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11 MSC MEDITERRANEAN SHIPPING COMPANY S.A.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 MSC MEDITERRANEAN SHIPPING  
15 COMPANY S.A.,

16 Plaintiff,

17 v.

18 BNSF RAILWAY COMPANY,

19 Defendant.

CASE NO.

**COMPLAINT**

Gordon Rees Scully Mansukhani, LLP  
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20 Plaintiff MSC MEDITERRANEAN SHIPPING COMPANY S.A. (“MSC”),  
21 by counsel, for its Complaint against BNSF RAILWAY COMPANY (“BNSF”),  
22 alleges upon information and belief as follows:

**JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over the subject matter of this action  
24 because MSC’s claims arise under federal law, and the transportation of the  
25 property at issue constitutes transportation in interstate commerce under 49 U.S.C.  
26 § 13102(14) and (23), as well as 49 U.S.C. § 13501(1). Thus, this action arises  
27 under the Court’s federal question jurisdiction (28 U.S.C. § 1331 and 49 U.S.C. §  
28 14706) and/or supplemental jurisdiction (28 U.S.C. § 1367).



1 freight-rail-transportation business as a common carrier of goods by rail for hire,  
2 with an agent for service of process in this judicial district.

3 **FACTS**

4 7. On or about January 19, 2022, MSC, acting as a vessel-owning  
5 common carrier, issued MSC Sea Waybill No. MEDUPH104184 (“MSC Bill 1”)  
6 for the shipment of printers (“Cargo 1”) loaded in container nos. FFAU2035293  
7 and MEDU4957349 (respectively “Container 1 and 2”) from the Port of Batangas,  
8 Philippines to Plainfield, Indiana, via the Port of Los Angeles.

9 8. Pursuant to MSC Bill 1, MSC undertook to transport (or arrange for  
10 transportation of) Container 1, Container 2 and Cargo 1 from the Port of Batangas,  
11 Philippines to Plainfield, Indiana, via the Port of Los Angeles. MSC carried the  
12 Container 1, Container 2 and Cargo 1 from the Port of Batangas, Philippines to the  
13 Port of Los Angeles, and then tendered Container 1, Container 2, and Cargo 1 to its  
14 subcontractor, BNSF, for the portion of the shipment from Los Angeles, California  
15 to Chicago, Illinois.

16 9. On or around January 19, 2022, Container 1 and Container 2 departed  
17 Batangas, Philippines and arrived in the Port of Los Angeles on or around March  
18 23, 2022.

19 10. BNSF accepted Container 1, Container 2 and Cargo 1 in Los Angeles,  
20 California, and, in consideration of certain agreed freight charges thereupon paid,  
21 BNSF agreed to transport and carry said Container 1, Container 2 and Cargo 1  
22 from Los Angeles, California to Chicago, Illinois, there to be delivered in like  
23 good order and condition at the BNSF Chicago Rail Ramp.

24 11. On or around March 24, 2022, Container 1 and Container 2 were  
25 loaded onto a BNSF train in the Port of Los Angeles and they arrived at the BNSF  
26 Rail Ramp and was unloaded in Chicago, Illinois on April 24, 2022. Whilst in the  
27 custody and possession of BNSF, Cargo 1 in Container 1 and Container 2 was  
28 pilfered (“Incident 1”).

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1           12. On or about January 26, 2022, MSC, acting as a vessel-owning  
2 common carrier, issued MSC Sea Waybill No. MEDUPH106148 (“MSC Bill 2”)  
3 for the shipment of printers and projectors (“Cargo 2”) loaded in container nos.  
4 BMOU6889371, MSDU8045763, MSMU5414355, and TGBU9654672  
5 (respectively “Containers 3 through 6”) from the Port of Batangas, Philippines to  
6 Plainfield, Indiana, via the Port of Los Angeles.

7           13. Pursuant to MSC Bill 2, MSC undertook to transport (or arrange for  
8 transportation of) Container 3, Container 4, Container 5, Container 6 and Cargo 2  
9 from the Port of Batangas, Philippines to Plainfield, Indiana, via the Port of Los  
10 Angeles. MSC carried Container 3, Container 4, Container 5, Container 6 and  
11 Cargo 2 from the Port of Batangas, Philippines to the Port of Los Angeles, and  
12 then tendered Container 3, Container 4, Container 5, Container 6 and Cargo 2 to its  
13 subcontractor, BNSF, for the portion of the shipment from Los Angeles, California  
14 to Chicago, Illinois.

15           14. On or around January 26, 2022, Container 3, Container 4, Container 5  
16 and Container 6 departed Batangas, Philippines and arrived in the Port of Los  
17 Angeles on or around March 23, 2022.

18           15. BNSF accepted Container 3, Container 4, Container 5, Container 6  
19 and Cargo 2 in Los Angeles, California, and, in consideration of certain agreed  
20 freight charges thereupon paid, BNSF agreed to transport and carry Container 3,  
21 Container 4, Container 5, Container 6 and Cargo 2 from Los Angeles, California to  
22 Chicago, Illinois, there to be delivered in like good order and condition at the  
23 BNSF Chicago Rail Ramp.

24           16. On or around March 24, 2022, Container 3, Container 4, Container 5,  
25 and Container 6 were loaded onto a BNSF train in the Port of Los Angeles and  
26 they arrived at the BNSF Rail Ramp and was unloaded in Chicago, Illinois on  
27 April 24, 2022. Whilst in the custody and possession of BNSF, the Cargo in  
28 Container 3, Container 4, Container 5, and Container 6 was pilfered (“Incident 2”).

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1           17. Epon America, Inc. (“Epon”), the consignee under MSC Bill 1 and  
2 MSC Bill 2 subsequently made a claim for the pilfered Cargo 1 and Cargo 2 to its  
3 cargo insurers, Tokio Marine America Insurance Company (“Tokio Marine”),  
4 which Tokio Marine paid.

5           18. On March 20, 2023, Tokio Marine, as subrogee of Epon, filed an  
6 action in the United States District Court for the Southern District of New York  
7 against MSC (the “Action”) for the pilfered Cargo 1 inside the Container 1 and  
8 Container 2, and the pilfered Cargo 2 in Container 3, Container 4, Container 5 and  
9 Container 6 (the “Claim”). The total damages claimed were US\$1,311,228.19, plus  
10 interest and costs.

11           19. As a result of Incident 1 and Incident 2, BNSF failed to make delivery  
12 of Cargo 1 and Cargo 2 in like good order and condition.

13           20. BNSF’s failure to deliver Cargo 1 and Cargo 2 and/or failure to  
14 deliver the Cargo 1 and Cargo 2 in like good order and condition was in violation  
15 of the obligations and duties of common carriers of merchandise by rail for hire,  
16 including BNSF’s failure to perform services with respect to Container 1,  
17 Container 2, Container 3, Container 4, Container 5 and Container 6, as well as  
18 Cargo 1 and Cargo 2 in a careful, workmanlike matter; its failure and/or negligence  
19 to properly inspect, supervise, and safeguard Container 1, Container 2, Container  
20 3, Container 4, Container 5 and Container 6, as well as Cargo 1 and Cargo 2; and  
21 its failure to hire and train employees.

22           21. Due to BNSF’s failure to deliver Cargo 1 and Cargo 2 in like good  
23 order and condition, MSC attracted liability under MSC Bill 1 and MSC Bill 2 for  
24 Tokio Marine’s Claim (as BNSF was MSC’s subcontractor for the rail leg of the  
25 shipment). MSC resolved Tokio Marine’s Claim and the Action for  
26 US\$975,589.46 and paid that sum on January 19, 2024.

27           22. In accordance with BNSF’s Intermodal Rules and Policies, MSC filed  
28 a claim with BNSF for the pilfered Cargo 1 and Cargo 2.

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