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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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INDEMNITY INSURANCE COMPANY OF : ECF CASE  
NORTH AMERICA, :  
 :  
Plaintiff, : 11 Civ. 6417 (RJS)  
 :  
- against - : **COMPLAINT**  
 :  
MARTINAIR; MARTINAIR HOLLAND NV; :  
MARTIN AIR HOLLAND; MARTINAIR :  
CARGO; ASSOCIATED TRANSPORTS; :  
ASSOCIATED TRANSPORTS S.A.; LAND :  
AIR EXPRESS INC.; :  
 :  
Defendants. :  
 :  
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Plaintiff, through its undersigned attorney, alleges as follows for its complaint against defendants:

**FIRST CAUSE OF ACTION**

1. Plaintiff Indemnity Insurance Company of North America (“IINA”) is a corporation organized under the laws of, and with its principal place of business in, the state of Pennsylvania, and maintains an office at 140 Broadway, New York, New York, and sues herein as subrogated insurer of Parallel Technology, LLC who was at all material times the consignee, purchaser and owner of the cargo, and the entity entitled to receive the shipment.

2. Defendants Martinair, Martinair Holland NV, Martin Air Holland; Martinair Cargo, Associated Transports and Associated Transports S.A., are believed to be corporations organized under the laws of, and with their principal places of business in, certain foreign sovereigns.

3. Defendant Land Air Express Inc. is believed to be a corporation organized under the laws of one of the fifty states with a registered agent for service of process in New York.

4. This Court has *in personam* jurisdiction over defendants, who conduct business in the State of New York and the United States as a whole.

5. This Court has federal question subject matter jurisdiction pursuant to 28 USCA § 1331. There is also diversity pendent, ancillary and supplemental jurisdiction as to certain aspects of the claim in suit.

6. This cause of action arises under a treaty of the United States, specifically the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000, T.S. No. 876 (1934), reprinted in note following 49 U.S.C. Sec. 1502 (the "Warsaw Convention"), and certain amendments, protocols and successor treaties thereto in effect in the country of origin and destination at the time of shipment. Alternatively, this cause of action is governed by the Convention for Unification of Certain Rules for International Carriage by Air, Done at Montreal on 28 May 1999, reprinted in S. Treaty Doc. No 106-45, 1999 WL 33292734 (2000) (entered into force Nov. 4, 2003) ("Montreal Convention").

7. This action involves damage to a shipment of electronic equipment which moved from France to the United States, as described more fully in Martin Air Holland

air waybill 129 5337 7811 dated on or about September 29, 2010, and Associated Transports air waybill ASO10034915 dated on or about September 29, 2010, and others.

8. Defendant Land Air Express Inc. provided truck transportation for the shipment from the intermediate airport to the destination airport.

9. Said damage was the result of defendants' fault, recklessness, wanton neglect, and willful misconduct in that defendants, their agents, servants, connecting carriers, subcontractors, terminal operators, truck drivers, warehousemen and employees failed to properly handle, protect and care for the cargo in question and in that defendants had no proper and effective procedures to receive, handle, carry, transfer and care for the cargo

10. By reason of the aforesaid plaintiff, and those on whose behalf it sues, has sustained damages in the amount of \$47,120.45, no part of which has been paid although duly demanded.

11. Plaintiff sues herein on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

12. Plaintiff, and those on whose behalf it sues, has performed all conditions precedent required of it under the premises.

### **SECOND CAUSE OF ACTION**

13. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 12 of this complaint.

14. When the cargo was received into the care, custody and control of defendants, or those entities acting on their behalf, the cargo was in good order and condition.

15. However, defendants failed to make delivery of the entire cargo at the intended destination in the same order and condition. Instead the cargo was in damaged and depreciated condition at the time of delivery and was unfit for intended usage.

16. Therefore, defendants, as common carriers, bailees, and/or warehousemen, are liable to plaintiff for the claimed damage and loss to the cargo in suit.

WHEREFORE, plaintiff demands judgment against defendants jointly and severally:

- (a) for the sum of \$47,120.45;
- (b) for prejudgment interest at the rate of 9% per annum;
- (c) for the costs and disbursements of this action;
- (d) for such other and further relief as this Court deems proper and just.

Date: New York, New York  
August 30, 2011

LAW OFFICES,  
DAVID L. MAZAROLI

*s/David L. Mazaroli*

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