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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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INDEMNITY INSURANCE COMPANY OF
NORTH AMERICA a/s/o CAPSUGAL HOLDING
USA, INC.,

15 Civ.

Plaintiff,

- against -

COMPLAINT

A.P. MOLLER-MAERSK S.A. and PANTAINER
(UK) LIMITED,

Defendants.
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Plaintiff, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA a/s/o
CAPSUGAL HOLDING USA, INC. by and through its attorneys, Casey & Barnett LLC, as
and for their Complaint, allege upon information and belief as follows:

JURISDICTION

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the
Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333.

PARTIES

2. At all material times, INDEMNITY INSURANCE COMPANY OF NORTH
AMERICA (hereinafter "IINA" or "Plaintiff") was and is a corporation with an office and place

of business located at 1133 Avenue of the Americas, New York, New York 10036, and is the subrogated underwriter of nine consignments of Apparel, as more specifically described below.

3. At all material times, Capsugal Holding USA Inc., (hereinafter “Capsugal” or “Plaintiff”) was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at 535 North Emerald Road, Greenwood, South Carolina 29646 and was the owner/consignee of 12 Pallets Medical Supplies laden on board the M/V MAERSK MISSOURI, as more specifically described below.

4. At all material times, defendant, A.P. MOLLER-MAERSK SA. (hereinafter “Maersk”) was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at 2 Giralda Farms, Madison, New Jersey 07940 and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court as a common carrier of goods for hire.

5. At all material times, defendant, Pantainer (HK) Limited (hereinafter “Pantainer”) was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at Beacon Lakes Corporate Park, Bldg 10, 12430 NW 25 Street, Suite 100, Miami, FL 33182 and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court as a common carrier of goods for hire.

6. Plaintiff brings this action on their own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignments, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

7. On November 27, 2014, a consignment consisting of 12 Pallets Medical Supplies, consigned to Roxane Laboratories and laden in container MWCU 6822643, then being in good

order and condition, was delivered to the M/V MAERSK MISSOURI and to Maersk and Panalpina and/or their agents in Bornum, Belgium in consideration of an agreed upon freight, pursuant to a Maersk bill of lading and pursuant to Panalpina bill of lading number ANR007081 dated December 3, 2014, for transportation to Charleston, South Carolina via Rotterdam, The Netherlands.

8. The plaintiff shipper provided temperature instructions to Panalpina and Maersk to maintain temperatures within the container at a range between 15C and 25C at all times during transit.

9. On or about December 18, 2014 the container was discharged in Charleston, South Carolina. On or about December 22, 2014 the container was delivered to the cargo receiver's designated trucker at the port in Charleston, South Carolina.

10. On or about December 29, 2014 the container and cargo was delivered to the receiver.

11. Between November 28, 2014 and December 23, 2014 - or the entire time the container and cargo was in the custody and control of defendants, the temperature within the container was outside the parameters set forth in the instructions provided by the shipper.

12. As a result of the temperature deviation, the product was determined to be a constructive total loss and was destroyed. The cargo receiver refused to accept delivery of the cargo due to the temperature deviation.

13. As a result of the foregoing, Capsugal suffered a loss of its cargo valued at \$75,834.00.

14. The loss sustained by Plaintiff was not the result of any act or omission of the Plaintiff but, to the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage, and bailment on the part of the Defendants and/or their agents.

15. At all times relevant hereto, a contract of insurance for property damage was in effect between Capsugal with IINA, which provided coverage for, among other things, loss or damage to the subject consignment.

16. Pursuant to the aforementioned contract of insurance between Capsugal with IINA, monies have been expended on behalf of Capsugal to the detriment of IINA due to the damages sustained during this transit.

17. As IINA has sustained damages as a result of said expenditures, expenditures rightly the responsibility of defendants, IINA has an equitable right of subrogation and is subrogated, to the extent of the expenditures, to the rights of its insured with respect to any and all claims for damages against the defendant.

18. By reason of the foregoing, plaintiff has sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be no less than \$75,834.

WHEREFORE, Plaintiff prays:


1. That process in due form of law may issue against Defendants citing them to appear and answer all and singular the matters aforesaid;

2. That judgment may be entered in favor of Plaintiffs against Defendant for the amount of Plaintiffs' damages in the amount of at least \$75,834.00, together with interest, costs and the disbursements of this action; and

3. That this Court grant to Plaintiff such other and further relief as may be just and proper.

Dated: New York, New York
December 21, 2015
115-1395

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Attorneys for Plaintiff

By: 
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