

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 24-27

INTERNATIONAL LUMBER IMPORTS, INC.

COMPLAINANT,

v.

CEVA FREIGHT, LLC,

ZIM INTEGRATED SHIPPING SERVICE LTD., and

ZIM AMERICAN INTEGRATED SHIPPING SERVICES COMPANY CO. LLC,

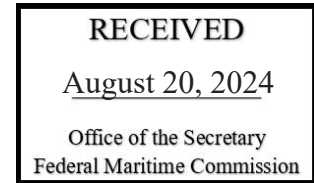
RESPONDENTS.

VERIFIED COMPLAINT

Complainant International Lumber Imports, Inc. (“Complainant” or “ILI”), by its undersigned attorneys, files this Verified Complaint against Respondents pursuant to violations of 46 U.S.C. § 41104(a)(2)(A), 46 U.S.C. § 41104 (a)(15)(A)(B) and Part 545 of title 46, Code of Federal Regulations, and applicable provisions and regulations, including the principles of the final rule published on May 18, 2020, entitled “Interpretive Rule on Demurrage and Detention Under the Shipping Act,” and pursuant to the Federal Maritime Commission’s (“FMC”) authority to permit the filing of complaints under Section 11(a) of the Shipping Act, 46 U.S.C. § 41301(a), in response to Respondent’s violations of the Shipping Act. Complainant alleges upon information and belief as follows:

I. COMPLAINANT

1. Complainant is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at 7524 Commerce Place, Sarasota, Florida 34243. ILI is an importer of exotic hardwoods, primarily exterior decking and siding material. ILI has been in the business for over 20 years and has imported many thousands of containers in that time. This is the first time ILI has had any issue with demurrage or detention.



II. RESPONDENTS

2 Respondent ZIM Integrated Shipping Service Ltd. is a global ocean carrier with its corporate office at 9 Andrei Sakharov St., “Matam” - Scientific Industries Center, P.O.B. 1723, Haifa 31016, Israel, conducting business in the U.S. through ZIM American Integrated Shipping Services Company Co. LLC, with its principal corporate office at 5801 Lake Wright Drive, Norfolk, VA 23502 (“ZIM”). ZIM 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”).

3. Respondent CEVA Freight, LLC (“CEVA”), 5601 NW 72nd Ave., Miami, FL 33166, for the shipments subject of this Complaint was acting as delivery agent for Pyramid Lines Ltd., d/b/a as Pyramid Lines (“PLL”), which issued house bills of lading to Complainant ILI. PLL surrendered its FMC registration FMC No. 024243, effective on or about January 5, 2022 and upon information and belief CEVA was designated as consignee on ZIM bills of lading pertinent to this Complaint and was issued detention charges by ZIM which it now seeks to collect from Complainant.

III. JURISDICTION

4. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984, as amended, 46 U.S.C. § 40101 et seq.

5. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. Sec. 41301. Complainant ILI is seeking a cease and desist order and reparations for injuries caused to it by Respondents due to the violations of the Shipping Act.

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

7. CEVA, as Consignee on ZIM’s bills of lading pertinent to this proceeding, was acting as a regulated entity by attempting to pass through the subject detention charges to Complainant assessed to it by ZIM. These charges were unreasonable practices in violation of 46 U.S.C. § 41102(c) and thereby CEVA was inextricably interwound with the merits of the case. *See Herbert v. Nat’l Acad. of Sciences*, 974 F.2d 192, 198 (D.C. Cir. 1992).

8. Respondent ZIM’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 ILI, in violation of 46 U.S.C. § 41102(c) (unreasonable practices); 46 U.S.C. § 41104(a)(3)(unfair or unjustly discriminatory methods) and 46 U.S.C. § 41104(a)(14), (15)(A), (B) (invoicing without required compliance of the “Interpretive Rule on Demurrage and

Detention under the Shipping Act”)); and 46 U.S.C. § 41104(a)(14) non-compliant or inconsistent charges).

IV. FACTUAL ALLEGATIONS

9. On or about September 2021, ILI arranged through EasyLog Servicios E Logistica LTDA, agent of PLL, for the shipment of three containers of tropical hardwood products from Brazil to the United States with Respondent Pyramid and its agent, CEVA.

10. On September 6, 2021, the three containers (hereinafter, the “Containers”) were shipped from Brazil to the Port of Charleston, South Carolina. Respondent ZIM was the carrier and issued the Master bills of Lading. The House bills of Lading were issued by PLL which, upon information and belief, is a Non Vessel Operating Common Carrier (“NVOCC”) and was registered with the FMC as an NVOCC as organization number 024243 that has more than 200 booking and handling agents all over the world and has long term contracts with ocean carriers, including ZIM. Upon information and belief, CEVA was the listed consignee on ZIM’s bills of lading. The Containers were identified as follows:

Container #: ZCSU2557850

Master Bill of Lading: ZIMU ITJ8030165 / House Bill of Lading: PYMN
ITJ7076915 / PO5324.

Container #: ZCSU2798918

Master Bill of Lading: ZIMU ITJ8030166 / House Bill of Lading: PYMN
ITJ7076824 / PO5343

Container #: ZCSU2739685

Master Bill of Lading: ZIMU ITJ8030214 / House Bill of Lading: PYMN
ITJ7076877 / PO540

See copies of PLL’s bills of lading, attached as **Exhibit A**.

The Containers arrived at the port of destination on October 5, 2021.

11. On or about October 10 and 11, 2021, ILI was advised by its Customs Broker, John A. Steer Co., that the United States Customs and Border Patrol was placing a customs hold on the Containers at the request of United States Fish and Wildlife Services (“FWS”).

12. No explanation was provided for the hold. FWS then requested substantial amounts of documentation related to the container contents, all of which were promptly provided.

13. Between October 2021 and April 2022, either directly or through its customs broker, ILI made at least sixteen (16) written inquiries along with additional phone inquiries to FWS attempting to seek status and release of the Containers. In each instance the inquiries were either ignored or received a short response stating that the Customs hold remained in place.

(Appended, hereto, is a Table of the written communications, attached as **Exhibit B**; Copies of the relevant correspondence, attached as **Exhibit C**.)

14. By letter dated April 6, 2022, FWS informed ILI that the goods were refused entry and seized. (A copy of the FWS Letter of Refused Entry is attached as **Exhibit D**.) The basis for the seizure was an unspecified violation of the Lacey Act. (Complainant has vigorously contested this determination and as outlined below FWS has released the cargo with no violations.)

15. On the same date, April 6, 2022, CEVA advised ILI by email that "... your containers have been released from Customs exam. Please remit exam payment to ZIM for attached invoices and keep [CEVA] in copy of payment." (A copy of the CEVA correspondence is included in **Exhibit C**.)

16. After an unsuccessful attempt to negotiate the exam charges, ILI made the requested payment which totaled \$56,070.45 (\$18,690.15 for each container). ILI was led to believe at that time that this was the extent of any amounts claimed by ZIM or CEVA. (Copies of the invoices are attached as **Exhibit E**.)

17. To ILI's surprise, on September 8, 2022 CEVA sent an email to ILI asking if payment for detention charges had been made. ILI immediately advised CEVA that it had not received any invoices or notice of any kind of detention charges. By correspondence dated September 12, 2022, ILI received three ZIM invoices from CEVA for alleged detention charges. The invoices total \$180,860.00. (Copies of the invoices are attached as **Exhibit F**.) The detention period was calculated from October 11, 2021 to July 13, 2022. Notably, the invoiced charges also include charges for 98 days beyond the date that the Containers were released from Customs hold. Despite repeated requests to all parties, ILI has not been provided with a clear explanation for this additional delay.

18. Upon information and belief, the cost of a new container of the size utilized in this matter is approximately \$18,000. The sum demanded by ZIM per container is more than three times the cost of a new container.

19. In addition, upon information and belief, during the relevant time period, there were thousands of empty, readily available containers in the market and ZIM was not deprived of the use of a necessary container. In reality, ZIM suffered minimal, if any, actual damage as a result of the extended detention.

20. Upon information and belief, CEVA has paid ZIM the charges invoiced and is now seeking payment from Complainant. The amount ZIM, through CEVA, is seeking for detention charges represents an unreasonable act in violation of the Shipping Act and a violation of the Incentivizing Principle among other violations alleged herein. The hold of the containers was completely out of the control of Complainant, as a government hold.

21. Complainant has not made payment on the invoices and has tried repeatedly to resolve this matter informally.

22. The containers were devanned on April 6, 2022, and the cargo was released from government hold by FWS on June 26, 2024 upon FWS's determination that no claim was valid against ILI. (Email from FWS attached as **Exhibit G.**)

V. VIOLATIONS OF THE SHIPPING ACT

23. 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." Section 545.5 of FMC regulations (46 C.F.R. § 545.5) provides in pertinent part that "in assessing the reasonableness of demurrage and detention practices and regulations, the Commission will consider the extent to which demurrage and detention are serving their intended primary purposes as financial incentives to promote freight fluidity."

24. Respondent ZIM is a vessel operating common carrier as defined by the Shipping Act.

25. Respondent ZIM's practices and regulations relating to the assessment of demurrage and detention are directly related to receiving, handling, storing, or delivering property, are occurring on a normal, customary, and continuous basis, and are unjust and unreasonable.

26. Respondent has failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing detention charges against containers, including the Containers that are subject to a governmental hold for examination by Customs, and therefore, unavailable for pick-up, while Complainant fully complied with information and documentation requests from the government pursuant to the investigation.

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

28. 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 demurrage charges for the Containers, which were unavailable for pickup.

29. Respondent CEVA, as Consignee on ZIM's bills of lading pertinent to this proceeding, was acting as a regulated entity by attempting to pass through the subject detention charges to Complainant that were assessed to it by ZIM. These charges were unreasonable practices in violation of 46 U.S.C. § 41102(c) and thereby CEVA was inextricably interwound

with the violations alleged in the case and is in any case is a necessary and indispensable party in the proceeding.

VI. CAUSATION AND INJURY TO COMPLAINANT

30. As a result of Respondent's violations of the Shipping Act, the Complainant is entitled to an order that CEVA cease and desist claiming the amount of \$180,860.00 from ILI and an order that the ZIM detention charges were unreasonable and violate the Shipping Act and ordering those amounts returned to CEVA.

VIII. PLACE OF HEARING

31. 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

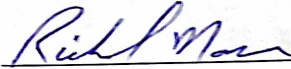
WHEREFORE, Complainant respectfully requests that Respondent be required to answer the charges in this Complaint, and that after the Commission's investigation and hearing, the Commission issue an order:

- 1) Declaring that the detention charges sought by Respondents in this matter are unlawful.
- 2) Finding Respondent ZIM to have violated 46 U.S.C. § 41104(a)(2)(A); 46 U.S.C. § 41104(a)(14)(15)(A)(B); 46 U.S.C. § 41102(c); and 46 C.F.R. § 545.5 by charging detention while the containers were under government hold;
- 3) Finding that pursuant to 46 U.S.C. § 41305(c) relating to violations of 46 U.S.C. § 41102(c) ILI is entitled to additional amounts not to exceed twice the amount of the actual injury
- 4) Ordering that Respondents pay to Complainant its attorneys' fees and costs, pursuant to 46 U.S.C. § 41305;
- 5) Providing such other and further relief that the Commission deems just and proper.

DATE: August 13, 2024 Respectfully submitted,

Respectfully submitted,

Dated: August 13, 2024



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Inc.*

VERIFICATION

Mr. Robert J. Pelc Jr., President of International Lumber Imports, Inc., pursuant to 28 U.S.C. § 1746, the undersigned hereby declares under penalty of perjury that he has read the foregoing Verified Complaint, and that the facts stated therein to the best of his knowledge, information and belief further declares that the foregoing is true and correct on information, belief, and upon information received from others.

Dated: August 13, 2024



Robert J. Pelc Jr.
International Lumber Imports, Inc.
7524 Commerce Pl. Sarasota, FL 34243