPING COMPANY (USA) INC., as agent for Mediterranean Shipping Company  
S.A., and TOTAL TERMINALS INTERNATIONAL, LLC,

RESPONDENTS.

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**VERIFIED COMPLAINT**

COMES NOW complainant AirBoss Defense Group, LLC (“ADG”) by its undersigned attorneys files this verified complaint and alleges violations of the Shipping Act of 1984, as amended, 46 U.S.C. § 40101 *et seq.* (the “Shipping Act”), as follows:

**I. THE COMPLAINANT**

1. ADG is a limited liability company that exists under the laws of Delaware and, at all material times, was a purchaser of goods in international commerce.

## **II. THE RESPONDENTS**

2. Respondent FedEx Trade Networks Transport & Brokerage, Inc. (“FTN”) is a New York corporation with its principal place of business in Memphis, Tennessee that has licensing from the Federal Maritime Commission (the “Commission”) under organization number 018021 as a non-vessel-operating common carrier (“NVOCC”).

3. Respondent Mediterranean Shipping Company S.A. (“MSC”) is a global container shipping company and ocean common carrier headquartered at Chemin Rieu 12-14, CH-1208 Geneva, Switzerland conducting business in the United States through Mediterranean Shipping Company (USA) Inc. Mediterranean Shipping Company (USA) Inc.’s office is located at 420 5th Avenue, 4th Floor, New York, New York 10018.

4. Respondent Total Terminals International, LLC (“TTI”) is a corporation organized and existing under the laws of the State of Delaware and was a marine terminal operator with its principal place of business at 301 Mediterranean Way, Long Beach, California 90802.

## **III. JURISDICTION**

5. The Commission has subject matter jurisdiction over this complaint under the Shipping Act.

6. ADG has filed this complaint under section 11(a) of the Shipping Act. ADG seeks reparations for injuries that FTN, MSC, and TTI (collectively, the

“Respondents”) have caused to ADG because of their violations of 46 U.S.C. § 41102(c).

7. In violation of 46 U.S.C. § 41102(c) (unreasonable practices), 46 U.S.C. § 41104(a)(15) (invoicing without required information), 46 U.S.C. § 41104(a)(14) (unreasonable charges), and 46 C.F.R. §§ 545.4 and 545.5, the Respondents have each failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property as it relates to the application of demurrage, detention, chassis charges, and per diem.

8. In violation of 46 U.S.C. § 41104(a)(2) and (11) and 46 C.F.R. § 532.5, FTN failed to comply with the NVOCC negotiated rate arrangements requirements.

#### **IV. GENERAL ALLEGATIONS**

9. ADG is a survivability company that provides government agencies, military, law enforcement, industrial providers, and first responders with a diverse portfolio of protective equipment that spans the entire survivability spectrum.

10. In March 2021, ADG contracted with the U.S. Department of Health and Human Services (“HHS”) to supply the agency with over 18 million boxes of nitrile rubber gloves.

11. To fulfill the HHS contract, ADG contracted in June 2021 (the “Sales and Purchase Agreement”) with a Thailand-based seller to purchase certain nitrile rubber examination gloves (the “Original Goods”).

12. Between May and December 2021, through an unlicensed ocean transportation intermediary, McWilliams Collective, LLC (“McWilliams”), FTN

contracted to transport the Original Goods from Malaysia to the United States. In turn, FTN contracted with vessel-operating common carrier MSC to perform that ocean transportation. MSC contracted with TTI to act as MSC's marine terminal operator.

13. On November 4, 2021, the United States Customs and Border Protection ("CBP") issued a Withhold Release Order ("WRO") against the manufacturer of the Original Goods that prevented entry of 202 shipping containers of the Original Goods (the "202 WRO Containers"). CBP regulations require the exportation or destruction of the Original Goods in the 202 WRO Containers.

14. FTN, MSC, and TTI had immediate notice of the WRO hold. McWilliams was the importer of record of the 202 WRO Containers. McWilliams and its customs broker, Omega CHB International Inc. ("Omega"), informed ADG of the WRO. Following the WRO hold, MSC, FTN, and TTI failed to extend the free time as to the 202 WRO Containers and continued to assess demurrage, detention, chassis charges, and per diem as to those 202 WRO Containers detained by CBP.

15. ADG is informed and believes and, on that basis alleges, that 62 of the 202 WRO Containers remained at MSC's marine terminal, TTI.

16. ADG is informed and believes and, on that basis alleges, that CBP instructed FTN to transport 135 of the 202 WRO Containers to Price Transfer, Inc. ("Price"), which is a CBP centralized examination station.

17. ADG is informed and believes and, on that basis alleges, that a motor carrier that FTN hired, ITS Logistics (“ITS”), and a subcontractor of ITS, MTK Logistics, Inc. (“MTK”), held five of the 202 WRO Containers.

18. In late March 2022, despite payment by ADG to McWilliams for ocean freight and related charges, FTN informed ADG that McWilliams failed to pay freight, demurrage, detention, chassis charges, and per diem charges related to the Original Goods. According to FTN, on May 16, 2022, and without notice to ADG, FTN filed two CBP Form 3485 lien notices with CBP: a general lien against 129 of the 202 WRO Containers at Price for \$4,287,540.10 in freight charges and \$5,586,880 in per diem charges; and a general lien against 66 of the 202 WRO Containers at TTI for \$2,289,817.38 in freight and \$3,231,745 in detention and demurrage charges, for a total of more than \$14,000,000 (collectively, the “Liens”).

19. On May 24, 2022, ADG learned of the Liens when CBP informed Omega that ADG could not export the Cargo until the release of the Liens.

20. On June 1, 2022, FTN filed an action against ADG in the District of Maryland alleging non-payment of freight, demurrage, and other charges for 571 containers, including the 202 WRO Containers (the “Maryland Action”). FTN claimed that through May 31, 2022, the unpaid ocean freight and insurance charges were \$15,387,550 and that the 202 WRO Containers had accrued storage, demurrage, and other charges exceeding \$11,385,518 (collectively, the “Disputed FTN Charges”).

21. In violation of 46 U.S.C. § 41104(f), and in the first instance, FTN, MSC, and TTI never invoiced ADG for the Disputed FTN Charges. Further, FTN, MSC, and

TTI withheld information from ADG necessary to evaluate the Disputed FTN Charges, and FTN, MSC, and TTI withheld the location of 202 WRO Containers and the information necessary for ADG's exportation of the Original Goods.

22. FTN never provided ADG with a copy of a compliant negotiated rate arrangement ("NRA") in support of the Disputed FTN Charges, notwithstanding that FTN's bills of lading for the 202 WRO Containers referred to an NRA number.

23. To obtain the release of the Liens and to avoid the accrual of additional charges and to export the subject cargo as quickly as possible, on July 22, 2022, FTN and ADG settled the Maryland Action for \$5,000,000. In exchange for ADG's payment of that amount, FTN released the Liens on August 15, 2022, stipulated to dismiss the Maryland Action with prejudice, and promised to arrange a meeting with MSC.

24. FTN induced ADG to believe that the only remaining party with outstanding charges was MSC. FTN arranged a settlement conference with MSC on August 10, 2022. During and after that meeting, ADG and MSC negotiated a settlement of all remaining 202 WRO Container charges, including demurrage, detention, chassis charges, and per diem charges (collectively, "MSC's 202 WRO Container Charges"). During the negotiations, MSC represented that the 202 WRO Container Charges included all chassis charges and per diem related to the 140 of the 202 WRO Containers that the parties believed were at Price (the "140 WRO Chassis").

25. On August 29, 2022, ADG's counsel sent MSC's counsel a draft settlement agreement that would settle the dispute over the MSC 202 WRO Container Charges, including the charges as to the 140 WRO Chassis. On August 30,

2022, FTN provided ADG and its counsel with an Excel spreadsheet claiming additional FTN charges of \$3,786,923.80 (the “Additional FTN Charges”), including ITS chassis charges of \$2,793,925.00 (the “Disputed ITS Chassis Charges”), which ADG’s counsel forwarded to MSC’s counsel on the same day.

26. ADG did not arrange the drayage from TTI to Price and had no knowledge of or visibility into the interchange of the 140 WRO Chassis. ADG’s counsel sent e-mails to MSC’s counsel between August 30, 2022, and August 31, 2022, putting MSC on notice of the Disputed ITS Chassis Charges.

27. Based on MSC’s prior representations, on August 31, 2022, ADG and MSC settled MSC’s 202 WRO Container Charges for \$5,750,000, through September 24, 2022. ADG paid that amount to MSC to settle all charges not already settled with FTN, including all charges related to the 140 WRO Chassis.

28. From August 30, 2022, to October 7, 2022, ADG arranged the export bookings of the 202 WRO Containers on board multiple MSC vessels using FTN as its ocean transportation intermediary.

29. Throughout September and into October 2022, MSC unilaterally changed or extended FTN’s bookings due to vessel delay and congestion at the Port of Los Angeles. And as late as September 26, 2022, MSC changed the booking from the MSC M/V Vita, voyage FV237R, to the MSC M/V Ravenna, voyage FV240R, with the port earliest return date of October 4, 2022, and cut-off date of October 6, 2022.

30. When ADG learned of the above changes, ADG requested MSC to resolve the Disputed ITS Chassis Charges before ADG would commit to the booking.

ADG repeatedly requested MSC, FTN, and ITS to negotiate in good faith, to mediate, and to resolve the Disputed ITS Chassis Charges. ADG's settlement with MSC included the Disputed ITS Chassis Charges. Despite ADG's best efforts, MSC, FTN, and ITS failed to resolve the Disputed ITS Chassis Charges, and that dispute remains. The Additional FTN Charges, including the Disputed ITS Chassis Charges, dramatically increased the projected cost of exportation.

31. FTN refused to perform the services necessary to mitigate without prepayment of the Additional FTN Charges. MSC, TTI, and FTN failed to extend the free time as to the 202 WRO Containers and continued to assess demurrage, detention, chassis charges, and per diem as to those detained containers during the time available to comply with CBP's required destruction. FTN failed to cancel the export booking or to provide accurate information concerning the containers and chassis that would have expedited the destruction of the Original Goods. MSC and TTI withheld information and delayed in making the containers available at the marine terminal. FTN, MSC, and TTI's failures caused extensive delay during the destruction of the Original Goods under CBP supervision. The disposal of the Original Goods followed, in various landfills, which disposal lasted about nine months, from October 2022 to July 2023. MSC, TTI, and FTN continued to charge demurrage, detention, chassis charges, and per diem during that nine-month period (the "Disposal-Related Charges"). In violation of 46 U.S.C. § 41104(f), FTN, MSC, and TTI never invoiced ADG for the Additional FTN Charges or the Disposal-Related Charges.



32. FTN, MSC, and TTI continue to demand payment of the Disputed FTN Charges, the Additional FTN Charges, the Disputed ITS Chassis Charges, the Disposal-Related Charges, and additional disputed charges that accrued because of the delays in the disposal of the Original Goods.

## **V. VIOLATIONS OF THE SHIPPING ACT**

33. The Shipping Act 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.” 46 U.S.C. § 41102(c).

34. FTN and MSC are ocean common carriers subject to the Shipping Act.

35. TTI is a marine terminal operator subject to the Shipping Act.

36. FTN’s and MSC’s practices and regulations relating to the assessment of demurrage/detention are related to receiving, handling, storing, or delivering property, are occurring on a normal, customary, and continuous basis, and are unjust and unreasonable.

37. FTN has failed to establish and observe just and reasonable practices by accepting cargo from McWilliams, which failed to have a tariff or bond in violation of 46 U.S.C. § 41104 – Common carriers (11), filing a general lien based on violative ocean freight charges, demanding payment of inaccurate, inconsistent, and unsupported, demurrage, detention, per diem, and chassis charges without invoices, failing to provide accurate container locations, and failing to provide accurate equipment return locations.

38. FTN, MSC, and TTI failed to establish and observe just and reasonable practices by assessing detention charges that serve no incentivizing principle and that do not promote freight fluidity in accordance with 46 C.F.R. § 545.5(c)(2)(iv) Interpretation of Shipping Act of 1984—Unjust and unreasonable practices with respect to demurrage and detention - Government inspections.

39. FTN, MSC, and TTI failed to establish and observe just and reasonable practices by failing to extend free time or to waive or reduce detention charges for containers, which the designated termination location refused to accept.

40. FTN, MSC, and TTI violated 46 U.S.C. § 41104(d) and 46 U.S.C. § 41104(f) by failing to invoice ADG for the Disputed FTN Charges, MSC's 202 WRO Container Charges, Additional FTN Charges, Disputed ITS Chassis Charges, and the Disposal-Related Charges.

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

41. As a result of Respondents' violations of the Shipping Act, ADG has sustained injuries and damages in an amount not less than \$11,000,000.

## **VIII. ALTERNATIVE DISPUTE RESOLUTION**

42. ADG has made numerous unsuccessful attempts to resolve this matter with Respondents before the filing of this complaint. Several of the parties are currently in litigation in the District of Maryland, in three actions: *FedEx Trade Networks Transport & Brokerage, Inc. v. Airboss Defense Group, LLC* (1:22-cv-01313-LKG), *AirBoss Defense Group, LLC v. McWilliams Collective, LLC* (1:23-cv-01253-LKG) and *FedEx Trade Networks Transport & Brokerage, Inc. v. Airboss Defense*

*Group, LLC* (1:23-cv-02232-LKG). Because of the pendency of those actions, ADG did not seek to use the Commission's alternative dispute resolution procedures before October 30, 2023. ADG has engaged in preliminary consultations with the Commission's Dispute Resolution Specialist regarding the availability of alternative dispute resolution under the Commission's program. 46 C.F.R. § 502.64.

#### **IX. PLACE OF HEARING**

43. ADG requests a hearing on this matter to take place at the Commission at 800 North Capitol Street, NW, Washington, D.C. 20573-0001.

#### **X. PRAYER FOR RELIEF**

WHEREFORE, ADG respectfully requests that Respondents be required to answer the charges of this complaint and that after the Commission's investigation and hearing, that the Commission issue an order requiring Respondents to:

- A. Cease and desist their violations of the Shipping Act;
  - B. Order that ADG has no duty to pay any demurrage or detention charges to FTN, MSC, and TTI under 46 U.S.C. § 41104(d) and 46 U.S.C. § 41104(f).
  - C. Pay reparations to ADG for all damages flowing from the Respondents' unlawful conduct, along with interest and ADG's attorneys' fees and costs under 46 U.S.C. § 41305;
  - D. Pay any other amounts to ADG that the Commission deems appropriate;
- and
- E. Provide for such other relief as the Commission may deem just and proper.

Dated: March 8, 2024

Respectfully submitted,

By: /s/ Cameron W. Roberts  
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*Attorneys for complainant  
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## VERIFICATION

I, Carlos Motta, am Chief Financial Officer of AirBoss Defense Group, LLC and I declare under penalty of perjury under the laws of the United States that I have read the above complaint and believe, to the best of my knowledge, that the facts in the complaint are true and correct.

Dated: March 8, 2024



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Carlos Motta