

126-09/MEU/SL  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NORDEN A/S,

Plaintiff,

-against-

RTI LTD., f/k/a RUSAL TRADING  
INTERNATIONAL LIMITED,

Defendant.

09 Civ ( )

RECEIVED  
VERIFIED COMPLAINT

FEB - 4 2009

U.S.D.C. S.D. N.Y.  
CASHIERS

Plaintiff NORDEN A/S (hereinafter "NORDEN"), for its Verified Complaint against Defendant RTI LTD., f/k/a RUSAL TRADING INTERNATIONAL LIMITED (hereinafter "RTI/RUSAL"), alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure in that it involves claims for breach of maritime contracts of affreightment. The case thus falls under the Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. §1333. The Court also has federal question jurisdiction pursuant to 28 U.S.C. §1331 because the action arises under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards at 9 U.S.C. §201 *et seq.* and/or the Federal Arbitration Act, 9 U.S.C. §1 *et seq.*

2. At all times material hereto, Plaintiff NORDEN was and still is a foreign business entity duly organized and existing under the laws of a foreign country with an address at 52 Strandvejen, DK – 2900 Hellerup, Denmark.

3. At all times relevant hereto, Defendant RTI/RUSAL was and still is a foreign business entity duly organized and existing under the laws of a foreign country with an address at Whiteley Chambers, Don Street, St. Helier JE4 9WG Jersey and an address in Moscow, Russia.

4. On or about November 30, 2007, Defendant RTI/RUSAL, as charterer, entered into a contract of affreightment with Plaintiff NORDEN, as owner, for 43 shipments each of a cargo of 60,000 metric tons (plus 10% more/less at NORDEN's option and/or plus an additional cargo up to 240,000 metric tons at RTI/RUSAL's option to be completed in up to four shipments) from one safe berth at Weipa to one safe berth at Porto Vesme to be performed between January 1, 2008 and December 31, 2008 (hereinafter "November 30, 2007 COA").

5. For the shipments under the November 30, 2007 COA, Defendant RTI/RUSAL was obligated to pay freight at the rate of \$64.65 per metric ton.

6. In addition, for the shipments under the November 30, 2007 COA, Defendant RTI/RUSAL was obligated to pay demurrage at the rate of \$62,000 per day pro rata for time lost by the vessel at loading and/or discharge berth(s) beyond the agreed laytime period.

7. On or about February 20, 2008, Defendant RTI/RUSAL, as charterer, entered into a second contract of affreightment with Plaintiff NORDEN, as owner, for multiple shipments of cargo from one safe berth at Weipa to one safe berth at Porto Vesme (hereinafter "February 20, 2008 COA").

8. Pursuant to the February 20, 2008 COA, the parties agreed that Defendant RTI/RUSAL would supply the following cargos:

- (a) 21 shipments each of a cargo of 60,000 metric tons (plus 10% more/less at NORDEN's option) from one safe berth Weipa to one safe berth at Porto Vesme to be performed between March 10, 2008 and December 31, 2008 (hereinafter "2008 Shipments"); and
- (b) 15 shipments each of a cargo of 60,000 metric tons (plus 10% more/less at NORDEN's option), with a minimum of three shipments per quarter, from one safe berth Weipa to one safe berth Porto Vesme to be performed between January 1, 2009 and December 31, 2009 (hereinafter "2009 Shipments").

9. For the 2008 Shipments under the February 20, 2008 COA, Defendant RTI/RUSAL was obligated to pay freight at the rate of \$55.00 per metric ton.

10. For the 2009 Shipments under the February 20, 2008 COA, Defendant RTI/RUSAL was obligated to pay freight at the rate of \$64.65 per metric ton.

11. In addition, for both the 2008 Shipments and 2009 Shipments under the February 20, 2008 COA, Defendant RTI/RUSAL was obligated to pay demurrage at the rate of \$62,000 per day pro rata for time lost by the vessel at loading and/or discharge berth(s) beyond the agreed laytime period.

12. On or about August 11, 2008, Defendant RTI/RUSAL, as charterer, entered into a third contract of affreightment with Plaintiff NORDEN, as owner, for 9 shipments each of a cargo of 60,000 metric tons (plus 10% more/less at NORDEN's option) from one safe berth at Weipa to one safe berth at Porto Vesme to be performed between September 1, 2008 and December 31, 2008 (hereinafter "August 11, 2008 COA").

13. For the shipments under the August 11, 2008 COA, Defendant RTI/RUSAL was obligated to pay freight at the rate of \$53.50 per metric ton.

14. In addition, for the shipments under the August 11, 2008 COA, Defendant RTI/RUSAL was obligated to pay demurrage at the rate of the BPI at the day of acceptance of the nominated performing vessel for time chartered routes for time lost by the vessel at loading and/or discharge berth(s) beyond the agreed laytime period.

15. On or about August 18, 2008, Defendant RTI/RUSAL, as charterer, entered into a fourth contract of affreightment with Plaintiff NORDEN, as owner, for 12 shipments each of a cargo of 60,000 metric tons (plus 10% more/less at NORDEN's option) from one safe berth at Weipa to one safe berth at Porto Vesme to be performed between January 1, 2009 and December 31, 2009 (hereinafter "August 18, 2008 COA").

16. For the shipments under the August 18, 2008 COA, Defendant RTI/RUSAL was obligated to pay freight at the rate of \$50.00 per metric ton.

17. In addition, for the shipments under the August 18, 2008 COA, Defendant RTI/RUSAL was obligated to pay demurrage at the rate of rate of the BPI (Baltic Exchange Panamax Index) at the day of acceptance of the nominated performing vessel for time chartered routes for time lost by the vessel at loading and/or discharge berth(s) beyond the agreed laytime period.

18. Plaintiff NORDEN duly performed all of its duties in accordance with the terms of the contracts.

19. During the third quarter of 2008, Defendant RTI/RUSAL failed to supply a cargo for one of the 2008 Shipments under the February 20, 2008 COA, in breach of the contract terms.

20. As a result of Defendant's breach, Plaintiff suffered damages in the amount of \$3,048,991.00, no part of which has been paid by Defendant, despite due demand. (See Exhibit A).

21. Also during the third quarter of 2008, Defendant RTI/RUSAL failed to supply cargos for five shipments under the August 11, 2008 COA, in breach of the contract terms.

22. As a result of Defendant's breach, Plaintiff suffered damages in the amount of \$11,618,660.00, no part of which has been paid by Defendant, despite due demand.

23. Defendant RTI/RUSAL thereafter wrongfully terminated and repudiated the ongoing contracts of affreightment advising NORDEN that it would not provide any further cargos despite its contractual obligations to do so.

24. As a result of RTI/RUSAL's wrongful termination and repudiation, RTI/RUSAL will not supply cargos for the following shipments:

- (a) 15 of the 2009 Shipments under the February 20, 2008 COA, and
- (b) 12 of the shipments under the August 18, 2008 COA,

thus causing Plaintiff to suffer further damages, as best as can now be reasonably estimated, as follows:

- (a) \$41,649,777.00 under the February 20, 2008 COA, plus
- (b) \$22,353,204.00 under the August 18, 2008 COA.

(See Exhibit A).

25. In addition, and in further breach of the contracts, Defendant RTI/RUSAL failed and/or otherwise refused to pay outstanding demurrage in the amount of \$2,071,800.73 owing to Plaintiff NORDEN for shipments performed under the February 20, 2008 COA, the August 11,

2008 COA, and other similar contracts of affreightment between the parties dated October 15, 2008 and February 22, 2008. (See Exhibit B).

26. In sum, as a result of Defendant RTI/RUSAL's breaches of the contracts of affreightment, Plaintiff NORDEN suffered damages totaling \$80,742,432.73, as follows:

- (a) \$14,667,651.00 for failing to provide cargos during the third quarter of 2008,
- (b) \$64,002,981.00 for wrongfully termination and repudiation, plus
- (c) \$2,071,800.73 for unpaid demurrage

27. The contracts of affreightment provide for the application of English law and disputes between the parties to be resolved by arbitration in London, and Plaintiff NORDEN specifically reserves its right to arbitrate the substantive matters at issue. Arbitration has or will soon be commenced.

28. This action is brought *inter alia* pursuant to 9 U.S.C. §8 in order to obtain security for Plaintiff NORDEN's claims made or to be made in the London arbitration under English law, as agreed by the parties.

29. As a regular feature of English law and arbitration, attorneys fees are awarded to the successful litigant, along with costs, disbursements, the cost of the arbitration, and interest, all of which constitutes a part of the Plaintiff's main claim and the amount sued for herein.

30. Plaintiff estimates, as nearly as can presently be computed, that the legal fees and costs of prosecuting its claims in London arbitration will be \$300,000.00. Interest anticipated to be awarded is estimated to be \$17,231,047.09 (calculated at the rate of 6.5% per annum compounded quarterly for a period of three years, the estimated time for completion of the proceedings in London).

31. In all, the claim for which Plaintiff NORDEN sues in this action, as near as presently may be estimated, totals **\$98,273,479.82**, no part of which has been paid by Defendant RTI/RUSAL, despite due demand. Plaintiff specifically reserves its right to amend this figure and to seek an increase in the amount of security should such sum appear to be insufficient to fully secure.

#### **Request for Rule B Relief**

32. Upon information and belief, and after investigation, Defendant RTI LTD., f/k/a RUSAL TRADING INTERNATIONAL LIMITED, cannot be “found” within this District for the purpose of Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims, but Plaintiff believes that Defendant has, or will shortly have, assets within this District comprising, *inter alia*, cash, funds, escrow funds, credits, debts, wire transfers, electronic funds transfers, accounts, letters of credit, freights, sub-freights, charter hire and/or sub-charter hire, of, belonging to, due or for the benefit of Defendant RTI LTD., f/k/a RUSAL TRADING INTERNATIONAL LIMITED (collectively hereinafter, “ASSETS”), including but not limited to ASSETS in its name and/or being transferred for its benefit, at, moving through, or being transferred and/or wired to or from banking institutions or such other garnishees who may be served with a copy of the Process of Maritime Attachment and Garnishment issued herein.

33. The total amount sought to be attached pursuant to the above is **\$98,273,479.82**.

WHEREFORE, Plaintiff NORDEN A/S prays:

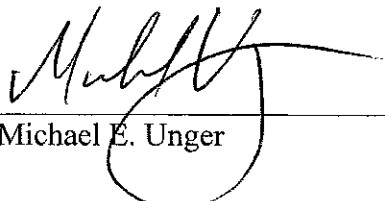
- a. That process in due form of law according to the practice of this Court issue against Defendant citing it to appear and answer under oath all and singular the matters alleged, failing which a default be taken against it;

- b. That if Defendant RTI LTD., f/k/a RUSAL TRADING INTERNATIONAL LIMITED cannot be found within this District pursuant to Supplemental Rule B that all tangible or intangible property of Defendant up to and including \$98,273,479.82 be restrained and attached, including, but not limited to any cash, funds, escrow funds, credits, debts, wire transfers, electronic funds transfers, accounts, letters of credit, freights, sub-freights, charter hire and/or sub-charter hire, of, belonging to, due or being transferred from or for the benefit of Defendant RTI LTD., f/k/a RUSAL TRADING INTERNATIONAL LIMITED, including but not limited to ASSETS in its name and/or being transferred for its benefit, at, through, or within the possession, custody or control of such banking institutions and/or any such other garnishees who may be served with a copy of the Process of Maritime Attachment and Garnishment issued herein;
- c. That this Court retain jurisdiction over the matter for any further or supplemental proceedings as may be necessary, including but not limited to the recognition and enforcement of any judgment entered against the Defendant in the London proceedings; and
- d. For such other, further and different relief as this Court may deem just and proper in the premises.

Dated: New York, New York  
February 4, 2009

FREEHILL HOGAN & MAHAR, LLP  
Attorneys for Plaintiff  
NORDEN A/S

By: \_\_\_\_\_

  
Michael E. Unger



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(212) 425-1901 (fax)

# **EXHIBIT A**

Rusal COA values:

Value of Q1 Atl rv: USD 7.000,00

Value of Q1 bh: USD 2.500,00

Paper value 2009: USD 11.000,00

If Porto Vesme plant continues the operation:

Loading	Discharging	COA date	TC equivalent (nett)	Result of the single voyage	Liftings	Total result
Weipa	Porto Vesme	20-02-2008	USD 69 449.48	USD 2 708 567.00	12	USD 32 502 804.00
Weipa	Porto Vesme	20-02-2008	USD 69 449.48	USD 3 048 991.00	3	USD 9 146 973.00 (Q1 2009)
Weipa	Porto Vesme	20-02-2008	USD 69 449.48	USD 3 048 991.00	1	USD 3 048 991.00 (Dec 2008)
Weipa	Black Sea	06-09-2007	USD 54 006.23	USD 2 685 710.00	2	USD 5 371 420.00 (Q1 2009)
Weipa	Porto Vesme	18-08-2008	USD 49 008.73	USD 1 777 661.00	9	USD 15 998 949.00
Weipa	Porto Vesme	18-08-2008	USD 49 008.73	USD 2 118 085.00	3	USD 6 354 255.00 (Q1 2009)
Weipa	Porto Vesme	11-08-2008	USD 53 524.31	USD 2 323 732.00	5	USD 11 618 660.00 (Dec 2008)
Trombetas	Aughinish	30-11-2007	USD 70 081.53	USD 1 985 363.00	3	USD 5 956 089.00
Trombetas	Aughinish	30-11-2007	USD 70 081.53	USD 2 479 746.00	1	USD 2 179 746.00 (Q1 2009)
					39	USD 92 177 887,00
						Total 2008: USD 14.667.651,00
						Total 2009: USD 77.510.236,00

# **EXHIBIT B**



**ATTORNEY VERIFICATION**


State of New York    )  
                                  ) ss.:  
County of New York )

MICHAEL E. UNGER, being duly sworn, deposes and says as follows:

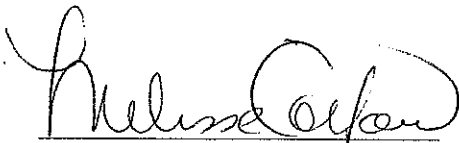
1. I am a partner with the law firm of Freehill Hogan & Mahar, LLP, attorneys for Plaintiff in this action, I have read the foregoing Verified Complaint and know the contents thereof, and the same is true to the best of my knowledge, information and belief.

2. The sources of my information and the grounds for my belief are communications, information and documentation provided by our client and/or by solicitors representing our client.

3. The reason this verification is made by an attorney and not by the Plaintiff is because the Plaintiff is a foreign entity, none of whose officers are presently within this Judicial District.

  
\_\_\_\_\_  
Michael E. Unger

Sworn to before me this  
4th day of February, 2009

  
\_\_\_\_\_  
Notary Public

MELISSA COLFORD  
Commissioner of Deeds  
City of New York-No. 5-1692  
Certificate Filed in New York  
Commission Expires 4/1/ 10