

ORIGINAL



Before the Federal Maritime Commission

Complaint

02-04

ANCHOR SHIPPING CO. (Complainant) v. ALIANCA NAVEGACAO E
A LTDA (Respondent)

I. The complainant is a corporation in the State of Florida, operating as an Ocean Transportation Intermediary, with its principal place of business located at 1031 Ives Dairy Road, Suite 228, North Miami Beach, FL 33179.

II. The respondent is a corporation in the State of New Jersey, operating as an Ocean Common Carrier, with its principal place of business located at 465 South Street, Morristown, NJ 07960

III. The complainant seeks Commission enforcement of Section 11 and Section 13 of The Shipping Act of 1984, as amended by OSRA of 1998, complemented by other Sections of The Act. For injuries caused through carrier misconduct in direct association with Shipping Act Violations which could not be enforced through arbitration before the Society of Maritime Arbitrators, New York before Ms. Lucienne Bulow, Sole Arbitrator, though some are cited in Arbiters Final Decision,

Complainant hereby seeks additional reparations pursuant to Section 11, for injuries caused through respondents deliberate and premeditated misconduct associated with activity prohibited by or in violation of Section 10 (c)(1), 10 (b)(3), 10 (a)(2) and 10 (a)(3) of The Shipping Act and Rules and Regulations of The FMC. Reparations sufficient to make complainant as whole and of equal commercial standing as complainant could have foreseeably been had respondent acted in good faith, not violated The Shipping Act and FMC Regulations and allowed the service contract to function as it was confirmed, drafted, and intended to function.

Complainant further seeks, Commissions full enforcement of the Civil Penalties prescribed under Section 13 (a), for respondents willfull and uncorrected violations of various Sections of The Shipping Act, and additionally requests Commission's consideration with respect to Additional Penalties pursuant to Section 13 (b) for activity involving violations of Section 10 (b)(1), (2), and (7), and further requests Commission's consideration with respect to respondent's attorney's (Hoppel, Mayer & Coleman) moral-ethics and disrespect for the law, and whether they should be barred from further practise before the F.M.C..

For witness convenience, complainant petitions for a hearing in Miami, FL.

IV. That, the respondent;

- A) switched / substituted a service contract (signature page) without notification, Contract had been signed and dated by the shipper (complainant) as service contract number EC99-165 (April 29, 1999 - April 29, 2000), for a **substitute service** contract of some similarity (S/C EC99-05 11 May 6, 1999 - May 6, 2000), which was later discovered to be **filed** in duplication yet with different effective dates.
- B) switched / substituted signed **and** dated amendments to service contract(s), in some instances neglected to amend or cancel contracts altogether.
- C) threatened to expire a service contract within days of its effective date and shortly thereafter began to discourage **and/or** limit space in certain routes (WCSA & ECSA N.B.) and in some instances, (WCSA N.B.) refused to acknowledge certain routes within the contract.
- D) began using unwarranted service and space objections and/or unwarranted commodity description objections, (in some instances refusing bookings in certain routes, WCSA N.B.) within 60 days of the effective date of the contract.
- E) began refusing certain routes (ECSA N.B.) just **after** 60 days of the effective date, by either, not acknowledging the contract or not accepting commodities which were permissible under the contract or by demanding rate increases not contemplated in the contract
- F) completely refused to accept bookings in the (WCSA N.B.) route from the **beginning** of the contract, completely refused bookings in the (ECSA N.B.) route beginning in August 1999, completely refused bookings in the (WCSA S.B.) route beginning in September 1999, completely refused bookings to La Guaira, Venezuela as of September 1999, and completely refused shipments of boats and/or machinery beginning in September 1999.
- G) willingly used their **inside** knowledge of the shipping industry with respect to rate discussion groups, pooling arrangements, capacity management, joint services, their knowledge of The OSRA (particularly complainant's exclusive remedy being arbitration in first instance) and, their advantage as the carrier, in conjunction with a series of obstacles and other convoluted objections, to coerce complainant into accepting rate increases, reductions in number of TEU'S per scheduled sailing, reductions in the total TEU'S permissible under the contract, reductions in the scopes of service and types of **services** under the contract, alterations or **exclusions** of additional and surcharges, and other unilateral amendments.
- H) was member to at least one discussion group (ECSADA), which by the copy of the discussion group meeting (minutes) in possession of complainant, evidence that the respondent was party to an agreement that was more than just a meeting of the minds

where carriers refrain from allocating **shippers**, observe voluntary guidelines and then publish the entire agreement legitimately before the commission as prescribed under Section 5, and that they may have discussed complainants contract(s) with other members of the group, to the complainants disadvantage.

I) used offering “Deferred Rebates” under a **service** contract as means of coercion.

J) arranged a business luncheon with complainant and (2) two representatives from their **affiliated** carrier (Columbus Line) as means of switching complainant from using the respondents contract(s) and be able to achieve higher rates and lesser carrier commitments, as sited further herein this complaint.

K) arranged for their affiliated carrier (Crowley), to offer complainant a service contract to La Guaira, as means of switching complainant from using the respondents contract..

L) did not accept the complainant’s numerous mitigating efforts with respect to space apportionment, rate increases, alternative amendments, reductions in scope ranges, or monetary settlement, but **instead** used their shipping industry knowledge, legal counsels advise and advantage as carrier, to drag out and deliberately attempt to either bankrupt or at least damage the complainant to where he would have to withdraw from his contract rights or otherwise have to accept the respondent’s terms, without any regard for the complainant or the complainant’s customer’s well-being.

M) through advise of their legal counsel, willingly allowed meritless objections be cause for arbitration pursuant to **its** service contract.. That respondent used its legal counsel as means of discouraging complainant through threats and a series of unsupported legal aspects, allegedly supporting respondents position, as means of causing complainant hardships **in** trying to correspond with their legal counsel at the same time as complainant was trying to access the contract or otherwise try to place its booking’s. That respondents intentions were to coerce complainant into accepting the respondents terms, or have to face long range monetary damages associated with the arbitration.

N) refused to furnish discovery or allow depositions during arbitration ,**and** instead introduced erroneous and misleading affidavits in the arbitration.

O) undermined or otherwise interfered with complainant’s dealings, through respondents direct dealings with complainant’s customer(s), its agent(s), and its competitors, in violation of **Sec** 10 (13)(a) and (b), and, that respondent may have converted some of the accounts to their own **benefit**.

P) had allegedly suspended their to/from WCSA Service, for allegedly having lost their space allotment with their affiliate (Columbus Line) while Columbus had continued

to serve the WCSA through its pooling arrangements, along with a new carrier to the group (Crowley) who also served WCSA, rather than having made internal arrangements with their affiliate(s), to **acomodate** complainants bookings, as they conveniently were able to do for the (2) remaining months following the Interim Decision.

Q) allegedly could no longer offer service from Baltimore, MD, to La Guaira, either by direct call, via rail ramp or door move. Then when confronted with the fact that this route was to be included in the contract because it was included in a previous contract (S/C **EC99-003**) which the respondent had agreed to merge into the new master contract, (along with previous S/C **EC99-002**) and the fact that they had been accepting the route all along, first under S/C **EC99-003** and later once S/C **EC99-165/05** 11 came into effect, under S/C **EC99-05** 11, respondents still refused to accept bookings, alleging Baltimore was not covered under the previous contract, despite being directed to refer to the original agreement and the fact they had an Alternate Port Rule published. That respondents further misconducted themselves, when after complainant was able to make a few bookings under the old contract number (S/C **EC99-003**) with a different employee who apparently had not been advised of the respondents intentions, respondent then claimed they had allegedly made a mistake using the old cancelled contract, refusing La Guaira altogether, yet it was later discovered that neither of the previous contract(s) had been cancelled, and that respondent, just did not want to perform. The respondent later used the contract(s) as a means of staging another arbitration as cited further herein.

R) refused to accept bookings from ECSA N.B., because of agreements with ECSADA which were **unfiled**, yet conveniently managed to accept bookings for a short period after the Arbiters Interim Decision (apparently to test complainant's residual commercial standing after alienating its customers for (6) months) before once again rejecting bookings and finding objections. That other bookings were refused, because of similar agreements.

S) admittedly had (6) six other service contracts like complainants, even though they allegedly only had very **limited** space available, and that the respondents conceivably may have favored some of the other contracts, or possibly violated other contracts, and in turn committed other Shipping Act Violations.

T) intentionally, reneged on the contract for foreseeable **financial** gains. That the respondent, knew the complainants contract rates were about 50% below those the respondent could demand elsewhere and that their carrier commitments under the contract were also to their disadvantage in light of the new accords, and that they knowingly took the calculated risk that they could either, coerce or **discourage** complainant(s) into submission, bluff or mislead them through their attorneys, or financially fatigue them into submission, without any regard for the complainant, the complainants customers and agent(s), or The Shipping Act and/or The F.M.C.

U) premeditated not adhering to the service contract, its essential terms, its tariff rules, tariff rates, The Shipping Act, or The Rules of The FMC.

V) deliberately staged an unwarranted Civil Action against the complainant for unpaid freight charges which were already involved in the arbitration dispute before the arbiter, for the purpose of causing complainant additional legal expenses and hardship.

V. That by reason of the facts stated in the foregoing paragraphs, **complainant** has been (and is being) subject to injury as a direct result of the violations by respondent of sections 4, 5, 6, 7, 8, 9, 10, and 12.

A) The respondent caused direct injury to complainant, through its Concerted Actions in violation of Section 10 (c)(1) and/or **Sec 10 (a)(2)** and/or **Sec 10(a)(3)**, with respect to Unfiled Agreements or Operating under Agreements other than those tiled, when in connection with a group of (2) two or more common carriers, respondents knowingly used, Columbus Line and Crowley (Hamburg Sud) and apparently other carriers which were part of an agreement and would not respond to service contract requests, as means of coercion, in the matter of rates, space accommodations, and service restrictions

B) The respondent caused direct injury to complainant, in connection with Concerted Actions under Section **10 (c)(1)**, when respondent directly or indirectly through its principals became a party to at least (1) one agreement (ECSADA), apparently outside any agreements sanctioned or tiled with the FMC in violation of **Sec 10 (a)(2)** and/or **10 (a)(3)**, whereby **carrier(s)** would among other things, turn in any contract(s) not in compliance with the minimum floor rate levels, and eliminate the northbound GDSM Rate. Here the respondent directly violates Section 10 (c)(1), by working in conjunction with a group of carriers, in the matter of rates, space accommodations, and service restrictions, and arbitrarily, forcing it on a complainant while still under a valid contract, to whereby respondent knew complainant would be barred from finding an equal rate and service level elsewhere, and also violates **Sec 10 (a)(2)** and/or **10 (a)(3)**, for operating under the agreement.

C) By respondent having stopped accepting booking's in practically all routes at once (even some less significant routes) for the sake of reaching its goal. The respondent injured complainant in retaliation for complainant attempting to hold them to the contract or threatening to file a complaint. Here respondent violated Section 10 (b)(3) specifically as it was intended not to be violated.

D) By respondent having resorted to unwarranted obstacles and deliberate disputes to keep complainant from accessing the contract, then consciously allowing their meritless objections and disputes be cause for arbitration as means of causing the complainant hardships and financial fatigue and then intentionally causing delays during

arbitration and continuing to **misconduct** themselves during arbitration, **upto** and including the last two days of a contract, the respondent, clearly retaliated against complainant, in direct violation of Section 10 (b)(3).

E) The fact respondent knowingly allowed a meritless case go through lengthy arbitration as a means of causing damages to complainant, foreseeably to be irreparable damages or at minimum, very significant damages, was a totally premeditated retaliation on the complainant to be considered a flagrant violation of Section 10 (b)(3) for its resulting severity to complainant.

F) By respondent ignoring / not responding to any of the numerous reasonable mitigation efforts on the part of complainant, respondent used its inside knowledge of at least one discussion group agreement and/or pooling arrangement activity to unfairly refuse complainant's mitigation efforts, in violation of **Sec 10 (c)(1)** or **Sec 10 (a)(2)** and/or **Sec 10 (a)(3)** or all three violations.

G) By respondent refusing to extend the contract as a means of settling the dispute and mitigating damages, despite (5) different request's at (3) different intravels, and the fact they continued to do so for the extend of the contract, despite an interim **decission** from the arbiter, that so much as recommended them to extend the contract as means of reducing complainants damages, respondent acted on its knowledge of the discussion group accord, in violation of Section 10 (c)(1) and/or **Sec 10 (a)(2)** or (3), in conjunction with retaliatory activity in violation of Section 10 (b)(3), with respect to just wanting to injure complainant.

H) By respondent staging a last minute service contract dispute during arbitration, a dispute over old previous service contract(s) that were represented as contracts that were to be subsumed by a later larger service contract, one which complainant was lead to believe and had reason to believe had been filed or amended as such, and which respondent knew was to **be** amended as such, respondent retaliated against complainant in violation of Section 10 (b)(3) with respect to maliciously trying to cause the complainant additional injury.

I) By respondent all of sudden **diciding** not to accept booking's to La Guaira, by either filing the agreed amendment or admitting there was a published contract, at about the same time Crowley (with possible Venezuelan Conference involvement) was mysteriously offering La Guaira rates to the complainant, which was also about the same time practically the whole contract was being repudiated, the respondent violated Section 10 (c)(1) and/or **Sec 10 (a)(2)** and/or 10 (a)(3) , plus various parts of **Sec 8**, but because of the way the refusals were inflicted on complainant, respondent retaliated in violation of Section **10(b)(3)**.

Here Crowley actually offered lower rates ex-Baltimore rail-ramp, however it was obvious when one looks at the offer and underlying issues, that, first off all,

Crowley's differential of about \$200 for moving the containers from Baltimore to Philadelphia, would never cover expenses nor was it line with any of Crowley's other quotes, for which reason the rate was likely to increase, secondly, the contract had GRI and Bunker Clauses, service restrictions and inferior transit time, as opposed to the subject contract, and third and most important, the respondent's parent company became involved (Hamburg Sud), requesting that we sign an amendment to reassign them the contract.

J) The respondent injured complainant through activity in violation of **Sec 10 (a)(2)** and/or **10 (a)(3)**, by directly or indirectly through their principals, becoming party to at least (1) one agreement to turn in contract(s) below floor rate levels and eliminate or re-categorize the GDSM Rate formally available to NVOCC's. Agreements not sanctioned by The Shipping Act or The FMC and unlikely filed or legitimately filed before the Commission as required by **Sec 5 (a)** pursuant to **Sec 4 (a)**. Agreement (s) which apparently did not coincide with complainant's valid contract but which respondent was compelled to abide by.

Alternatively if such agreement(s) were filed before the Commission. By operating under unfiled agreement(s) at the beginning of the contract and later again at the end of the contract, before compelled to abide by the filed agreement(s).

K) By respondent staging an unwarranted Civil Action for freight collections already before the arbiter, which the arbiter had ruled had arisen from a dispute over the contract and would offset any forthcoming award, respondent caused the complainant unnecessary delays, legal expenses and hardships, in retaliation for complainant having filed an arbitration claim pursuant to its contract, in violation of Section 10 (b)(3).

L) In the event respondent is found to have converted any of complainant's list of customers to its own benefit in connection with violations of **Sec 10 (13)(a)** and (b), particularly if respondent is found to be carrying the cargo at rate that is either the same or lower than the replacement costs the respondent was attempting to charge the complainant. Complainant hereby petitions the Commission to enforce its powers under the Shipping Act to direct additional reparations and that in order to prevent this activity, the necessary steps be taken to include said violations to the list of prohibited violations under **Sec 11 (g)** (prescribing additional reparations).

VI. That complainant was injured in the following manor.

Prior to signing the contract subject in this complaint, (December 1998) while complainant was already looking to secure a master contract covering base ports in East Coast and West Coast of South America, and exploring the possibilities of either entering an existing shippers association, or becoming part of a new shippers association, or possibly forming a shippers association or perhaps an **alliance** with other NVOCC's , to where complainant could have **benefitted** through future buying ability, supplemental

routes and services to offer its customers and agents, etc, etc, the respondent approached the complainant and assured complainant they would soon be a part of a large alliance of carriers, serving South America and that a master contract like the complainant was looking for, would soon be forthcoming. Shortly **thereafter**, (January 1999) respondent offered complainant a (6) six month contract covering U.S. West Coast and U.S. Gulf to East Coast South America, followed by a (1) one year contract (March 1999) covering U.S. East Coast to Venezuela. On both **occasions**, and several other occasions where complainant would inquire, respondent reassured complainant a master contract would be forthcoming and that same would automatically incorporate the two previous contracts, as well as cover whatever additional routes the carrier alliance offered. Shortly thereafter, (April 1999) respondent confirmed the scopes that would be covered by the master contract, shortly followed by confirmation of the rate levels and later the actual contract for **signature**.

By the respondent having confirmed their intent to offer a contract, and later giving complainant every reason to believe (judging by the (2) contract's) the contract would be forthcoming and that it would be **competitive**, the complainant refrained from any other activity being contemplated, and agreed to a 500 TEU, (1) one year contract with respondent.

The complainant was **previously** handling about four-hundred containers per year, (387 TEU's average over three years) serving Colombia and Venezuela in the Southbound trade only. Through the additional routes in the contract, had increased momentum to 62 TEU's per month when respondent began breaking the contract, and, would have shipped over 80 TEU's in the last month of the contract, when after the arbitrators interim **decision**, respondent began partially honoring ECSA Northbound for the first time, but again started posing objections and rejections.

Complainant had capital investments in opening and maintaining the company, has significant advertising expenses invested in the company, and worked feverishly with its customers over the years to maintain goodwill. Complainant also has goodwill investments in personnel, agents compensation and forwarders compensation.

By the respondent confirming the contract and at least partially honoring it for about (4) four month's before resorting to misconduct during the course of a valid contract, isolated complainant just long enough to make it impossible for complainant to go elsewhere. As a consequence, complainant suffered immediate contract damages and hardships, lost (8) eight months use of the contract and intangible benefits, and most importantly, due to the timing where complainant now couldn't go elsewhere for the rates and service levels needed to compete, the complainant was forced to devote all its time to either solving hardships caused by respondent, or dealing with respondents attorney's, thus, has not only indefinitely lost the customers, but now also finds itself indefinitely damaged.

Complainant received an arbitration award, under SMA Rules, pursuant to The Federal **Arbitration** Act and in accordance with The Shipping Act, covering proven contract damages related to breach. The complainant suffered and continues to suffer consequential damages not reached by the arbitration award to include, lost profits since May 6, 2000 (formally over \$1 OOK / year), payroll for the president of the company since May 6, 2000, for rightfully pursuing enforcement of the laws and regulations governing his contract, and personally having to monitor the complete arbitration including drafting and filing this complaint and later having to pursuit this complaint, the numerous other financial setback's caused through carrier misconduct, plus, an undetermined amount of income complainant was likely to earn and produce over time, as consequence of goodwill, investments in the company and number of other intangible benefits the complainant would have realized had the respondent acted in good faith.

To its damage in the sum of \$1 ,000,000.00.

VII Wherefore complainant prays that respondent be required to answer the charges herein; that after due hearing, an order be made commanding said respondent (and each of them): to cease and desist from aforesaid violations of said act (s) ; to establish and put in force such practices as the Commission determines to be lawful and reasonable ; to pay to said complainant by way of reparations for the unlawful conduct hereinabove described, the sum of \$1,000,000.00, with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparation; and that such other and further order or orders be made as Commission determines proper in the premises.

Dated at Miami, FL, this 6th day of March, 2002.

G, President
1031 Ives Dairy Road Suite 228, North Miami Beach, FL 33 179 (Office), 18640 NW
2nd Ave, Miami, FL 33169 (Post Office)

N/A

N/A

Verification

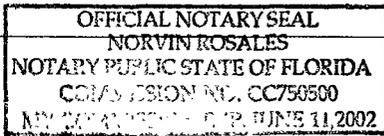
State of Florida, County of DADE, ss: _____,

ALFRED HERNANDEZ being first duly sworn on oath deposes and says that he (she) is,

PRESIDENT
of the corporation and am the person who signed the foregoing complaint; I have read the complaint and the facts stated therein, upon information received from others, **affiant** believes them to be true.

Subscribed and sworn to be me, a notary public in the State
of Florida, county of DADE, this 6th day March, 0 0 2

(Seal)



My commission expires _____

Norvin Rosales

Before the Federal Maritime Commission

ANCHOR SHIPPING CO.)
Complainant,)

v.)

ALIANCA NAVEGACAO)
E LOGISTICA LTDA.)
Respondent,)
_____)

02-04



a

REQUEST FOR PRODUCTION / ADMISSIONS

Complainant requests the respondent, Alianca Navegacao E Logistica LTDA, produce Discovery in accordance with 46 CFR 502 20 1(b), in an action before the Federal Maritime Commission involving Service Contract No EC99-165 / EC99-05 1 1, in form of either sworn certified copies of each request or a detailed admission to each document being requested, articulating the particulars attempted to be ascertained from each request.

1. All service contract(s) and time volume contracts affected by or with **similarity** to the contract(s) subject in this complaint, including contracts in effect (3) three months prior, the duration and **upto** (3) months after the affected contract(s) validity dates.
2. All amendments affecting contract(s) affected by or with similarity to contract(s) subject to this complaint.
3. All discussion groups agreements **encompassing** routes covered by or that would affect contract(s) subject in this complaint, and to which respondent was a direct or indirect party to, including agreements in effect (3) three months prior, the duration, and **upto** (3) three months after the affected contract(s) validity dates.
4. All uncensored minutes from discussion group meetings encompassing routes covered by or that would have affected contract(s) subject in this complaint, and to which respondent was direct or indirect party to
5. All intercompany correspondence and communications between respondents different offices and department heads, and offices of respondents principals, **affiliates** and agents with respect to performance or non-performance of complainants contract.

6. All correspondence and **communications** between respondent and other carriers or discussion group personnel or member with respect to performance or non-performance on complainant's contract.

7. All tariff pages for G.D.S.M. and F.A.K. Rates that were in effect for all routes covered by service contract(s) subject to this complaint, including **from** (3) months **prior**, the duration, and **upto** (3) months after the affected contract(s) validity dates.

8. The original or sworn **&** certified copy of contract signed as S/C EC99-165, including its corresponding rules and essential terms.

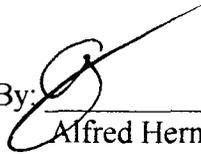
9. All pooling arrangements, joint service arrangements or slot charter arrangements that respondent was a direct or indirect party to during complainant's contract period, in routes covered by subject contract(s)

10. All Notices filed with the Commission pursuant to 46 CFR Part 530.9 (b) in connection with Part 530.10 (a)(3), for adjustments of accounts for events not anticipated by complainant's service contract(s).

11. All shipper **statistics** (by shipper) used by respondent during the course of complainant's contract(s) used for determining and monitoring shippers week to week TEU performance. To include complainant and the (6) other shippers with contracts admittedly like complainant's.

12. A list of all the shippers and freight forwarders being handled by respondent **during** the effective dates of complainant's contract(s) and **upto** (3) months past the effective date(s).

Anchor Shipping Co (Complainant)
103 1 Ives Dairy Road Suite 228
North Miami Beach, FL 33179

By: 

Alfred Hernandez, President