

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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	:
MAROC FRUIT BOARD S.A. and	:
WAFU ASSURANCE S.A.,	:
	:
Plaintiffs,	:
	:
v.	:
	:
	CIVIL ACTION NO. 1:10-cv-10306-JLT
	IN ADMIRALTY
	:
M/V VINSON, Her Engines,	:
Machinery, Tackle, Apparel,	:
Appurtenances, etc., <i>in rem</i> ,	:
and AGDER OCEAN REEFER	:
III, AS, <i>in personam</i> ,	:
Defendants.	:
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**AMENDED VERIFIED COMPLAINT**

NOW COME plaintiffs, Maroc Fruit Board S.A. and Wafu Assurance S.A., by their attorneys, pursuant to Fed.R.Civ.P. 15(a)(2) and with opposing party’s written consent, and complaining *in rem* against defendant motor vessel VINSON, her engines, machinery, tackle, apparel, furniture, equipment, rigging, and all other necessary appurtenances thereto as set forth in plaintiffs’ original Verified Complaint, dated, February 22, 2010 [Docket No. 1], and *in personam* against defendant, Agder Ocean Reefer III AS, to enforce a maritime lien for cargo damage, allege as follows upon information and belief:

**Jurisdiction and Venue**

1. Subject matter jurisdiction of this Honorable Court is based upon 28 U.S.C. §1333. Venue is proper in this District Court pursuant to 28 U.S.C. §1391(b). This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Plaintiff invokes

the maritime procedures and special relief provided in Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure for the arrest of defendant vessel.

**The Parties**

2. Plaintiff, Maroc Fruit Board S.A., doing business under the fictitious name M.F.B. (hereinafter referred to as “M.F.B.”), is a foreign business entity organized and existing under the laws of Morocco, with its principal place of business located at Agroparc KM5, Route D’Azemmour dar Bouazza, Casablanca, Morocco. At all times relevant hereto, M.F.B. was, and still is, the shipper of certain goods described in this Verified Complaint.

3. Plaintiff, Wafu Assurance S.A. (hereinafter referred to as “Wafu”) is a foreign business entity organized and existing under the laws of Morocco, with its principal place of business located at 1 Boulevard Abdelmoumen, Casablanca, Morocco. At all times relevant hereto, Wafu Assurance was, and still is, the cargo insurer of M.F.B., and is now subrogated, in whole or in part, to the rights of its’ assured in connection with the subject shipments herein.

4. Defendant motor vessel VINSON, her engines, machinery, tackle, apparel, furniture, equipment, rigging, and all other necessary appurtenances thereto (hereinafter referred to as “Vessel”), is a Liberian-flagged ocean-going refrigerated cargo ship owned by Agder Ocean Reefer III AS of Norway and on charter to Navimar S.A. of Morocco. Said Vessel is now, or will be, during the pendency of this action within the District of Massachusetts.

5. Defendant, Agder Ocean Reefer III AS (hereinafter referred to as “Agder Ocean Reefer III”) is, upon information and belief, a foreign business entity organized and existing under the laws of Norway and was at all relevant times the owner of the defendant, motor vessel VINSON.

**Factual Allegations**

6. On or about January 25, 2010, at the port of Agidar, Morocco, plaintiff M.F.B., as shipper, delivered to Agder Ocean Shipping AS, as agent for Agder Ocean Reefer III, many hundreds of pallets said to contain many thousands of boxes of fruit in good order and condition.

7. Thereafter, defendant Agder Ocean Reefer III received, accepted and agreed to transport said cargo for certain consideration from Agidar, Morocco to the port of New Bedford, Massachusetts, there to be delivered in like good order and condition as when shipped to order of said plaintiff's consignee in accordance with the valid terms and conditions of a certain bill of lading then and there signed and delivered to plaintiff M.F.B. by an authorized agent or representative of defendant Vessel, a copy of which is attached to the original Verified Complaint [Docket No. 1] and marked as Exhibit A.

8. On or about January 28, 2010, at the port of Casablanca, Morocco, plaintiff M.F.B., as shipper, delivered to Agder Ocean Shipping AS, as agent for defendant Agder Ocean Reefer III, in good order and condition many hundreds of pallets said to contain many thousands of boxes of fruit, as set forth on the bills of lading attached hereto .

9. Thereafter, defendant Agder Ocean Reefer III received, accepted and agreed to transport said cargo for certain consideration from Casablanca, Morocco to the port of New Bedford, Massachusetts, there to be delivered in like good order and condition as when shipped to order of said plaintiff's consignee in accordance with the valid terms and conditions of a certain bill of lading then and there signed and delivered to M.F.B. by an authorized agent or representative of defendant Vessel, a copy of which is attached to the original Verified Complaint [Docket No. 1] and marked as Exhibit B.

10. On or about January 28, 2010, at the port of Casablanca, Morocco, plaintiff M.F.B., as shipper, delivered to Agder Ocean Shipping AS, as agent for Agder Ocean Reefer III, many hundreds of pallets said to contain many thousands of boxes of fruit in good order and condition.

11. Thereafter, Agder Ocean Reefer III received, accepted and agreed to transport said cargo for certain consideration from Casablanca, Morocco to the port of New Bedford, Massachusetts, there to be delivered in like good order and condition as when shipped to order of said plaintiff's consignee in accordance with the valid terms and conditions of a certain bill of lading then and there signed and delivered to M.F.B. by an authorized agent or representative of defendant Vessel, a copy of which is attached to the original Verified Complaint [Docket No. 1] and marked as Exhibit C.

12. On or about January 28, 2010, at the port of Casablanca, Morocco, plaintiff M.F.B., as shipper, delivered to Agder Ocean Shipping AS, as agent for Agder Ocean Reefer III, many hundreds of pallets said to contain many thousands of boxes of fruit in good order and condition.

13. Thereafter, Agder Ocean Reefer III received, accepted and agreed to transport said cargo for certain consideration from Casablanca, Morocco to the port of New Bedford, Massachusetts, there to be delivered in like good order and condition as when shipped to order of said plaintiff's consignee in accordance with the valid terms and conditions of a certain bill of lading then and there signed and delivered to M.F.B. by an authorized agent or representative of defendant Vessel, a copy of which is attached to the original Verified Complaint [Docket No. 1] and marked as Exhibit D.

14. On February 17, 2010, defendant Vessel arrived in the port of New Bedford, Massachusetts, and thereafter delivered plaintiffs' cargo in a condition damaged by contact to mold and other substances unknown to plaintiffs.

15. Plaintiffs are entitled to maintain this action as the shippers, consignees, owners and/or insurers of the subject cargo, and otherwise have a proprietary interest in the cargoes described above, and bring this action on their own behalf and for the interests of all parties who may be or become interested in the said shipments, as their respective interests may ultimately appear.

16. Plaintiffs have duly performed all the conditions precedent on their parts to be performed under the terms of the aforesaid bills of lading.

**First Cause of Action**  
**(Contract)**

17. Plaintiffs repeat and reiterate the allegations contained in Paragraphs 1 through 16 of this Verified Complaint with the same force and effect as if set forth fully herein.

18. Said transit damage resulted from the breach by defendant Vessel of its agreements and warranties, both express and implied, to secure, load, stow, carry and/or otherwise care for the said cargo, and discharge and deliver same to plaintiffs' consignee in like good order and condition as when received by it for shipment.

19. By reason of the aforesaid premises, defendant Vessel breached its duties to plaintiffs as common carriers by water for hire and was otherwise at fault.

20. As a direct and proximate result of the foregoing, plaintiffs have sustained damages in the amount of USD \$2,000,000.00, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

**Second Cause of Action**  
**(Tort)**

21. Plaintiffs repeat and reiterate the allegations contained in Paragraphs 1 through 20 of this Verified Complaint with the same force and effect as if set forth fully herein.

22. Said transit damage resulted solely from the negligence of defendant Vessel to secure,

load, stow, carry and/or otherwise care for the said cargo, and discharge and deliver same to plaintiff's consignee in like good order and condition as when received by them for shipment, with no fault or negligence of plaintiffs contributing thereto.

23. By reason of the aforesaid premises, defendant Vessel breached its duties of care to plaintiffs as a common carrier by water for hire and was otherwise at fault.

24. As a direct and proximate result of the foregoing, plaintiffs have sustained damages in the amount of USD \$2,000,000.00, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

**Third Cause of Action**  
**(Contract)**

25. Plaintiffs repeat and reiterate the allegations contained in Paragraphs 1 through 24 of this Verified Complaint with the same force and effect as if set forth fully herein.

26. Said transit damage resulted from the breach by defendant Agder Ocean Reefer III of its agreements and warranties, both express and implied, to secure, load, stow, carry and/or otherwise care for the said cargo, and discharge and deliver same to plaintiffs' consignee in like good order and condition as when received by it for shipment.

27. By reason of the aforesaid premises, defendant Agder Ocean Reefer III breached its duties to plaintiffs as common carriers by water for hire and was otherwise at fault.

28. As a direct and proximate result of the foregoing, plaintiffs have sustained damages in the amount of USD \$2,000,000.00, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

**Fourth Cause of Action**  
**(Tort)**

29. Plaintiffs repeat and reiterate the allegations contained in Paragraphs 1 through 28 of this Verified Complaint with the same force and effect as if set forth fully herein.

30. Said transit damage resulted solely from the negligence of defendant Agder Ocean Reefer III to secure, load, stow, carry and/or otherwise care for the said cargo, and discharge and deliver same to plaintiff's consignee in like good order and condition as when received by them for shipment, with no fault or negligence of plaintiffs contributing thereto.

31. By reason of the aforesaid premises, defendant Agder Ocean Reefer III breached its duties of care to plaintiffs as a common carrier by water for hire and was otherwise at fault.

32. As a direct and proximate result of the foregoing, plaintiffs have sustained damages in the amount of USD \$2,000,000.00, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

WHEREFORE, plaintiffs, Maroc Fruit Board S.A. and Wafu Assurance S.A., pray that this Honorable Court adjudge as follows:

- (i) That plaintiffs claims be adjudged a valid and enforceable maritime lien against the whole of the motor vessel VINSON, her engines, tackle, apparel, appurtenances, etc., and an *in rem* judgment enter in its favor against the motor vessel VINSON for the full amount of its liquidated and unliquidated damages, together with interest, costs and expenses, including reasonable attorneys' fees and costs of suit, and other damages which may be shown at trial;
- (ii) That plaintiffs claims be adjudged a valid and enforceable as against defendant Agder Ocean Reefer III AS, and an *in personam* judgment enter in its favor against the defendant Agder Ocean Reefer III AS for the full amount of its liquidated and unliquidated damages, together with interest, costs and expenses, including reasonable attorneys' fees and costs of suit, and other

damages which may be shown at trial; and

- (iii) That plaintiffs have such other and further relief as this Honorable Court and justice may deem just and appropriate under the circumstances.

Dated: November 8, 2010

Respectfully submitted,

MAROC FRIUT BOARD S.A. and  
WAFU ASSURANCE S.A.

By their attorneys,

PARTRIDGE SNOW & HAHN LLP

/s/ Bradley F. Gandrup, Jr.

Bradley F. Gandrup, Jr.

(BBO No. 549794)

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**Verification**

Bradley F. Gandrup, Jr. hereby states under the penalty of perjury pursuant to 28 U.S.C. §1746 that:

1. I am of counsel to the law firm of Partridge Snow & Hahn LLP, attorneys for plaintiffs in the above entitled action.
2. I have read the foregoing Verified Complaint and know the contents thereof, and the same is true to best of my knowledge, information and belief.
3. The source of my information is the correspondence from plaintiffs' counsel in Greece, Messrs. Lallis Voutsinos Anagnostopoulos, and the records and documents of plaintiffs in my possession..
4. This verification is made by me instead of plaintiffs because they are not located within the Commonwealth of Massachusetts.

I hereby certify under the penalty of perjury that the foregoing is true and correct on this 8<sup>th</sup> day of November, 2010.

*/s/ Bradley F. Gandrup, Jr.* \_\_\_\_\_  
Bradley F. Gandrup, Jr.

**Certification Pursuant to Fed.R.Civ.P. 15(a)(2)**

Pursuant to Fed.R.Civ.P. 15(a)(2), plaintiffs file this Amended Verified Complaint with written consent of Attorney Brian Kydd, counsel for defendants.

/s/ Bradley F. Gandrup, Jr.  
Bradley F. Gandrup, Jr.

**Certificate of Service**

A copy of the foregoing Amended Verified Complaint was filed and served electronically on all counsel of record through the Court's ECF system on November 8, 2010.

/s/ Bradley F. Gandrup, Jr.  
Bradley F. Gandrup, Jr.

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