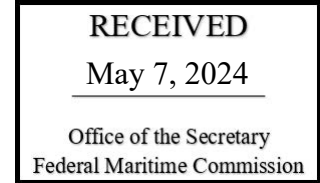


BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 24-20

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INTERNATIONAL EXPRESS TRUCKING, INC.,

COMPLAINANT,

v.

COSCO SHIPPING LINES CO., LTD. and  
COSCO SHIPPING (NORTH AMERICA) INC., as agent for  
COSCO SHIPPING LINE CO., LTD.,

RESPONDENTS.

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**COMPLAINT**

Complainant International Express Trucking, Inc. (“Complainant” or “IXT”), by its undersigned attorneys, files this Complaint against Respondents herein, alleging violations of the Shipping Act of 1984, 46 U.S.C. § 401010, *et. seq.* (the “Shipping Act”) as follows:

**I. COMPLAINANT**

1. Complainant IXT is a corporation organized and existing under the laws of the State of Kansas with a principal place of business at 3359 Brinkerhoff, Kansas City, Kansas 66115.

**II. RESPONDENTS**

2. Respondent COSCO Shipping Lines Co., Ltd. (“COSCO”) is a corporation organized under the laws of China. COSCO’s corporate headquarters is located at No. 378, Dong Da Ming Road, Shanghai, China. COSCO is an ocean common carrier conducting business in the United States through Respondent COSCO shipping (North America) Inc. (“COSCO America”).

COSCO America's principal place of business is located at 100 Lighting Way, 3<sup>rd</sup> Floor, Secaucus, New Jersey 07094. COSCO was at all times pertinent to this complaint an ocean common carrier within the meaning of the Shipping Act, 46 U.S.C. § 40102(7), subject to regulation by the Federal Maritime Commission ("FMC").

### **III. JURISDICTION**

3. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984, as amended.

4. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. IXT is seeking reparations for injuries caused to it by Respondents due to their violations of 46 U.S.C. § 41102(c).

5. The FMC has personal jurisdiction over COSCO as a "common carrier" as defined in 46 U.S.C. § 40102(7).

6. Respondent's actions alleged herein constitute failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property, in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§545.4 and 545.5.

### **IV. FACTUAL ALLEGATIONS**

7. IXT is a motor carrier registered with the Federal Motor Carrier Safety Administration, that provides motor carrier transportation services.

8. Between 2022 and 2023 COSCO issued invoices to IXT for per diem charges amounting to \$75,725.00. See Exhibit A.

9. The invoices reflected in Exhibit A did not contain all of the following information: (1) Date that container is made available; (2) The port of discharge; (3) The container number or numbers; (4) For exported shipments, the earliest return date; (5) The allowed free time in days; (6) The start date of free time; The end date of free time; (7) the applicable detention or demurrage

rule on which the daily rate is based; (8) The applicable rate or rates per the applicable rule; (9) The total amount due; (10) The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees; (11) A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage; (12) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

10. The invoices reflected in Exhibit A were also issued in situations involving: (1) lack of chassis availability, (2) unavailable return appointments; and/or (3) congestion.

11. COSCO Invoice # HOU00069003 includes charges for containers which could not be returned due to weather conditions. COSCO agreed to waive charges related to the weather conditions in an email dated June 23, 2022. However, COSCO has never waived the charges in this invoice.

12. The invoices listed in Exhibit A have been the topic of numerous communications between IXT and COSCO. Notwithstanding IXT's numerous complaints relating to each invoice raising the above discussed issues, COSCO has refused to waive the charges. COSCO has further threatened to discontinue service for IXT.

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

13. Section 41102(c) of the Shipping Act (46 U.S.C. § 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."

14. Respondent COSCO is an ocean common carrier as defined by the Shipping Act.

15. Respondents' practices and regulations relating to the assessment of per diem charges are directly related to receiving, handling, storing, or delivering property, are occurring on a normal, customary, and continuous basis, and are unjust and unreasonable.

16. Respondent has failed to establish and observe just and reasonable practices in violation of § 41102(c) by failing to issue invoices which do not comply with OSRA 2022's requirements; for charging per diem which were caused by conditions beyond complainant's control; for refusing to waive these charges; and for threatening to discontinue service on the basis of the unpaid per diem charges.

17. Respondent failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing detention charges that serve no incentivizing principle and do not promote freight fluidity.

18. Respondent failed to establish and observe just and reasonable practices in violation of § 41102(c) by refusing to extend free time and/or waive or reduce per dem charges for containers, which were rejected for return by the designated termination location.

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

19. As a result of Respondents' violations of the Shipping Act, the Complainant has sustained injuries and damages in the amount of \$75,725.00.

## **VII. ALTERNATIVE DISPUTE RESOLUTION**

20. IXT has made numerous unsuccessful attempts to resolve this matter with COSCO prior to filing this Verified Complaint. IXT has been in direct communication with COSCO since 2022 and has communicated with COSCO through counsel for several months. IXT send a demand letter to COSCO relating to these in February 2024. COSCO has persisted in its refusal to waive the per diem charges which are the subject of this Complaint. Because COSCO has failed to respond to these requests, IXT did not seek to use the FMC's alternative dispute resolution

procedures prior to filing this Verified Complaint. For the same reasons, Complainant has not had any preliminary consultations with the FMC's Dispute Resolution Specialist regarding the availability of alternative dispute resolution (ADR) under the FMC's ADR program, 46 C.F.R. § 502.64.

### **VIII. PLACE OF HEARING**

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

### **IX. PRAYER FOR RELIEF**

WHEREFORE, Complainant respectfully requests that Respondents be required to answer the charges in this Complaint, and that after the Commission's investigation and hearing, the Commission issue an order:

- 1) Requiring Respondent to pay Complainant reparations for the unlawful conduct described herein, along with interest and Complainant's attorneys' fees and costs pursuant to 46 U.S.C. 41305;
- 2) Requiring the payment of any other amounts that the Commission deems appropriate; and
- 3) Providing such other and further relief that the Commission deems just and proper.

May 7, 2024

Respectfully submitted,



Brendan Collins

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*Attorneys for Complainant*

*International Express Trucking Inc.*

VERIFICATION

I, Kristen Burkett, am the Chief Operating Officer of Complainant International Express Trucking, Inc. and hereby declare and attest under penalty of perjury that I have read the forgoing Verified Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: May 7, 2024:

A handwritten signature in black ink that reads "Kristen Burkett". The signature is written in a cursive style with a horizontal line underneath the name.