

01-316-CD -
BACRUS USA, INC. -vs- NYK LINE (NORTH AMERICA, INC.)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,

Plaintiff

vs.

NYK LINE (NORTH AMERICA, INC.),

Defendant

No. 01-316-CO

Type of Pleading: Complaint

Filed on behalf of: Backus USA, Inc.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

900 Beaver Drive

DuBois, Pennsylvania 15801

(814) 375-0300

FILED

MAR 07 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
NYK LINE (NORTH AMERICA, INC.),	:	
Defendant	:	

NOTICE

TO DEFENDANT:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641 (ext. 5982)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
NYK LINE (NORTH AMERICA, INC.),	:	
Defendant	:	

COMPLAINT

NOW, comes the Plaintiff, Backus USA, Inc., by and through its attorneys, The Hopkins Law Firm, and says as follows:

COUNT I

1. Plaintiff, Backus USA, Inc. is a Delaware corporation who maintains a principal business address along Route 219 North, DuBois, Pennsylvania 15801.
2. Defendant, NYK Line (North America, Inc.) is a corporation maintaining a principal business address at 300 Lighting Way, Secaucus, New Jersey 07094.
3. In or about the fall of 1999, Plaintiff contracted with Defendant to transport a USM-2 machine from the Netherlands to the convention center in Portland, Oregon, USA.
4. The equipment at issue arrived in Toronto, Canada from the Netherlands on December 27, 1999.
5. On December 30, 1999, the shipment departed Toronto and arrived in Detroit on December 31, 1999.

6. From Detroit Defendant sent the equipment via railcar to its final destination of Portland, Oregon where it arrived on January 10, 2000.

7. Defendant was obligated to transport the equipment to the NWFPFA trade show which was held at the Oregon Convention Center in Portland, Oregon. The NWFPFA show ran from January 24, 2000 through January 26, 2000. Consequently, Defendant had fourteen (14) days to move the equipment from the rail yard in Portland, Oregon to the Convention Center in Portland Oregon.

8. Defendant did not take the machine to the NWFPFA trade show until Plaintiff called the Defendant complaining that the machine had not yet arrived at the Convention Center.

9. Plaintiff's agent advised Plaintiff that the Chicago office did not inform the agent that a shipment was coming to Portland and that is why the equipment was not transported to the Convention Center.

10. Defendant then arranged for the transfer of the machine from the rail yard to the Convention Center.

11. As a result of the delay in transporting the equipment to the Convention Center, Plaintiff was without the machine for the first day of a two and one half (2 ½) day show.

12. Defendant breached its contract with Plaintiff by failing to alert its agents that a shipment was traveling from Detroit to Portland, Oregon, or otherwise transporting Plaintiff's equipment with diligent speed to the Oregon Convention Center.

13. As a result of Defendant's breach of its contract, Plaintiff has suffered damages in an amount in excess of \$20,000.00.

WHEREFORE, Plaintiff demands judgment against the Defendant for the following:

- a. Compensatory damages;
- b. Pre and post judgment interest;
- c. Cost of suit; and
- d. Such other and further relief as the Court deems fair, just and equitable.

COUNT II

14. Plaintiff repeats the allegations set forth in Count I as if set forth at length herein.

15. Defendant acted in a careless, reckless and negligent fashion in allowing Plaintiff's equipment to sit at a railroad yard in Portland, Oregon for fourteen (14) days without moving it to the NWFPFA trade show.

16. Said negligence consists of:

- a. Failing to advise its agent that the shipment was headed to Portland, Oregon;
- b. Failing to notify Plaintiff when the shipment arrived in Portland, Oregon.
- c. Failing to advise Plaintiff that the equipment had not yet been moved to the NWFPFA trade show.
- d. Failing to transport Plaintiff's equipment to the Oregon Convention Center with deliberate speed.

17. As a direct and proximate result of the careless, reckless and negligent conduct of Defendant, Plaintiff has suffered damages in an amount in excess of \$20,000.00.

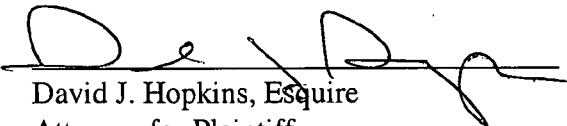
WHEREFORE, Plaintiff demands judgment against the Defendant for the following:

- a. Compensatory damages;
- b. Pre and post judgment interest;
- c. Cost of suit; and
- d. Such other and further relief as the Court deems fair, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by twelve jurors on all issues presented herein.

Respectfully submitted,


David J. Hopkins, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

BACKUS USA, INC.

By: _____

Lawrence Salone

Date 2/26/01

FILED

MAR 07 2001
10:49
William A. Shaw
Prothonotary
Hapkins
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acc atty.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

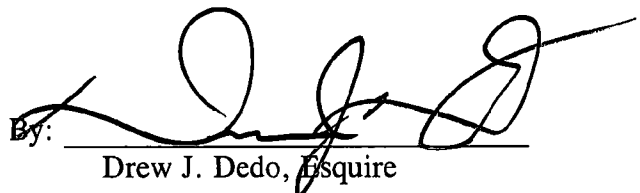
BACKUS USA, INC.	:	NO. 01-316-00
PLAINTIFF	:	
	:	Type of Pleading: Praecipe
v.	:	
	:	Filed on behalf of: NYK Line
NYK LINE (NORTH AMERICA, INC.)	:	(North America, Inc.)
	:	
DEFENDANTS	:	Counsel of Record for this party:
	:	Drew J. Dedo, Esquire
	:	Attorney at Law
	:	PA Identification No. 66210
	:	
	:	RAWLE & HENDERSON <small>LLP</small>
	:	The Widener Building
	:	One South Penn Square
	:	Philadelphia, PA 19107
	:	Phone: (215) 575-4200
	:	Telefax: (215) 563-2583

PRAECIPE

TO: The Prothonotary of the Court of Common Pleas of Clearfield County:

Pursuant to 28 U.S.C. § 1446(d), defendant NYK Line (North America, Inc.) files
herewith a copy of the Notice of Removal filed in the U.S. District Court for the Western
District of Pennsylvania on the 4 day of April, 2001.

RAWLE & HENDERSON LLP

By: 
Drew J. Dedo, Esquire

0501726.01

FILED

APR 06 2001

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I hereby certify that on today's date a true and correct copy of the foregoing Praecipe has been sent via first-class mail, postage prepaid, upon all counsel of record, addressed as follows:

David J. Hopkins, Esquire
Attorney at Law
900 Beaver Drive
DuBois, Pennsylvania 15801
Attorney for Plaintiff,
Backus USA, Inc.

RAWLE & HENDERSON LLP

By: 

Ann-Michele G. Higgins, Esquire
The Widener Building
One South Penn Square
Philadelphia, PA 19107
Attorneys for Defendant,
NYK Line (North America, Inc.)
(215) 575-4200

DATED: 4/4/01

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BACKUS USA, INC.

PLAINTIFF

v.

NYK LINE (NORTH AMERICA, INC.)

DEFENDANT

CIVIL ACTION

NO. 01-99 JOHNSTOWN

PETITION FOR NOTICE OF REMOVAL

Defendant, NYK Line (North America), Inc., hereinafter ("NYK"), by and through its attorneys Rawle & Henderson LLP, hereby removes this action to the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. § 1331 and § 1441.

1. This action was commenced by way of a Complaint - Civil Action filed in the Court of Common Pleas of Clearfield County on March 7, 2001, and is docketed at No. 01-316-00, and is attached as Exhibit "A". The Complaint-Civil Action was mailed to petitioner no earlier than March 10, 2001.

2. The Complaint-Civil Action avers that there was a delay claim pursuant to cargo under a bill of lading or other marine contract shipped from the Netherlands to the United States.

3. The claim out of which the subject matter of this action arose was a maritime contract within the meaning of the Carriage of Goods by Sea Act (COGSA), and the rights of the parties herein are governed by the provisions of the Carriage of Goods by Sea Act. 46 U.S.C. §§ 1300 *et seq.*

4. This action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1331, and is one which may be removed to this Court by defendant NYK pursuant to the provisions of 28 U.S.C. § 1441, as it is a civil action arising under a treaty of the United States. Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction 3d* § 3675 n.13 citing *Logistics Management, Inc. v. One Pyramid Tent Arena*, 86 F.3d 908 (9th Cir. 1996); *Thyssen Steel Co. v. M/V KAVO YERAKAS*, 50 F.3d 1349 (5th Cir. 1995); *Genetics Int'l v. Coremorant Bulk Carriers, Inc.*, 877 F.2d 806 (9th Cir. 1989); *Allied Chem. Int'l. Corp. v. Companhia de Navegacao Lloyd Brasileiro*, 775 F.2d 476 (2d Cir. 1985), *cert denied* 106 S. Ct. 1502 (1985).

5. This notice is timely, it being filed within 30 days of the receipt by petitioner of a copy of the Complaint-Civil Action setting forth the claims for relief upon which the action is based.

6. No other party has been named.

WHEREFORE, notice is given that this action is removed from the Court of Common Pleas of the Clearfield County to the United States District Court for the Western District of Pennsylvania.

Respectfully submitted,

RAWLE & HENDERSON LLP

By 

Drew J. Dedo, Esquire

PA Identification No. 40319

Attorney for Defendant,

NYK Line (North America), Inc.

Telephone: (215) 575-4200

DATED: March 24, 2001

EXHIBIT A

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43652

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,

Plaintiff

vs.

NYK LINE (NORTH AMERICA, INC.),

Defendant

No. 01-316-CO

Type of Pleading: Complaint

Filed on behalf of: Backus USA, Inc.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

900 Beaver Drive

DuBois, Pennsylvania 15801

(814) 375-0300

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 07 2001

Attest.

William L. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

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Plaintiff

vs.

No.

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16. Said negligence consists of:

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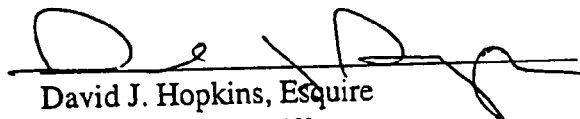
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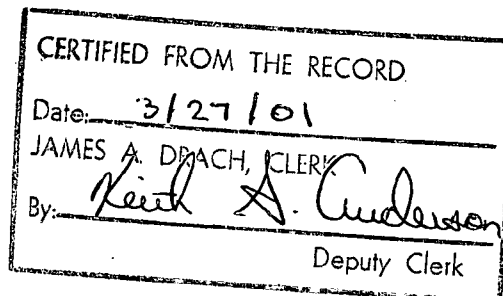
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Respectfully submitted,


David J. Hopkins, Esquire
Attorney for Plaintiff



VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

BACKUS USA, INC.

By: 

Lawrence Salone

Date 2/26/01

CERTIFICATE OF SERVICE

I hereby certify that on today's date a true and correct copy of the foregoing Petition for Notice of Removal has been sent via first-class mail, postage prepaid, upon all counsel of record, addressed as follows:

David J. Hopkins, Esquire
Attorney at Law
900 Beaver Drive
DuBois, Pennsylvania 15801
Attorney for Plaintiff,
Backus USA, Inc.

RAWLE & HENDERSON LLP

By: 

Ann-Michele G. Higgins, Esquire
The Widener Building
One South Penn Square
Philadelphia, PA 19107
Attorneys for Defendant,
NYK Line (North America), Inc.
(215) 575-4200

DATED: 3/26/01

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David J. Hopkins, Esquire
Attorney at Law
900 Beaver Drive
DuBois, Pennsylvania 15801
Attorney for Plaintiff,
Backus USA, Inc.

RAWLE & HENDERSON LLP

By: 

Ann-Michele G. Higgins, Esquire
The Widener Building
One South Penn Square
Philadelphia, PA 19107
Attorneys for Defendant,
NYK Line (North America, Inc.)
(215) 575-4200

DATED: April 2, 2001