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FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COMMISSION

INFORMAL DOCKET NO. 1898(I)

DSW INTERNATIONAL, INC., a Texas Corporation
Claimant,

v.

COMMONWEALTH SHIPPING, INC.,

and

ABOU MERHI LINES, LLC.
Respondents.

ANSWER OF RESPONDENT COMMONWEALTH SHIPPING, INC

The above-named Respondent, COMMONWEALTH SHIPPING, INC. (hereinafter
"COMMONWEALTH"), for Answer to the Complaint in this proceeding, states:

I. The Respondent denies that the Claimant, Arinze Udegune, has standing to appear in this matter. He has no position at DSW INTERNATIONAL, INC. and therefore has no standing to appear individually in an action based upon an contract entered into between DSW and COMMONWEALTH. See Exhibit "A." The Respondent acknowledges that DSW INTERNATIONAL, INC. (hereinafter "DSW") is a Texas Corporation. The Respondent is without knowledge of Arinze Udegune's capacity to execute and affidavit. Further, the affidavit fails to state whether the affidavit is based upon the affiant's personal knowledge or from knowledge provided by others. It is therefor inadmissible in support of the Complaint.

II. It is admitted that the Claimant, DSW is a shipper of cargo. Whether it owns the cargo or not is unknown and therefore denied. It is admitted that COMMONWEALTH is an NVOCC and that ABOU MEHRI LINES LLC is an ocean common carrier.

III. This is a cargo damage case. It is denied that the Federal Maritime Commission has subject matter jurisdiction over disputes arising pursuant to a single bill of lading for damage to cargo, and therefore lacks jurisdiction over the matters alleged in the Request for Informal Adjudication of Small Claims. It is denied that the cause of action attempted to be alleged in the Request falls within the scope of the Shipping Act of 1984 as modified by the Ocean Shipping Reform Act of 1998, 46 U.S.C. §§ 40101 - 41309. It is admitted that COMMONWEALTH issued a bill of lading for the carriage of two automobiles as shown in the bills of lading attached hereto as Exhibits "B" and "C." It is denied that COMMONWEALTH committed gross negligence and the Request fails to provide factual support or legal support stating a cause of action for gross negligence. It is denied that COMMONWEALTH has breached its agreement with DSW. Even if the cargo is missing or destroyed, such cargo damage or loss is not a violation of the terms of the Shipping Act of 1984 as modified by the Ocean Shipping reform Act of 1998.

IV. It is denied that the Claimant suffered damages. It is further denied that pre-judgment rate is appropriate. It is denied that post-judgement interest is appropriate, but if it is, then post-judgment interest should be awarded at the legal rate established by 28 U.S.C. §1961. COMMONWEALTH shall in any event be or

become liable for any loss or damage to or in connection with the transportation of Claimant's cargo in an amount exceeding \$ 500 per package or per customary freight unit, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. For COGSA damage limitation purposes, a "package" has been defined as "a class of cargo, irrespective of size, shape or weight, to which some packaging preparation for transportation has been made which facilitates handling, but which does not necessarily conceal or completely enclose the goods." Aluminios Pozuelo Ltd. v. S.S. Navigator, 407 F.2d 152, 155 (2d Cir. 1968). See also Hayes-Leger Associates, Inc. v. M/V Oriental Knight, 765 F.2d 1076 (11th Cir. 1985). "Customary freight unit" refers "to the unit upon which the charge for freight is computed, and not to the shipping unit." In re Isbrandtsen Co., 201 F.2d 281, 286 (2d Cir. 1953); Bumble Bee Seafoods v. S.S. Kiku Maru, 1978 AMC 1586 (D. Md. 1978). Like in this matter, items subject to the package limitation were an automobile, Barth v. Atlantic Container Line, 597 F.Supp. 1254 (D. Md. 1984); tractors, Caterpillar, Inc. v. S.S. Enterprise, 725 F.Supp. 1255 (S. D. Ga. 1989); Caterpillar Americas Co.; and large machines, General Electric Co. v. M.V. "Nedlloyd Rouen", 618 F.Supp. 62 (S. D. N.Y. 1985), aff'd 817 F.2d 1022.

V. Denied, there is no information that indicates that DSW is the owner of the cargo. Denied as to Arinze Udegbune being the president of DSW. See Exhibit "A."

VI. COMMONWEALTH admits being an OTI and/or NVOCC. Without knowledge therefore denied having represented itself as a freight forwarder to DSW at

the time of contract. COMMONWEALTH's Federal Maritime License is attached herein as Exhibit "D". Without knowledge therefore denied as far as Abou Merhi.

VII. Denied that Arinze Udegbune is president of DSW. See attached extract from the Texas Secretary of State Exhibit "A". Denied that COMMONWEALTH was hired as an international freight forwarding agent.

VIII. Denied as to the first sentence. COMMONWEALTH was not instructed to find "a safe, reliable, reputable, and suitable ocean carrier." There is no factual support for this allegation. Admitted as to the second sentence.

IX. Denied. COMMONWEALTH did not retain ABOU MERHI LINES, SAL. Admitted as to ABOU MERHI LINES (USA), LLC issuing bills of lading.

X. The length of the trip is without knowledge therefore denied. Without knowledge and therefore denied as far as the shipper is owner of the cargo. Without knowledge and therefore denied as far as the allegation of what ABOU MERHI told Claimant.

XI. Denied. Loss of cargo is a foreseeable event that is not unheard of in particular in the international. Loss of cargo is not "extreme and egregious." Without knowledge and therefore denied as the reputation and fame of the Claimant. Without knowledge and therefore denied as to the impact of the loss of the cargo and its effect on business turnover. Moreover, Claimant as a merchant should have insured the cargo against such a loss.

XII. Denied as far as COMMONWEALTH. The allegation does not establish

that COMMONWEALTH failed to file with the Commission any agreement. Without knowledge and therefore denied as far as ABOU MERHI's "unreasonably refus[ing] the deal" with the shipper. Denied as far as COMMONWEALTH since COMMONWEALTH always communicated with Claimant.

XIII. Denied. COMMONWEALTH never refused to cooperate with the Claimant.

XIV. Denied as to the amount. When goods are lost in their entirety rather than simply damaged, the measure of damages is the market value of the sound goods at the port of destination. St. Johns N.F. Shipping Corp.; Santiago v. Sea-Land Service, Inc., 366 F.Supp. 1309 (D. P. R. 1973). The court may accept the invoice price when the fair market value is uncertain. Terman Foods, Inc. v. Omega Lines, 707 F.2d 1225 (11th Cir. 1983). The shipper must prove both the sound and damaged values. Schoenbaum, Hornbook on Admiralty and Maritime Law §8-36 (West Group 3d ed. 2001, 2003 Supp.). The sound value may be proved by the declared value if it has been placed on the bill of lading and additional freight paid. United States v. Ocean Bulk Ships, Inc., 248 F.3d 331 (5th Cir. 2001).

XV. Denied as to the amount of damages. See XIV. Denied as to the attorney' fees. Attorneys' fees and costs, which are not usually recoverable, may be awarded based on the bad faith of the defendant. Weinberger v. Kendrick, 698 F.2d 61, 80 (2d Cir. 1982) (there exists "an exceptional power to shift fees where an action has been commenced or conducted in 'bad faith, vexatiously, wantonly or for oppressive reasons,'" quoting F. D. Rich Co. v. United States ex rel. Industrial Lumber Co., 417

U.S. 116, 129 (1974)); Dow Chemical Pacific Ltd. v. Rascator Maritime S.A., 782 F.2d 329, 344 (2d Cir. 1986) (to uphold award of attorney's fees based on bad faith exception, appellate court must see "both "clear evidence" that the challenged actions "are entirely without color and [are taken] for reasons of harassment or delay or for other improper purposes," Weinberger v. Kendrick, 698 F.2d at 80 (quoting Nemeroff v. Abelson, 620 F.2d 339, 348 (2d Cir. 1980)), and 'a high degree of specificity in the factual findings of [the] lower courts.' Weinberger v. Kendrick, 698 F.2d at 80; see Browning Debenture Holders' Committee v. DASA Corp., 560 F.2d 1078, 1089 (2d Cir.1977).")

XVI. Denied as to the rate of pre-judgment and post-judgment interests. It is not appropriate to request pre-judgment interests. It is denied that post-judgment interest is appropriate, but if it is, then post-judgment interest should be awarded at the legal rate established by 28 U.S.C. §1961.

XVII. Denied. Less than one year passed since the cargo was reportedly missing. This is hardly a case where "time is of the essence."

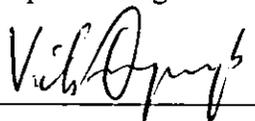
XVIII. Denied. COMMONWEALTH refuses to use the informal adjudication under Subpart S and requests formal adjudication under Subpart T.

To the extent not otherwise denied, and there are other allegations to the complaint, the same are denied.

FIRST AFFIRMATIVE DEFENSE

The rights and liabilities of the parties are governed by the Carriage of Goods by Sea Act, 46 U.S.C. §30701, which applies to the shipment *ex proprio vigore*. Under Section 4(5) of the Act, the liability of the NVOCC and the OCC are limited to \$500 per package. The COMMONWEALTH bill of lading clearly lists the number "1" under the "Number of Packages" column on each of the two NVOCC bills of lading, copies of which are attached hereto as Exhibits "B" and "C."

WHEREFORE Respondent COMMONWEALTH SHIPPING, INC., prays that the Complaint in this proceeding be dismissed.



COMMONWEALTH SHIPPING, INC.

By: Victor Onyeujo

President / CEO

9560 Skillman Street, Suite 100, Dallas, TX 75243

Dated at Dallas, Texas this 23 day of May, 2009.



Attorney

8777 San Jose Blvd. Suite 803, Jacksonville, FL 32217

VERIFICATION

State of Texas, County of Dallas, ss: Victor Onyeujo being first duly sworn on oath deposes and says that he is the person who signed the foregoing Answer to the Complaint; that he has read the Complaint and that the facts stated therein, upon information received from others, Affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of Texas, County of Dallas, this 23 day of May, 2009.

[Seal]

Christopher L Zettle
(Notary Public)



My Commission expires 05/20/2010.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished this 26 day of May, 2009 via U.S. Mail to Don B. Chae, Esquire, 3010 LBJ Freeway, Suite 750, Dallas, Texas 75234, counsel for DSW International, Inc, and to Abou Merhi Lines (USA), LLC, 13453 North Main Street Suite 505, Jacksonville, Florida 32218

SULLIVAN & COMPANY

G.J. Rod Sullivan, Jr.

G.J. ROD SULLIVAN, JR., ESQUIRE

Florida Bar No.: 356794

8777 San Jose Blvd.

Suite 803

Jacksonville, Florida 32217

(904) 355-6000 Office

(904) 737-0920 Facsimile

Attorney for COMMONWEALTH

Exhibit 'A'



[UCC](#) | [Business Organizations](#) | [Trademarks](#) | [Notary](#) | [Account](#) | [Help/Fees](#) | [Briefcase](#) | [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 800335808 **Entity Type:** Domestic For-Profit Corporation
Original Date of Filing: April 28, 2004 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 32014927530 **FEIN:**
Duration: Perpetual
Name: DSW International, Inc.
Address: 11180 HARRY HINES BLVD STE 10
DALLAS, TX 752294603 USA

<u>REGISTERED AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED ENTITIES</u>
Last Update	Name	Title	Address		
March 14, 2008	CHIOMA UNEGBUNE	Director	3505 RD PLANO, TX 75025 USA		
March 14, 2008	ADAIRE ENEGBUME	Director	3136 SMOKEFORD LN GRAND PRAIRIE, TX 75052 USA		
March 14, 2008	TYNA EYER UNEBUME	Director	3136 SMOKEFORD LN GRAND PRAIRIE, TX 75052 USA		
March 14, 2008	TYNA EYER UNEBUME	PRESIDENT	3136 SMOKEFORD LN GRAND PRAIRIE, TX 75052 USA		

[Order](#) [Return to Search](#)

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

COMMONWEALTH SHIPPING, INC.

EX. 1

2. Exporter (Principal or seller-licensee and address including Zip Code) DSW INTERNATIONAL, INC. 11180 HARRY HINES BLVD. #110 DALLAS, TX USA Zip Code: 75229	5. Document Number JCS 3002	5a. Bill of Lading Number
	6. Export References 1793	6a. Reference No. 719

3. Consigned To: UDEMBA ELECTRONICS COY LTD 133 IDEWU INDUSTRIAL OLODI-APAPA, LAGOS NIGERIA	7. Forwarding Agent (Name and Address) 214-383-7177 COMMONWEALTH SHIPPING, INC. 9560 SKILLMAN ROAD SUITE 100 DALLAS, TEXAS 75243 FMC: 019202
4. Notify Party / Intermediate Consignee (Name and Address) SAME AS ABOVE	8. Point (State) or Origin or FTZ Number JACKSONVILLE FL

12. Pre-Carriage By	13. Place of Receipt by Pre-Carrier	10. Loading Pier / Terminal
14. Exporting Carrier SEA AHMED, VOY 806	15. Port of Loading / Export JACKSONVILLE	11. Type of Move VESSEL

16. Foreign Port of Unloading (Vessel and air only) COTONOU	17. Place of Delivery by On-Carrier	11a. Containerized (Vessel) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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Marks and Numbers (18)	Number of Packages	Description Of Commodities in Schedule B detail (20)	Gross Weight (Kilos) (21)	Measures (22)
RO - RO	1	USED 2004 FORD PK; VIN#1FMZU67K44UB59703 AES XTN: 01-0821828-719 AES ITN: X20080527043537	1813 kgs	
<p>SED FILED ELECTRONICALLY AES XTN: 01-0821828-719</p> <p align="center">FREIGHT PREPAID ON BOARD 06/01/2008 AT JACKSONVILLE ON BOARD NAMED VESSEL SEA AHMED, VOY 806 VIA ABOU MERHI LINES AS CARRIER.</p> <p align="center">These commodities, technology, or software were exported from the United States in accordance with the export Administration regulations.</p>				

(CONDITIONS CONTINUED FROM REVERSE SIDE)

In accepting this Bill of Lading the Shipper, the Consignee and the Owner of the goods agree to be bound by all of its stipulations and conditions, whether written, printed or stamped on the front or back hereof, any local customs of privileges to the contrary notwithstanding.
In agreement, the Shipper specifically approves the clauses on the front and on the back of this Bill of Lading.

ORIGINAL

COMMONWEALTH SHIPPING, INC.
As Agents For The Shipper

WITNESS WHEREOF, the master of Agent of said vessel has affirmed to THREE (3) ORIGINAL Bills of Lading, all of this tenor and date, one of which being accomplished is other to stand void.

16/16/2008
Date Agents

FAXED
 TO Arinze
 06/16/08
 Exhibit B

COMMONWEALTH SHIPPING, INC.

2. Exporter (Principal or seller-licensee and address including Zip Code) DSW INTERNATIONAL, INC. • 11180 HARRY HINES BLVD. #110 DALLAS, TX USA Zip Code: 75229		5. Document Number JCC 3002	5a. Bill of Lading Number
3. Consigned To: UEMBA ELECTRONICS COY LTD 133 IDEWU INDUSTRIAL OLODI-APAPA, LAGOS NIGERIA		6. Export References 1794	
4. Notify Party / Intermediate Consignee (Name and Address)		7. Forwarding Agent (Name and Address) 214-383-7177 COMMONWEALTH SHIPPING, INC. 9560 SKILLMAN ROAD SUITE 100 DALLAS, TEXAS 75243 FMC: 019202 8. Point (State) or Origin or FTZ Number JACKSONVILLE FL	

12. Pre-Carriage By	13. Place of Receipt by Pre-Carrier	10. Loading Pier / Terminal
14. Exporting Carrier SEA AHMED, VOY 0806	15. Port of Loading / Export JACKSONVILLE	

16. Foreign Port of Unloading (Vessel and air only) COTONOU	17. Place of Delivery by On-Carrier	11. Type of Move VESSEL	11a. Containerized (Vessel) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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Marks and Numbers (18)	Number of Packages	Description Of Commodities in Schedule B detail (20)	Gross Weight (Kilos) (21)	Measurer (22)
RO - RO	1	USED 2001 HOND 4D; VIN#1HGCG16541A079154	1464 kgs	
**TRANSIT NIGERIA		AES XTN: 01-082828-720 AES ITN: X20080527043296		

SED FILED ELECTRONICALLY
 AES XTN: 01-0821828-720

FREIGHT PREPAID ON BOARD 06/01/2008 AT JACKSONVILLE
ON BOARD NAMED VESSEL SEA AHMED, VOY 0806 VIA ABOU MERHI LINES AS CARRIER.

These commodities, technology, or software were exported from the United States in accordance with the export Administration regulations.

(CONDITIONS CONTINUED FROM REVERSE SIDE)

In accepting this Bill of Lading the Shipper, the Consignee and the Owner of the goods agree to be bound by all of its stipulations and conditions, whether written, printed or stamped on the front or back hereof, any local customs of privileges to the contrary notwithstanding.

In agreement, the Shipper specifically approves the clauses on the front and on the back of this Bill of Lading.

COMMONWEALTH SHIPPING, INC.
 As Agents For The Shipper

ORIGINAL

IN WITNESS WHEREOF, the master of Agent of said vessel has affirmed to THREE (3) ORIGINAL Bills of Lading, all of this tenor and date, one of which being accomplished the other to stand void.

06/16/2008
 Date _____ Agents _____
 B/L No. _____

FAXED
 TO Arinzo
 06/16/08

Exhibit C³

Federal Maritime Commission

Washington, D.C. 20573-0001

OCEAN TRANSPORTATION INTERMEDIARY LICENSE NON-VESSEL-OPERATING COMMON CARRIER

NO. 020769N

THIS IS TO CERTIFY THAT

COMMONWEALTH SHIPPING, INC.

is the holder of an Ocean Transportation Intermediary License and, as such, is duly authorized to carry on the business of providing non-vessel-operating common carrier services for the provision of transportation by water of cargo via common carriers between the United States, its territories or possessions and foreign countries

This license is conferred pursuant to the authority contained in Section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, and is subject to the provisions of said Act, Part 515 of Title 46 of the Code of Federal Regulations as it is or may be amended, and the pertinent provisions of other applicable regulations promulgated under the foregoing Act.

By authority of the Federal Maritime Commission

Sandra L. Kusumoto

Director, Bureau of Certification and Licensing

Effective: MAY - 7 2007