

UNITED STATES COURT OF INTERNATIONAL TRADE
BEFORE:

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UNITED STATES,		:
	Plaintiff,	:
		:
	v.	: Court No. 13-00086
		:
LINCOLN GENERAL INSURANCE COMPANY,		:
	Defendant.	:
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COMPLAINT

Pursuant to the rules of the United States Court of International Trade (CIT), plaintiff, United States, alleges as follows:

1. This action is brought by the United States on behalf of the Department of Homeland Security, United States Customs and Border Protection (CBP) to recover unpaid supplemental antidumping duties in the amount of \$4,527,586.00, plus pre- and post-judgment interest, including but not limited to interest pursuant to 19 U.S.C. sections 580 and 1505, as well as pursuant to principles of equity.
2. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1582(2).
3. During all times relevant to this action, Avalon Risk Management (Avalon) acted as agent for defendant Lincoln General Insurance Company (LGIC) in managing LGIC’s U.S. Customs bond program.
4. LGIC is currently located at 3501 Concord Road, York, Pennsylvania 17402.
5. On information and belief, effective January 1, 2000, Avalon operated under an agency agreement with LGIC whereby Avalon was appointed as an agent to solicit applications for risks, including insurance policies and bonds, and to collect premiums

thereon. Compl. ¶¶ 19, 20 filed in *Lincoln Gen. Ins. Co. v. Kingsway Am. Agency, Inc., f/k/a Avalon Risk Mgmt., Inc., et al.*, No. 1:11-cv-01195-SHR (M.D. Pa.).

6. On information and belief, the agency agreement between LGIC and Avalon created an agency relationship with LGIC as the principal and Avalon as its agent. *Id.* ¶ 21.

7. On information and belief, LGIC provided Avalon with authority to issue both continuous and single transaction U.S. Customs bonds. *Id.* ¶ 37.

8. On information and belief, as part of the agency relationship, Avalon agreed on behalf of LGIC to accept business written by other agents, solicitors, and/or brokers, also called sub-producers, and to direct, supervise, and coordinate the efforts of such sub-producers. *Id.* ¶ 31.

9. On information and belief, Avalon subsequently authorized East-West Associates, Inc. (EWA) to issue U.S. Customs bonds on behalf of LGIC. *Id.* ¶ 39.

10. On information and belief, Avalon subsequently authorized Global Solutions Insurance Services, Inc. (GSIS), to issue U.S. Customs bonds on behalf of LGIC. *Id.* ¶ 39.

11. On information and belief, both EWA and GSIS issued bonds on behalf of LGIC and, therefore, were both acting as agents for LGIC with respect to the solicitation, underwriting, issuance of such bonds. *Id.* ¶ 43; *see also Lincoln Gen. Ins. Co. v. Kingsway Am. Agency, Inc. f/k/a Avalon Risk Mgmt., Inc.*, No. 1:11-cv-01195-SHR, Memorandum and Order, 16 (denying dismissal on four of five counts in the complaint, and finding that “[LGIC] has pleaded sufficient facts to show the existence of a fiduciary relationship between [LGIC] and East-West and/or GSIS”) (M.D. Pa. May 7, 2012).

12. At all times relevant to this action, Glenn A. Stebbings was an officer and/or employee of GSIS.

COUNT I

13. Paragraphs 1 through 12 are incorporated by reference as though fully set forth herein.

14. Importer Coast to Coast, Inc. (Coast to Coast), made seventeen (17) entries of fresh garlic from China between June 21, 2002 and August 18, 2002 (hereafter, the Entries). Copies of the seventeen (17) entry documents are attached hereto as Exhibit A.

15. Each of the Entries was secured by a single transaction bond (STB) issued by LGIC through its agent EWA and/or GSIS, and which also identifies the surety's requested mailing address as "C/O Global Solutions Insurance Services, Inc." and identifies Coast to Coast's attorney-in-fact as "East-West Associates Inc." Copies of the seventeen (17) STBs are attached hereto as Exhibit B.

16. The seventeen (17) STBs constitute valid contracts for the payment of supplemental duties, fees and interest that were entered into jointly and severally between the importer Coast to Coast, as principal, and EWA and/or GSIS on behalf of LGIC as surety, with these STBs making the United States a third-party obligee.

17. Plaintiff United States, as the third-party obligee of the valid STB contracts, seeks to collect unpaid supplemental duties, fees, and interest owed by LGIC on the Entries pursuant to its bond obligations.

18. The merchandise covered by the Entries consisted of fresh garlic from the People's Republic of China, produced and/or exported by Huaiyang Hongda Dehydrated Vegetable Co. (Hongda).

19. The Entries were subject to the Department of Commerce (Commerce) Antidumping Duty Order A-570-831, *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 Fed. Reg. 59209 (Nov. 16, 1994).

20. Liquidation of the Entries was suspended by statute. *Notice of Preliminary Determination of Sales at Less Than Fair Value: Fresh Garlic From the People's Republic of China*, 59 Fed. Reg. 35310, 35311 (July 11, 1994), citing §733(d)(1) of the Tariff Act of 1930, 19 U.S.C. §1673b(d)(1) (1994).

21. On August 6, 2003, Commerce published a notice rescinding the administrative review with respect to Hongda for the period May 1, 2002 – October 31, 2002 (the period in which the Entries were made). *Fresh Garlic From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 68 Fed. Reg. 46580 (Aug. 6, 2003).

22. Hongda and LGIC commenced litigation in the U.S. Court of International Trade (CIT) challenging Commerce's decision to rescind the review. *See Lincoln General Insurance Co. v. United States*, Court No. 03-00546 (commenced August 2003) (LGIC Action); *Huaiyang Hongda Dehydrated Vegetable Company v. United States*, Court No. 03-00636 (commenced September 2003) (Hongda Action).

23. In an order dated October 31, 2003, the CIT issued a preliminary injunction in the Hongda Action enjoining the liquidation of the Entries and other related entries pending the outcome of a challenge of the partial rescission of the administrative review and the application of an antidumping rate applied by Commerce.

24. The CIT issued decisions affirming Commerce's rescission in the Hongda Action in November 2004, *see Huaiyang Hongda Dehydrated Vegetable Co. v. United*

States, 28 CIT 1944 (2004), and in the LGIC Action in December 2005, *see Lincoln General Ins. Co. v. United States*, 29 CIT 1505 (2005). The injunction dissolved after no appeals were taken from these decisions.

25. On January 24, 2007, Commerce issued liquidation instructions to CBP in publicly available Administrative Message 7024202 directing CBP to liquidate entries of Fresh Garlic from the People's Republic of China, exported by Hongda and entered or withdrawn from warehouse for consumption during the period of May 1, 2002 through October 31, 2002. The Entries satisfied these criteria for liquidation.

26. The Entries at issue in this action were timely liquidated on March 2, 2007.

27. LGIC did not file any protest. Therefore, the liquidations of the Entries are final and conclusive as to LGIC pursuant to 19 U.S.C. § 1514(a).

28. On or around November 13, 2007, CBP demanded payment through a “Formal Demand on Surety for Payment of Delinquent Amounts Due” (the 612 Billing Report) to LGIC first notifying the surety of the unpaid bills arising out of the liquidations of the Entries.

29. These bills remained on the monthly 612 Billing Report to LGIC until on or around June 10, 2009, when all the bills except bill number 44766121 were switched to the continuous bond surety’s monthly 612 report. Bill 44766121 has remained on LGIC’s monthly 612 report up to the present. The other sixteen bills were transferred back to LGIC’s 612 Report as of October 31, 2012.

30. Thereafter, on November 14, 2007, CBP’s Debt Management Branch demanded payment from LGIC. A copy of the demand letter is attached hereto as Exhibit C.

31. On June 28, 2012, CBP's Office of Chief Counsel demanded payment in a letter to LGIC and advised LGIC that CBP would seek interest in excess of the face amounts of LGIC's 19 STBs under equitable theories and pursuant to 19 U.S.C. § 580 should litigation have to be commenced. A copy of this demand letter is attached hereto as Exhibit D.

32. To date, neither Coast to Coast nor LGIC has made payment with respect to the supplemental duties owed on the Entries or for any accrued interest on the amounts owed.

WHEREFORE, plaintiff respectfully requests that judgment be entered in favor of the United States against defendant LGIC in the amount of \$4,527,586.00, plus pre-judgment interest from the date(s) of liquidation of the entries under 19 U.S.C. § 1505, post-judgment interest, and equitable interest to the extent necessary to fully compensate the United States for the surety's default, plus interest pursuant to 19 U.S.C. § 580, even

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if any such amounts exceed the limits of liability of the STBs; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

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Dated: March 1, 2013