

KENNEDY LILLIS SCHMIDT & ENGLISH  
John T. Lillis Jr., Esq.  
75 Maiden Lane, Suite 402  
New York, New York 10038  
Telephone: (212) 430-0800  
Telecopier: (212) 430-0810  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

LOUIS VUITTON NORTH AMERICA, INC.,

Plaintiff,

- v. -

SCHENKER S.A., AIR FRANCE, and  
CARGO AIRPORT SERVICES USA, LLC d/b/a  
Consolidated Aviation Services,

Defendants.

17 Civ. \_\_\_\_ ( )

**COMPLAINT**

Plaintiff Louis Vuitton North America, Inc. (“LVNA”), by and through its attorneys, Kennedy Lillis Schmidt & English, alleges upon information and belief as follows:

**INTRODUCTION**

1. This is an action against Schenker S.A. (“Schenker”), Air France (“Air France”), and Cargo Airport Services USA, LLC d/b/a Consolidated Aviation Services (“CAS”) (collectively “Defendants”) for statutory indemnification and breach of international air carriage contracts, which arises from (1) the misdelivery and resultant theft of 403 cartons of Louis Vuitton-brand purses, handbags, luggage, leather goods, and accessories (“Cargo”) owned by LVNA and tendered to Defendants for international air carriage and handling (“Theft”), and (2) Defendants’

issuance and acceptance of multiple, irregular, inconsistent, and incomplete air-carriage-related documents relative to the Cargo's carriage, misdelivery, and resultant theft.

2. This is also an action against Schenker for the breach of the Freight Forwarding Agreement ("Forwarding Agreement") it maintained with LVNA, arising from the conduct specified in Paragraph 1, *supra*, as well as Schenker's failure abide its contractual obligations to ensure that Air France and CAS, as subcontracted agents for the transport and ground handling of the Cargo, had sufficient security measures and procedures in place to protect the Cargo against in-transit theft.

#### THE PARTIES

3. LVNA was and is a Delaware corporation with an office and place of business at 1 East 57th Street, New York, New York 10022.

4. LVNA was and is a luxury fashion retail company engaged in the business of importing and selling high-quality purses, handbags, luggage, leather goods, clothing, and other accessories.

5. LVNA owned the Cargo.

6. LVNA brings this action on its own behalf and as agent or trustee on behalf of all parties who may be or become interested in the subject shipment as their respective interests may ultimately appear, and Plaintiff is duly entitled to maintain this action.

7. Schenker was and is a French corporation with offices and places of business at 37 Route Principale du Port, Gennevilliers 92637, France, and at 230-79 Rockaway Boulevard, Suite 200, Jamaica, New York 11413.

8. Schenker was and is engaged in business as, *inter alia*, an international freight forwarder, consolidator, and logistics provider.

9. LVNA hired Schenker to transport the Cargo from Paris, France to New York, New York, and Schenker issued Schenker Air Waybill No. CDG05152548 (“Schenker Air Waybill”) to cover the subject shipment.

10. Air France was and is a French corporation with offices and places of business at Charles de Gaulle Airport, 45 Rue de Paris, 95747 Roissy CDG Cedex, France and 125 West 55th Street, Second Floor, New York, New York 10019.

11. Air France was and is engaged in business as a common carrier of Cargo and passengers by air for hire.

12. Schenker subcontracted Air France to carry the Cargo by air from Charles de Gaulle Airport (“CDG”) in Paris to John F. Kennedy International Airport (“JFK”) in Jamaica, New York.

13. Air France transported the Cargo under Air France Air Waybill No. 057-22736906 (“Air France Air Waybill”).

14. Cargo Airport Services USA LLC d/b/a Consolidated Aviation Services (“CAS”) was and is a Delaware company with an office and place of business at Cargo Building 151, Suite 361, JFK International Airport, Jamaica, New York, 11430.

15. CAS was and is engaged in business as an air cargo ground handler.

16. CAS is party to the Customs Trade Partnership Against Terrorism (“C-TPAT”) with U.S. Customs and Border Protection (“CBP”) and thus legally obliged to, *inter alia*, abide C-TPAT rules, regulations, and procedures.

17. CAS, as Air France’s agent, handled and transported the Cargo from the delivering airplane to its warehouse at Building 261, JFK International, Airport Jamaica, New York, 11430 (“CAS Warehouse”), where it stored the Cargo pending its delivery.

## JURISDICTION AND VENUE

18. This Honorable Court has subject matter jurisdiction over Plaintiff's claim pursuant to 28 U.S.C. § 1331, because it arises under a treaty of the United States, to wit, the Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, S. Treaty Doc. No. 106-45 ("Montreal Convention").

19. This Honorable Court has supplemental jurisdiction over Plaintiff's claims arising under state law pursuant to 28 U.S.C. § 1637(a), because said claims arise out of the same case and controversy as Plaintiff's federal claims.

20. This Honorable Court has personal jurisdiction over Defendants, and venue is proper pursuant to 28 U.S.C. § 1391(b), because Defendants reside and/or conduct substantial business in this District, and the Defendants' acts or omissions giving rise to this action occurred within this District.

## FACTS

### *THE PARTIES' RESPECTIVE CONTRACTS OF CARRIAGE AND THE TRANSPORT OF THE CARGO FROM PARIS TO NEW YORK*

21. Before December 2015, LVNA and Schenker entered the Forwarding Agreement pursuant to which Schenker was responsible for arranging the transportation of LVNA's goods from France to various LVNA warehouses and retail stores throughout North America.

22. In or before December 2015, LVNA hired Schenker, as air carrier, to carry 403 cartons of Louis Vuitton-brand purses, handbags, luggage, leather goods, and accessories ("Cargo") from Paris to LVNA's retail store at 1 East 57th Street, New York, New York ("LVNA's Store") in consideration of certain agreed air freight charges.

23. On 21 December 2015, Schenker issued the Schenker Air Waybill to cover the subject shipment and agreed to carry the Cargo to JFK and deliver it there to LVNA in the same good order and condition as when received by Schenker.

24. Schenker subcontracted the Cargo's air carriage from CDG to JFK to Air France.

25. On 21 December 2015, Air France, in consideration of certain agreed freight charges, picked up, received, and accepted the Cargo, then in good order and condition, at CDG, issued the Air France Air Waybill to cover the subject shipment, and agreed to carry the Cargo to JFK and deliver it there to LVNA in the same good order and condition as when received by Air France.

26. On 21 December 2015, the Cargo was loaded aboard Air France's nominated aircraft at CDG, which thereafter carried the Cargo to JFK, landing there on 22 December 2015.

27. Air France appointed CAS to act as its cargo ground-handling agent at JFK to handle, transport, and store the Cargo pending its delivery to LVNA.

28. Upon the Cargo's arrival at JFK on 22 December 2015, CAS picked up the Cargo from the Air France aircraft and transported to CAS's Warehouse where it was to be stored pending delivery to LVNA.

*THE THEFT OF THE CARGO FROM CAS'S WAREHOUSE*

29. Before 22 December 2015, LVNA instructed Schenker (and by virtue of that instruction) Air France, and CAS to release the Cargo to MRZ Trucking ("MRZ") at 7:00 am on 23 December 2015

30. On 22 December 2015, Schenker instructed Air France and CAS to release the Cargo to MRZ Trucking ("MRZ") at 7:00 am on 23 December 2015.

31. Schenker and Air France issued multiple, irregular, inconsistent, and incomplete “AIR [Automated Manifest System]” documents that (1) utterly or partially failed to identify the Cargo’s marks, numbers, and number of pieces as required by those documents; (2) misidentified the number of the Airway Bills issued to cover the subject shipment; (3) partially failed to contain signatures required by those documents; (4) noted the wrong delivery date for the Cargo’s release; (5) partially failed to confirm that U.S. Customs had authorized transfer of the Cargo as required by those documents; (6) were directed the “Port Director, New York NY” and only requested transfer of the Cargo but not release thereof from CAS’s possession (“AIR AMS Documents”). Further, although called for by those documents, Schenker and/or Air France failed to append “an abstract of the carriers [sic] manifest covering the containers by airwaybill, marks, numbers, contents, consignee, etc.” to each copy of the AIR AMS they issued.

32. In contravention of the oral, written, and otherwise observed policies, procedures, and practices of both companies established to safeguard cargo entrusted to them for international air carriage and in contravention of contractual terms and statutory or other rules, policies, and regulations governing the performance of their obligations as air carriers, Schenker and Air France knowingly and recklessly distributed or otherwise made available to individuals that were unauthorized to receive them one or more versions of the AIR AMS Documents, subjectively aware – when they did – that damage or theft of the Cargo would probably result.

33. At approximately 10:00 p.m. on 22 December 2015, three unidentified individuals (“Suspects”) arrived at the CAS Warehouse in a four-door sedan.

34. One of those individuals (“Suspect 1”) exited the sedan, entered the CAS Warehouse, and produced to a CAS Employee a copy of a copy of one of the AIR AMS Documents.

35. Despite the fact that the presented document was a copy of a copy of one of the AIR AMS Documents, suffered from all of the deficiencies noted in Paragraph 31, *supra*, and did not have appended to it the required “abstract of the carriers [sic] manifest covering the containers by airwaybill, marks, numbers, contents, consignee, etc.,” the CAS Employee accepted the presented document as a legitimate authorization to release the Cargo to Suspect 1 in contravention of the oral, written, and otherwise observed policies, procedures, and practices of CAS established to safeguard cargo entrusted to it and in contravention of contractual terms and statutory or other rules, policies, and regulations governing CAS’s performance of its obligations, including those applicable by virtue of CAS’s entrance in to C-TPAT with CBP.

36. That is, the CAS Employee recklessly accepted the presented document as a legitimate authorization to release the Cargo to Suspect 1 subjectively aware that damage or theft of the Cargo would probably result.

37. Suspect 1 also produced to the CAS Employee as identification a non-commercial driver’s license bearing a photograph of a person whose appearance was obviously different from that of Suspect 1 (said driver’s license having belonged to a Mr. Jean Gainson (“Gainson”), who was later confirmed to have been at work at the relevant time).

38. Despite this, and in contravention of the oral, written, and otherwise observed policies, procedures, and practices of CAS established to safeguard cargo entrusted to it and in contravention of contractual terms and statutory or other rules, policies, and regulations governing CAS’s performance of its obligations, including those applicable by virtue of CAS’s entrance in to C-TPAT with CBP, the CAS Employee accepted the presented driver’s license as one properly identifying and belonging to Suspect 1.

39. That is, the CAS Employee recklessly accepted the presented driver's license as one properly identifying and belonging to Suspect 1 with subjective awareness that damage or theft of the Cargo would probably result.

40. In contravention of the oral, written, and otherwise observed policies, procedures, and practices of CAS established to safeguard cargo entrusted to it and in contravention of contractual terms and statutory or other rules, policies, and regulations governing CAS's performance of its obligations, including those applicable by virtue of CAS's entrance in to C-TPAT with CBP, the CAS Employee accepted the presented driver's license as one properly authorizing Suspect 1 to transport commercial cargo even though it was not a commercial driver's license, which is otherwise required to transport commercial cargo.

41. That is, the CAS Employee recklessly accepted the presented driver's license as one properly authorizing Suspect 1 to transport commercial cargo with subjective awareness that damage or theft of the Cargo would probably result.

42. In contravention of the oral, written, and otherwise observed policies, procedures, and practices of CAS established to safeguard cargo entrusted to it; in contravention of contractual terms and statutory or other rules, policies, and regulations governing CAS's performance of its obligations, including those applicable by virtue of CAS's entrance in to C-TPAT with CBP; and in contravention of the delivery instructions it received from LVNA, Schenker, and Air France, the CAS Employee authorized the release of the Cargo to Suspect 1 (and his co-Suspects) on 22 December 2015 rather than 23 December 2015.

43. That is, the CAS Employee recklessly authorized the release of the Cargo to Suspect 1 (and his co-Suspects) with subjective awareness that damage or theft of the Cargo would probably result.



44. In contravention of the oral, written, and otherwise observed policies, procedures, and practices of CAS established to safeguard cargo entrusted to it; in contravention of contractual terms and statutory or other rules, policies, and regulations governing CAS's performance of its obligations, including those applicable by virtue of CAS's entrance in to C-TPAT with CBP, the CAS Employee released the Cargo to Suspect 1 (and his co-Suspects) without demanding identification or paperwork confirm that he and his co-Suspects were MRZ employees authorized to collect the released Cargo.

45. That is, the CAS Employee recklessly authorized the release of the Cargo to Suspect 1 (and his co-Suspects) with subjective awareness that damage or theft of the Cargo would probably result.

46. After the CAS Employee authorized the release of the Cargo, the Suspects backed an unmarked and unlicensed truck up to Loading Door #25 of CAS's Warehouse to load the Cargo.

47. In contravention of the oral, written, and otherwise observed policies, procedures, and practices of CAS established to safeguard cargo entrusted to it; in contravention of contractual terms and statutory or other rules, policies, and regulations governing CAS's performance of its obligations, including those applicable by virtue of CAS's entrance in to C-TPAT with CBP, neither the CAS Employee that authorized the release of the Cargo nor any other CAS employee challenged or obtained an explanation why and the truck the Suspects loaded the Cargo into had no logo, badge, decal, paperwork, or other indication that it belonged to MRZ.

48. That is, the CAS Employee and his or her coworkers recklessly released the Cargo to Suspect 1 (and his co-Suspects) with subjective awareness that damage or theft of the Cargo would probably result.

49. After the Suspects loaded the Cargo into their unmarked truck, they carried it to an unknown location, and it was never delivered to LVNA.

50. As a result, LVNA incurred losses totaling \$767,906.54, as nearly as can now be determined, no part of which has been paid by Defendants although duly demanded.

*CAS'S INADEQUATE SECURITY SYSTEMS AND PROCEDURES*

51. Approximately one year prior to the subject theft, the Port Authority of New York and New Jersey Police ("PA Police") – while investigating another incident at CAS's Warehouse – informed CAS that its Closed-Circuit Television ("CCTV") security system was inadequate and needed to be upgraded to provide higher resolution video and more complete coverage of CAS Warehouse premises.

52. CAS never completed the upgrades.

53. At the time of the subject theft, the CCTV camera that should have covered Loading Door #25, was pointed in the opposite direction.

54. Further, because CAS had not upgraded its CCTV security system, CCTV footage available was poor and provided no clear video of the Suspects.

55. The CAS Warehouse does not have a fence installed around the perimeter of its premises, there is open access to the CAS Warehouse from a public street.

**FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS:  
STATUTORY INDEMNIFICATION & BREACH OF CONTRACT OF CARRIAGE**

56. Plaintiff repeats and realleges each of the allegations contained in the preceding and subsequent Paragraphs and incorporate the same as though fully set forth herein.

57. As air carriers of Cargo for hire or agents thereof, Defendants were obligated by the Montreal Convention and the terms of the Schenker and Air France Air Waybills to properly

and safely transport, handle, carry, keep, care for, discharge and deliver the Cargo in the same good order and condition as when received by them.

58. Defendants breached those duties by failing to deliver the Cargo in the same good order and condition as when received by them.

59. LVNA fully complied with all pre-suit requirements under the Montreal Convention and the terms of the Air France Air Waybill and the Schenker Air Waybill, including, without limitation, payment of all airfreight charges and all notice-of-claim requirements.

60. As a direct and proximate result of Defendants' breach of their duties under the Montreal Convention and the terms of the Schenker and Air France Air Waybills, Plaintiff has sustained damages, as nearly as can now be determined, no part of which has been paid although duly demanded, in the sum of \$767,906.54.

61. The actions or omissions of an air carrier or agent thereof constitute actionable willful misconduct where such conduct deviates from the applicable or appropriate regulations, policies, practices, and procedures (i.e. where it deviates from the standard of ordinary care) and such departure is accompanied by a subjective awareness of an unjustifiable likelihood that its conduct would result in damage.

62. Here, the regulations, policies, practices, and procedures applicable to or governing Defendants' conduct in transporting and handling the Cargo are established by, *inter alia*, the oral, written, and otherwise observed policies, procedures, and practices of they established to safeguard cargo entrusted to them; C-TPAT Security Criteria and Guidelines; and the standards and practices declared by the parties, including on their websites.

63. The following excerpts are illustrative of those the regulations, policies, practices, and procedures applicable to or governing Defendants' conduct:

- a. The preamble to C-TPAT's "Security Criteria" for Air Carriers provides, in relevant part, that "[w]here an air carrier does not control a specific element of the cargo transportation service it has contracted to provide, such as an airport terminal, direct handling of cargo containers ... the air carrier must work with these business partners to ensure that pertinent security measures are in place and adhered to;"
- b. The "Physical Access Controls" section of C-TPAT's "Security Criteria" for Air Carriers, provides that "to prevent unauthorized entry to aircraft and facilities . . . [p]rocedures must be in place to identify, challenge and address unauthorized persons;"
- c. The "Physical Access Controls" section of C-TPAT's "Security Guidelines for Air Freight Consolidators," provides that "[a]ccess controls must include the positive identification of all employees, visitors and vendors at all points of entry," and that "[p]rocedures must be in place to identify, challenge and address unauthorized/unidentified persons;"
- d. The "Procedural Security" section of C-TPAT's "Security Guidelines for Air Freight Consolidators," provides with respect to "Shipping & Receiving" that "...[d]eparting cargo should be checked against purchase or delivery orders. Drivers delivering or receiving cargo must be positively identified before cargo is received or released;"
- e. The "Procedural Security" section of C-TPAT's "Security Guidelines for Air Freight Consolidators," provides "[s]ecurity measures must be in place to ensure the integrity and security of processes relevant to the transportation, handling and storage of cargo in the supply chain," and specifically "[d]eparting cargo should be checked against purchase or delivery orders. Drivers delivering or receiving cargo must be positively identified before cargo is . . . released. . . . CBP and/or other appropriate law enforcement agencies must be notified if illegal or suspicious activities are detected;"
- f. The "Physical Security" section of C-TPAT's "Security Guidelines for Air Freight Consolidators" provides that "[a]larm systems and video surveillance cameras should be utilized to monitor premises and prevent unauthorized access to cargo handling and storage areas;"
- g. In the "Cargo warehousing and handling" section of CAS's Website, CAS states: "[a]s the dominant cargo handling operator in North America, CAS has the experience, resources and world-class facilities to handle all types and sizes of cargo. More than 250 airline customers rely on CAS for the safe and secure handling of shipments whether for export, import, or transition;"

- h. In the “Cargo import/export documentation” section of its Website, CAS states: “[f]or safety, security and simply for avoiding delays, we recognize that it’s as important to handle the paperwork as carefully as we handle the cargo. With years of experience, we can ensure that your documents are right first time, every time;”
- i. In the “Monthly Station Self Audits” of its Website, CAS states that the General Managers of CAS cargo facilities “are required to perform ‘self audits’ of their operations, including the safety and security of their facilities,” and that “[s]afety & security directors perform scheduled follow up audits at all locations;”
- j. Upon information and belief, at all relevant times CAS maintained a policy that Cargo was to be released from the CAS Warehouse only to drivers with Commercial Drivers’ Licenses that matched the identity of the individuals professed to be licensed thereby.

64. Defendants deviated from the regulations, policies, practices, and procedures applicable to or governing Defendants’ conduct (i.e. from the standard of ordinary care) – and were aware of an unjustifiable likelihood that their conduct would result in the theft of the Cargo – in the following ways (amongst others):

- a. Schenker and Air France issued multiple, irregular, inconsistent, and incomplete “AIR AMS Documents, which included the deficiencies noted in Paragraph 31, *supra*, and knowingly and recklessly distributed or otherwise made available to individuals that were unauthorized to receive them one or more versions of those AIR AMS Documents;
- b. CAS failed to verify whether the driver’s license presented by Suspect 1 was his own, despite that the picture on said driver’s license bore no resemblance to Suspect 1;
- c. CAS failed to question Suspect 1 as to why the driver’s license he produced was not a commercial driver’s license, which is required to operate any commercial truck that would be authorized to receive and transport cargo from the CAS Warehouse;
- d. CAS failed to question the authenticity of the obviously falsified AMS Release that Suspect 1 produced purportedly authorizing him to receive the Cargo;
- e. CAS failed to challenge or obtain an explanation why and the unlicensed and unmarked truck the Suspects loaded the Cargo into had no logo,

badge, decal, paperwork, or other indication that the it belonged to MRZ, despite CAS's instructions that MRZ would be picking up the Cargo;

- f. Given Suspect 1's provision of driver's license obviously not belonging to him and an obviously deficient AMS AIR Document, and Suspects' use of an unmarked and unlicensed truck to transport the Cargo, the Suspects' presence at the CAS Warehouse was patently irregular and highly suspicious;
- g. Despite this, CAS did not contact the appropriate authority or law enforcement agency and, instead, released the Cargo to the Suspects;
- h. CAS knowingly released the Cargo to unknown and unauthorized persons in circumstances, and against documents, which were patently irregular and fraudulent;
- i. CAS acted with complete, utter, and reckless disregard for the security of the Cargo, under circumstances which could only and certainly result in the loss of the Cargo, as it did;
- j. CAS failed to upgrade its CCTV security system to provide higher resolution video and more complete coverage of the CAS Warehouse premises despite instructions from the PA Police that it do so;
- k. The security camera intended to cover CAS Warehouse's Loading Door # 25 was repositioned in such a way as to prevent surveillance of the area where the Suspects loaded the Cargo into the truck, which would have deterred the fraudulent taking of the Cargo;
- l. CAS failed to build a fence around the premises of the CAS Warehouse to prevent unauthorized access thereto;
- m. CAS failed to undertake "self audits" of the CAS Warehouse's security systems and procedures as required to evaluate, maintain and improve the safety and security of that facility;
- n. CAS failed to undertake "self audits" of the CAS Warehouse as required to ensure that personnel working at that facility were adequately trained, instructed, managed, and supervised in and about the prevention of unauthorized and fraudulent removal of the Cargo from the CAS warehouse.
- o. CAS failed to have in place necessary security measures to ensure the integrity and security of processes relevant to the transportation, handling and storage of the Cargo arriving and stored at the CAS Warehouse;

- p. CAS failed to have in place required procedures to identify, challenge, and address unauthorized persons attempting to remove cargo from the CAS Warehouse;
- q. CAS failed to have in place and adhere to required procedures to ensure the authenticity and accuracy of purchase or delivery orders against which cargo is released from the CAS Warehouse;
- r. Air France and Schenker failed to work with CAS, as their designated cargo-handling agent, to ensure that necessary security measures were in place and adhered to with respect to the handling of the Cargo at the CAS Warehouse;

65. Based on the foregoing, Defendants engaged in actionable willful misconduct in that they were aware of an unjustifiable likelihood that their conduct would result – as it did – in the theft of the Cargo.

66. Pursuant to Article 10 of the Montreal Convention, Defendants, as carriers or agents thereof, must “indemnify [LVNA] against all damage suffered by it . . . by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt.”

67. Here, Defendants knowingly and recklessly issued or accepted multiple, irregular, inconsistent, and incomplete AIR AMS Documents, which included the deficiencies noted in Paragraph 31, *supra*.

68. As a direct and proximate result of Defendants’ having knowingly and recklessly issued or accepted multiple, irregular, inconsistent, and incomplete AIR AMS Documents, which include the deficiencies noted in Paragraph 31, *supra*, Plaintiff has sustained damages, as nearly as can now be determined, no part of which has been paid although duly demanded, in the sum of \$767,906.54.

69. Therefore, pursuant to Article 10 of the Montreal Convention, Defendants must “indemnify [LVNA] against all damage suffered by it . . . by reason of the irregularity, incorrect-

ness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt.” That is, they must indemnify LVNA in the amount of \$767,906.54.

WHEREFORE, Plaintiff demands judgment against Defendants in the amount of \$767,906.54, plus interest, costs, disbursements, and such other and further relief this Honorable Court may deem just and proper.

SECOND CAUSE OF ACTION AGAINST SCHENKER:  
BREACH OF CONTRACT

70. Plaintiff repeats and realleges each of the allegations contained in the preceding and subsequent Paragraphs and incorporate the same as though fully set forth herein.

71. The Forwarding Agreement constituted a valid and enforceable contract between LVNA and Schenker for the transportation of LVNA’s goods.

72. The Forwarding Agreement identified Schenker as a “freight forwarder ... and global logistics company of international repute capable of providing transportations and logistics services to [LVNA].” Exhibit 1, p. 2, Whereas Clause 4.

73. According to the Forwarding Agreement, “SCHENKER has a great knowledge of international logistics, transportation and customs operations and declares being in capacity to set-up all the necessary technology and means.” Exhibit 1, p. 2, Whereas Clause 5.

74. Under the terms of the Forwarding Agreement, Schenker was obligated “to implement all the equipment and staff ... required from qualitative professionals in order to obtain a perfect performance of the Services, in accordance with the Specifications.” Exhibit 1, p. 3, Article 4 “Terms of Services Performance,” Section 4.2 “Schenker’s Obligations.”

75. Air France and CAS were subcontractors as to Schenker under the Forwarding Agreement.



76. As to services under the Forwarding Agreement carried out by subcontractors of Schenker, the Forwarding Agreement provided that Schenker “shall be exclusively liable vis-à-vis [LVNA] for the transportation executed in accordance with the Specifications by the Subcontractors to the same extent that SCHENKER had carried out the work itself.” Exhibit 1 at page 3, Article 3 “Scope of the Services.”

77. The Forwarding Agreement further provided that “SCHENKER shall be directly and exclusively liable *vis-à-vis* [LVNA] for the consequences of its Subcontractors actions or omissions, which result in a breach of the Agreement.” Exhibit 1, p. 5, Article 6, “Liability.”

78. The Forwarding Agreement specifically required that Schenker “impose a contractual obligation upon its subcontractors with regard to the full compliance with all the provisions of the Agreement” (Exhibit 1 at page 5, Article 6 “Liability”), and further required Schenker to “[ensure] that ... Subcontractors are fully committed to all of SCHENKER’s obligations with regard to the Agreement.” Exhibit 1, p. 7, Article 11, “Subcontractors”.

79. Schenker failed to impose any contractual obligations on its Subcontractors, Air France and CAS, to ensure full compliance by Air France and CAS with the provisions of the FFA, in material breach of Schenker’s contractual obligations under the Forwarding Agreement.

80. In the event one of its subcontractors participated in cargo delivery or pickup from warehouses, the Forwarding Agreement further obligated Schenker to “communicate to [LVNA] the name of the Subcontractor and the name, identity card and driving license of the driver.” Exhibit 1, p. 7, Article 11, “Subcontractors.”

81. Schenker failed to communicate to LVNA the name, identity card, and driver’s license of Suspect 1, who arrived to collect the Cargo at CAS’s Warehouse on 22 December 2015,

in material breach of Schenker's obligations under the terms and Specifications of the Forwarding Agreement.

82. "Appendix 1 – Specifications" to the Forwarding Agreement provided in part that "SCHENKER shall put at the disposal of [LVNA] an accurate traceability & tracking system that will allow for a thorough localization and positioning of each shipment and, furthermore, of each parcel ..." Exhibit 1, p. 14, "Appendix 1 – Specifications" at Section 3 "Tracing & Tracking and Quality Control."

83. Schenker failed to ensure that LVNA was able to trace and track the location of the Cargo, in breach of Schenker's obligations under the terms and Specifications of the Forwarding Agreement, with the direct and foreseeable consequence that the Cargo was misdelivered to unknown persons and lost to LVNA.

84. As to the in-transit security of LVNA's goods, the "Specifications" of the Forwarding Agreement provided: "Due to the sensitive nature of the goods being transported, SCHENKER shall absolutely respect the following measures and rules:

SCHENKER shall constantly reinforce these measures in order to anticipate the evolution of the risks.

a) Road Transportation ...

SCHENKER shall execute the Services, using transportation materials equipped as follows:

- Steel-plated, sealed trucks with no connection between the tractor and the trailer (articulated vehicle) for each ... pick-up at the Warehouses;
- Secured trucks:

\* \* \*

- The use of experienced & regular drivers is compulsory (no part-time workers) ...”

Exhibit 1, p. 15, “Appendix 1 – Specifications” at Section 5 “Security and Safety Conditions.”

85. Schenker failed to ensure that the Suspects and the truck they arrived with at the CAS Warehouse to collect the Cargo on the night of 22 December 2015 complied with the specific terms and specifications of the Forwarding Agreement, in material breach of Schenker’s contractual obligations under the Forwarding Agreement.

86. The Forwarding Agreement required that all airport facilities and warehouses in which the Cargo was stored be “closed, fenced on all sides; under alarm and under video surveillance, with continuous surveillance from an operator; restricted access and managed by experienced and regular employees known within SCHENKER.” Exhibit 1, p. 15, “Appendix 1 – Specifications,” Section 5 “Security and Safety Conditions,” subsection 5(e) “Handling and cross-docking at hubs,” and, subsection 5(f) “Storage.”

87. Schenker failed to have in place procedures to properly vet and challenge the identification and documents produced by drivers arriving at the CAS Warehouse to take away the Cargo, in material breach of Schenker’s obligations under the terms and Specifications of the FFA.

88. Schenker failed to ensure that its subcontractors, Air France and CAS, had procedures in place to properly vet and challenge the identification and documents produced by drivers arriving at the CAS Warehouse to take away the Cargo, in material breach of Schenker’s obligations under the terms and Specifications of the Forwarding Agreement.

89. Schenker failed to ensure that the CAS Warehouse was equipped with operable and constantly-monitored video surveillance, in material breach of Schenker's obligations under the terms and Specifications of the Forwarding Agreement.

90. Schenker failed to ensure that the CAS Warehouse was managed by experienced and regular employees known within Schenker, in material breach of Schenker's obligations under the terms and specifications of the Forwarding Agreement.

91. Schenker failed to ensure that the employees managing the CAS Warehouse on 22 December 2015 were adequately supervised, instructed, and trained in recognizing and detecting irregular and incorrect identification produced by persons seeking to remove the Cargo, in material breach of Schenker's obligations under the terms and specifications of the Forwarding Agreement.

92. Schenker failed to have in place procedures to ensure that the Cargo was released from the CAS Warehouse only to known and authorized persons producing valid, confirmed and correct identification and delivery orders, in material breach of Schenker's obligations under the terms and Specifications of the Forwarding Agreement.

93. Schenker failed to ensure that its Subcontractors, Air France and CAS, had procedures in place to ensure that the Cargo was released from the CAS Warehouse only to known and authorized persons producing valid, confirmed and correct identification and delivery orders, in material breach of Schenker's obligations under the terms and Specifications of the FFA.

94. The Specifications appended as Appendix 1 to the Forwarding Agreement required that "SCHENKER and all its subcontractors shall be Customs-Trade Partnership Against Terrorism (C-TPAT) accredited by the U.S. Border and Customs [*sic*] Protection (CBP)."

95. Schenker failed to ensure that its Subcontractors, Air France and CAS, were in compliance with the C-TPAT Security Guidelines issued by CBP to Air Carriers and Air Freight Consolidators with respect to Physical Access Controls, Challenging and Removing Unauthorized Persons, Physical Security, Alarm Systems and Video Surveillance Cameras, Procedural Security, Shipping and Receiving and Cargo Discrepancies, in material breach of Schenker's obligations under the terms and Specifications of the Forwarding Agreement.

96. As a direct and proximate cause of Schenker's breaches of its obligations under the FFA, Plaintiff has sustained damages, as nearly as can now be determined, no part of which has been paid although duly demanded, in the sum of \$767,906.54.


97. To the extent that the acts or omissions of CAS and/or Air France contributed to cause LVNA's losses and damages, such acts and omissions were performed by CAS and Air France as subcontractors of Schenker for purposes of the terms and Specifications of the Forwarding Agreement.

WHEREFORE, Plaintiff demands judgment against Defendants in the amount of \$767,906.54, plus interest, costs, disbursements, and such other and further relief this Honorable Court may deem just and proper.

Dated: New York, New York  
December 21, 2017

KENNEDY LILLIS SCHMIDT & ENGLISH  
Attorneys for Plaintiff

By:

  
\_\_\_\_\_  
John T. Lillis, Jr., Esq.  
75 Maiden Lane – Suite 402  
New York, New York 10038-4816  
Tel.: 212-430-0800

95. Schenker failed to ensure that its Subcontractors, Air France and CAS, were in compliance with the C-TPAT Security Guidelines issued by CBP to Air Carriers and Air Freight Consolidators with respect to Physical Access Controls, Challenging and Removing Unauthorized Persons, Physical Security, Alarm Systems and Video Surveillance Cameras, Procedural Security, Shipping and Receiving and Cargo Discrepancies, in material breach of Schenker's obligations under the terms and Specifications of the Forwarding Agreement.

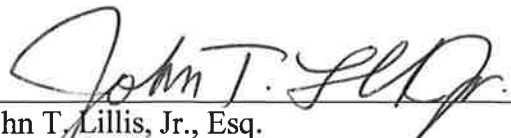
96. As a direct and proximate cause of Schenker's breaches of its obligations under the FFA, Plaintiff has sustained damages, as nearly as can now be determined, no part of which has been paid although duly demanded, in the sum of \$767,906.54.

97. To the extent that the acts or omissions of CAS and/or Air France contributed to cause LVNA's losses and damages, such acts and omissions were performed by CAS and Air France as subcontractors of Schenker for purposes of the terms and Specifications of the Forwarding Agreement.

WHEREFORE, Plaintiff demands judgment against Defendants in the amount of \$767,906.54, plus interest, costs, disbursements, and such other and further relief this Honorable Court may deem just and proper.

Dated: New York, New York  
December 21, 2017

KENNEDY LILLIS SCHMIDT & ENGLISH  
Attorneys for Plaintiff

By:   
John T. Lillis, Jr., Esq.  
75 Maiden Lane – Suite 402  
New York, New York 10038-4816  
Tel.: 212-430-0800