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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219179
Party	Plaintiff Spliethoff's Bevrachtungskantoor B.V.
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Date	12/04/2015
Attachments	Spliethoff's Memo in Opposition to UYT's Motion to Compel Discovery.pdf(80809 bytes ) Ex. A - Dockwise November 2011 Announcement to Sell Yacht Transport Business 4820-8324-5099.pdf(171633 bytes ) Ex. B Dockwise 3.27.12 draft Sale and Purchase Agreement 4843-4613-4059.pdf(4742712 bytes ) Ex. C MVYachtExpress Dry Dock Feb 2012 4845-9956-6379.pdf(1225651 bytes ) Ex. D MVSS4 in Dry Dock July 2012 4847-3719-1979.pdf(1912863 bytes ) Ex. E PEV 2015-2016 Directory 4843-8467-4091.pdf(1542086 bytes ) Ex. F Photos and video screen shots of Dockwise vessels 4850-3950-9547.pdf(2506010 bytes ) Ex. G Dockwise Cease_Desist_LT + Emails 4829-6031-3899.pdf(1436240 bytes ) Ex. H Summons and Complaint for Damages by United Yacht v Sevenstar 4830-9666-1544.pdf(2229687 bytes ) Ex. I Sevenstar Motion To Dismiss UYT's Complaint 4822-3584-9000.pdf(90938 bytes ) Ex. J - Clemens Van der Werf Resigns from Dockwise June 2013 4810-9319-2747.pdf(101808 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Opposition No. 91219179

Serial No. 86031633

SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V.,

Opposer,

v.

UNITED YACHT TRANSPORT LLC.,

Applicant.

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**OPPOSER'S MEMORANDUM OF LAW IN  
OPPOSITION TO MOTION TO COMPEL**

Opposer SPLIETHOFF'S BEVRACHTINGSKANTOOR B.V. ("Spliethoff"), by and through its undersigned counsel, pursuant to 37 C.F.R. 2.127, hereby files this memorandum of law in opposition to Applicant's Motion to Compel, and respectfully states as follows:

**I. INTRODUCTION**

**A. Background Facts**

On October 15, 2013, through an Asset Purchase Agreement, Spliethoff acquired the yacht transport business Dockwise Yacht Transport LLC, a division of a larger Dockwise entity. Spliethoff purchased Dockwise's yacht transport business operations, including Dockwise's dedicated yacht transport vessels, the M/V Yacht Express and the M/V Super Servant 4, customer contracts and other assets and also obtained assignments of Dockwise's rights in the mark UNITED YACHT TRANSPORT (the "Mark"). In the instant proceeding, Spliethoff claims superior rights in the mark UNITED YACHT TRANSPORT arising from Dockwise's priority use of the Mark, use

which includes but it not limited to Dockwise's public, deliberate and continuous display of the Mark on its mammoth and distinctive yacht transport vessels in 2012 and 2013.

Dockwise's sale of its yacht transport business to Spliethoff in mid-October 2013 was the culmination of several years of effort by Dockwise, a company primarily engaged in the heavy-lift business, to dispose of its yacht transport division.

In November 2011, Dockwise entered into a Letter of Intent to sell its yacht transport business to an investor group led by Coby Enterprises which also included Dockwise Yacht Transport's President Clemens Van der Werf and other individuals. (*See Exhibit "A" hereto*). The proposed transaction prohibited the Purchaser from using the name "Dockwise" after the closing, required the removal of all Dockwise marks from the assets sold and required Dockwise to transfer its rights in the marks "UNITED YACHT TRANSPORT" and "DYT" to the Purchaser for use by the acquiring entity. (*See Exhibit "B" hereto: draft Sale and Purchase Agreement, Clauses 7.2.1 – 7.2.4 at pp. 22 and 23*).<sup>1</sup>

In early February 2012, Dockwise's yacht transport vessel, the M/V Yacht Express, entered dry dock in Tampa, Florida where Dockwise changed the name on the vessel's sidewalls from "DOCKWISE YACHT TRANSPORT" to "UNITED YACHT TRANSPORT." (*See Composite Exhibit "C" hereto*). Thereafter, the vessel continued its usual operations of worldwide yacht transport with the Mark conspicuously displayed on its sidewalls.

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<sup>1</sup> Clause 7.2.4 stated, in pertinent part:

... Dockwise Transport shall as soon as practical after the Closing but in any event before 1 July 2012, procure that the Purchaser will be granted full ownership or license for the permanent use of the name "United Yacht Transport" and "DYT", and that the domain name "yacht-transport.com" will be transferred to the Purchaser.

By March 2012, the proposed sale of Dockwise's yacht transport business had progressed to the circulation of a draft *Sale and Purchase Agreement*, between the Purchaser UYT HOLDING COÖPERATIEF U.A., comprised of Coby Enterprises, LLC and Valkor, LLC, and Sellers DOCKWISE TRANSPORT B.V., SUPER SERVANT 3 B.V., SUPER SERVANT 4 B.V. AND YACHT EXPRESS B.V. (*See Exhibit "B" hereto*). The stated purchase price for the sale of the business, yacht transport vessels and other assets was over \$40 Million. (*Exhibit "B" hereto at 13 – 14*). The draft Agreement, at Clauses 7.2.1 and 7.2.4, prohibited the Purchaser from doing business under the name "DOCKWISE" and required the Seller (Dockwise) to grant Purchaser "full ownership or license for the permanent use of the names "UNITED YACHT TRANSPORT" and "DYT." (*See Exhibit "B" hereto at pp. 22 and 23*). The draft *Agreement* provided for a closing date of June 1, 2012. (*See Exhibit "B" hereto at 19*).

The proposed transaction between Dockwise and the Coby Enterprises group did not take place. Nonetheless, Dockwise continued to look for a buyer for its yacht transport division and to use the Mark to strengthen the public's association between the Mark and Dockwise's yacht transport services.

In late July 2012, Dockwise's yacht transport vessel, the M/V Super Servant 4 entered dry dock in Tuzla, Turkey and Dockwise changed the name on the sidewalls of the vessel from "DOCKWISE YACHT TRANSPORT" to "UNITED YACHT TRANSPORT." (*See Exhibit "D" hereto*). On or about July 29, 2012, the vessel departed Tuzla and continued its usual yacht transport operations to ports throughout the globe with the Mark displayed on its sidewalls.

In 2012 and 2013, prior to Applicant's filing on August 7, 2013 of its Application to register the Mark, Dockwise's yacht transport vessels, M/V Yacht Express and M/V Super Servant 4 prominently displayed the mark UNITED YACHT TRANSPORT on their sidewalls while these

vessels transported yachts between U.S. and foreign ports. Dockwise's use of the Mark during this time period on its yacht transport vessels was public, conspicuous, deliberate and continuous.<sup>2</sup> These mammoth and distinctive float-on, float-off yacht transport vessels are well known in the yacht transport industry. They were in the public eye and were widely photographed and videotaped during 2012 and 2013 when they displayed the Mark while engaged in transporting yachts in commerce.<sup>3</sup> Not only was the Mark visible on each vessel from afar when the massive vessels were in transit, but the huge word mark UNITED YACHT TRANSPORT on the sidewalls of the vessels was prominently visible "up close" to all yacht owners and their agents and crew, as well as vendors, maintenance personnel and others who were present when Dockwise's M/V Yacht Express or M/V Super Servant 4 was in port, loading or unloading yachts onto the vessels.

Applicant filed its Section 1(a) application to register the mark UNITED YACHT TRANSPORT on August 7, 2013. Its filing date was more than one year after Dockwise began using the Mark on its yacht transport vessels. On August 19, 2013, Dockwise filed its Section 1(a) application to register the mark UNITED YACHT TRANSPORT.

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<sup>2</sup> During these two years, as well as in prior years, Dockwise also advertised its yacht transport services under the names "Dockwise" and "United Yacht Transport" in the Annual Port Everglades Guide, a practice that Spliethoff has continued since its acquisition. (*See* Composite Exhibit "1" to Spliethoff's Notice of Opposition and Exhibit "E" hereto).

<sup>3</sup> The "web cam" at Port Everglades captured videos of the M/V Yacht Express routinely entering and leaving the Port with yachts in transport in 2012 and 2013, and photos and videos of the vessels at different ports worldwide were taken and posted online by photographers and "ship spotting" enthusiasts during this two-year time period. (*See* Exhibits "2," "3," and "4" to Spliethoff's Notice of Opposition and Composite Exhibit "F" hereto).

Spliethoff purchased four commercial copyrighted videos taken by the PEV "web cam" of the M/V Yacht Express displaying the Mark at Port Everglades on May 24, 2012, September 12, 2012, April 14, 2013 and April 19, 2013 and produced the videos to counsel for Applicant on September 23, 2015. These videos may be viewed by clicking on the following link: <http://gallery.ptztv.com/Yacht-Transport-Videos/n-vsTwSw/i-8CqMxJG/>.

On August 20, 2013, Dockwise's counsel sent a "cease and desist" letter to Applicant and confirmed Dockwise's long-standing rights in the Mark. In email communications in September 2013, Dockwise's counsel invited Applicant and counsel to come to Port Everglades and see the mark UNITED YACHT TRANSPORT displayed on the sidewalls of the M/V Yacht Express. (*See* Composite Exhibit "G" hereto). Applicant apparently declined the invitation, refused to stop using the mark and continued prosecuting its Application.

Spliethoff acquired Dockwise's yacht transport business in October 2013. In order to enforce the common law rights in the Mark which Spliethoff acquired from Dockwise, Spliethoff commenced the instant Opposition proceeding,

## **II. DISCOVERY PLACED AT ISSUE BY APPLICANT**

Applicant has moved to compel the production of documents, or additional documents, in response to the following: Requests 10, 24 and 25 of its Second Request for Production of Documents, Request 55 of its First Request for Production of Documents, Request (1) in the Subpoena Duces Tecum issued to Spliethoff's subsidiary, Sevenstar Yacht Transport, and Requests (4) and (6) – (8) of the Subpoena Duces Tecum issued to Clemens Van der Werf.

In its Motion to Compel, Applicant ignores the legal import of substantial evidence of Dockwise's priority use of the Mark in 2012 and 2013 and raises "red herring" discovery arguments which cannot overcome the trademark rights of Dockwise, and Spliethoff, arising from such use. Spliethoff has produced all responsive documents located relating to Dockwise's repainting of the vessels to install the Mark. (Request 10). The remaining documents sought by Applicant from Spliethoff and Sevenstar – concerning an alleged campaign of defamation – have their foundation in a commercial dispute Applicant has started against Sevenstar Yacht Transport, which is of no relevance to rights in the Mark at issue. Rather, these Requests are a feeble effort by Applicant to

focus attention away from Dockwise's prior use and Applicant's fraudulent USPTO filings and use this trademark opposition proceeding to pry into the files of its competitor, Sevenstar. Lastly, Mr. Van der Werf has complied with the subpoena duces tecum served upon him by producing all documents sought by the subpoena with the exception of his severance agreement from Dockwise. This document is irrelevant and utterly outside the scope of permissible discovery; therefore, an objection to same cannot be waived based on an untimely objection.

For the reasons set forth below as to each Request at issue, Applicant's Motion to Compel should be denied in its entirety.

**A. Request 10 of Applicant's Second Request for Production**

**Request 10.** All emails, correspondence and other documents between 2011 and 2013 which discuss or relate to repainting the sidewall of any vessel to change the name from Dockwise Yacht Transport to United Yacht Transport.

**Response to Request 10:** Opposer already has produced all documents located to date within its possession, custody or control which are responsive to this Request.

Applicant has directed numerous document requests to Spliethoff in which Applicant seeks production of documents relating to actions or communications of Dockwise which occurred prior to Spliethoff's October 15, 2013 acquisition of Dockwise's yacht transport business. Spliethoff raised this point in its General Objections to both of Applicant's document production requests. (*See* "General Objections" in Spliethoff's Responses to Applicant's First and Second Request for Production of Documents, Exhibits 2 and 4 to Motion at 1).

Spliethoff has diligent searched and produced all documents located which are responsive to Request 10. As noted in its General Objection and in communications with counsel for Applicant, Spliethoff does not have access to all Dockwise's records, emails or electronically-stored documents relating to Dockwise's yacht transport business. Spliethoff has searched and produced the responsive

documents and electronic data (including emails) of Dockwise in Spliethoff's possession, custody and control. Simply stated, Spliethoff cannot produce "Dockwise documents or electronic data" which Spliethoff does not have.

Moreover, Applicant's complaint that none of the documents produced by Spliethoff in response to Request #10 "related to the decision or reasons for repainting the vessel" is contradicted by the documents themselves. (Applicant's Motion at 4 – 5). As Applicant acknowledges at page 10 of its Motion, the documents produced by Spliethoff and Mr. Van der Werf evidence the fact that Dockwise changed the name on its vessels to UNITED YACHT TRANSPORT prior to and in connection with the proposed divestiture of its yacht transfer business. (*See* Exhibits "B" and "C" hereto). Spliethoff is not withholding any documents – as Applicant apparently is suggesting – that might provide a different explanation of "why" Dockwise changed the names on the sidewalls of its vessels. Applicant's argument at page 10 of its Motion that Dockwise's use of the Mark on its vessels did not constitute a "bona fide" use of the Mark by Dockwise or would not "benefit" Dockwise is absurd. As noted in the draft *Sale and Purchase Agreement*, in 2012 Dockwise had an stake of in excess of \$40 Million USD in selling its yacht transport division. (Exhibit "B" hereto, Clause 3.1 at 13 - 14). According to the documents produced, Dockwise re-branded its yacht transport vessels with the Mark UNITED YACHT TRANSPORT Mark in pursuit of a lucrative sale of its yacht transport vessels and business to Coby Enterprises or another buyer.

**B. Requests 24 and 25 of Applicant's Second Request for Production**

**Request 24.** All emails, correspondence, and other documents between Opposer (or any predecessors listed in Paragraph 12 of the Notice of Opposition) and any customers, potential customers, vendors, or potential vendors related to United Yacht Transport.

**Response/Objection to Request 24:** Objection: relevancy. *See* General Objection C.<sup>4</sup>

**Request 25.** All Facebook and internet postings by Opposer (or any predecessors listed in Paragraph 12 of the Notice of Opposition) related to United Yacht Transport.

**Response/Objection to Request 25:** Objection: relevancy. *See* General Objection C.

Requests 24 and 25 seek the production of documents which are irrelevant to the issues in this proceeding. Without providing any examples of the alleged conduct, or any legal authority of its relevance, Applicant states that it has "learned" that "Spliethoff's predecessor" (presumably Dockwise) and "its subsidiary" (presumably Sevenstar Yacht Transport) have "engaged in an extensive "smear campaign" associated with the United Yacht Transport name" (Motion at 9). Then, in a leap devoid of logic, Applicant theorizes that documents sent by Spliethoff to "any customers, potential customers, vendors, or potential vendors" or internet postings of Spliethoff (or Sevenstar) which mention UNITED YACHT TRANSPORT in a negative light would be proof that Spliethoff has an "intent not to resume use" of the Mark. This far-fetched argument should be summarily rejected.

The discovery sought by Requests 24 and 25 should be denied because "intention to resume use of the mark" only becomes an issue after a party claiming "abandonment" meets its burden of proving that use of the mark was "discontinued" – a key legal predicate which is ignored by Applicant. Instead, Applicant employs the classic "bootstrap approach" – it avoids the hurdle of

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<sup>4</sup> General Objections:

C. Spliethoff objects to all Requests which seek documents which are not relevant to this trademark proceeding but instead are an effort to obtain discovery to use in Applicant's pending lawsuit against Spliethoff's subsidiary Sevenstar Yacht Transport USA Agencies, LLC in which Applicant has asserted claims for various business torts: CASE NO. 15-012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida. These Requests seek documents which are not relevant to the subject matter or issues in this trademark proceeding. Applicant's allegation in its Second Affirmative Defense that SPLIETHOFF is purportedly "denigrating" the UNITED YACHT TRANSPORT name fails to state a proper affirmative defense.

"discontinuance of use" entirely and simply declares that "a critical element is whether Spliethoff and its predecessors harbored the 'intent not to resume use'" (Motion at 9) – the first bootstrap. Then as a second bootstrap, Applicant declares that, based on the issue of "intent not to resume use," it is entitled to discovery of all of Spliethoff's and Sevenstar's communications with third parties which mention UNITED YACHT TRANSPORT because (according to Applicant) negative comments by Spliethoff, Dockwise or Sevenstar Yacht Transport make it "more or less probable" that "they had the intention not to resume use." This is a circular and baseless argument.

In addition, Applicant makes concessions in its Motion which are directly at odds with its abandonment defense. Applicant concedes at page 10 of its Motion to Compel that documents produced in discovery show that Dockwise repainted the sides of its vessels to display the Mark in connection with Dockwise's plans to sell its yacht transport business. Documents, photographs and videos produced by Spliethoff and obtained by Applicant from Mr. Van der Werf via subpoena place the time frame of the re-branding of the vessels as 2012. (*See* Exhibits "C" and "D" hereto). However, Applicant studiously ignores the legal import of these facts. Applicant has not, and Spliethoff submits that Applicant cannot, establish that there was a discontinuance of Dockwise's use of the mark from the time period in early 2012 when Dockwise began rebranding its vessels with the UNITED YACHT TRANSPORT Mark through the October 15, 2013 date of sale of Dockwise's yacht transport business to Spliethoff. Without a showing of "discontinuance of use," the secondary question of a party's "intent to not to resume" which Applicant relies on as grounds for the relevancy of these Requests never becomes an issue. Applicant's "red herring" argument that the documents sought in Requests 24 and 25 are relevant is specious and must be rejected.

Lastly, another fundamental oversight in Applicant's argument is that Spliethoff's subsidiary, Sevenstar Yacht Transport, and Applicant are direct competitors. Sevenstar and Applicant compete

for the same yacht transport customers. This fact makes it highly likely that communications by both companies to third parties (potential customers and others) may mention the other entity from time to time, even if in the course of quoting or comparing rates for freight passage. There is a distinction between the mark "UNITED YACHT TRANSPORT" and Applicant's business "UNITED YACHT TRANSPORT" which Applicant's Requests 24 and 25 and Applicant's argument seeking this discovery fail to recognize. Notably, Requests 24 and 25 are not limited to asking for documents such as marketing plans or announcements made by Spliethoff or posted online by Spliethoff which pertain to the use of Mark. Instead, the Requests seek every document reflecting a third party communication or internet posting which mentions UNITED YACHT TRANSPORT – i.e. Applicant's business, not the Mark.

Applicant's Complaint in its lawsuit against Sevenstar, filed the Broward County Circuit Court, establishes that these two entities are involved in a purely commercial dispute against the backdrop of each company's efforts to secure yacht transport contracts with the same pool of luxury yacht owners. The permissible limits of fair competition are at issue in the case, rather than any issue involving the Mark. Since Applicant failed provide the Board with any "examples" of the purported negative statements about United Yacht Transport which it seeks to use to obtain the documents sought in Requests 24 and 25, Spliethoff attaches hereto Applicant's Complaint filed against Sevenstar in the Broward County, Florida action on July 24, 2015 and Sevenstar's Motion to Dismiss filed September 8, 2015 which is pending. (*See Exhibits "H" and "I" hereto*). These court filings establish that Applicant has asserted garden-variety business tort claims against Sevenstar that do not warrant granting the broad document discovery of Requests 24 and 25 into every document that Spliethoff and/or its subsidiary Sevenstar may have sent to a third party which mentions UNITED YACHT TRANSPORT. The legal squabble commenced by Applicant against Sevenstar

based on allegations of business interference and purported misrepresentations by Sevenstar about Applicant's business partners (*see* Exhibit H hereto: Applicant's *Complaint*) has no relevance to the claims or defenses in this trademark proceeding.

**C. Request 55 of Applicant's First Request for Production**

**Request 55.** All emails, correspondence or other documents related to removing or altering the name United Yacht Transport on any internet website owned or operated by Opposer.

**Response to Request 55:** On information and belief, no such documents exist; however inquiry is being made. If any such documents are located, Spliethoff will produce such documents.

Spliethoff has no documents responsive to Request 55. Moreover, the Board should disregard Applicant's argument at page 6 of its Motion that Spliethoff has failed to respond to Request 55 because Spliethoff did not produce documents relating purported changes to the website of its "predecessor." Request 55 does not request documents relating to any Dockwise website. To the contrary, Request 55 seeks documents relating only to "any internet website owned or operated by Opposer" (emphasis supplied) and Applicant's "Definitions" in its First Request for Production do not define Opposer to include its predecessors.<sup>5</sup> "A party cannot add new requests or broaden the scope of prior requests through a motion to compel." Handelman, Jeffrey A., *Guide to TTAB*

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<sup>5</sup> In its First Request for Production of Documents, Applicant defines Opposer as follows:

B. "Opposer" as used herein means Opposer, Spliethoff's Bevrachtungskantoor B.V., and all of its subsidiaries (including but not limited to Sevenstar), as well as officers, directors, employees, agents, and any other persons acting on behalf of Opposer or any subsidiaries.

(*See* Exhibit 3 to Motion at page 1).

*Practice, Volume I*, at § 12.17[A]. Spliethoff reiterates that it has no documents responsive to Request 55.

**D. Request (1) of Subpoena Duces Tecum to Sevenstar Yacht Transport**

**Document Request (1):**

All communications and documents with any third parties, including but not limited to vendors, customers and potential vendors and customers, which refer to United Yacht Transport, UYT, or United.

**Objection to Request (1):**

Objection: relevancy. Communications by SEVENSTAR with "any third parties... which refer to United Yacht Transport, UYT or United" have no relevance to the subject matter and issues in this trademark proceeding. Applicant's allegation in its Second Affirmative Defense that SPLIETHOFF is purportedly "denigrating" the UNITED YACHT TRANSPORT name fails to state a proper affirmative defense.

This Request is an improper effort by Applicant to obtain documents irrelevant herein for Applicant to use in Applicant's pending lawsuit against SEVENSTAR involving claims for various business torts which SEVENSTAR is vigorously defending. *See* CASE NO. 15- 012196 CACE, Circuit Court of the Eleventh Judicial Circuit, In and For Broward County, Florida.

To avoid unnecessary repetition, Spliethoff incorporates its discussion in B above in response to the Motion to Compel regarding Request (1) of the subpoena to Sevenstar.

**E. Requests (4) and (6) – (8) of Subpoena Duces Tecum to Clemens Van der Werf**

Mr. Van der Werf has produced all responsive documents to Requests (4) and (8) of the subpoena served upon him that are in his possession, custody and control. Mr. Van der Werf is the former President of Dockwise Yacht Transport LLC. He left Dockwise's employ on June 1, 2013. (*See* Exhibit "J" hereto). He has produced all documents responsive to Requests (4) and (8) which he located after searching his home computer and personal records.

Mr. Van der Werf has objected, on relevancy grounds, to producing documents responsive to (6) and (7) but states here in further response that the only document which he has located that

would be responsive to Requests (6) or (7) is his severance agreement with Dockwise. This agreement, has no relevance to the issues in this proceeding and thus is outside the scope of permissible discovery under Rule 26(b), irrespective of the timing of an objection.

#### IV. CONCLUSION

For the reasons and authorities set forth herein, Opposer Spliethoff Bevrachtingskantoor B.V, prays that the Trademark Trial and Appeal Board enter an Order which denies Applicant's Motion to Compel in its entirety.

Dated: December 4, 2015

Respectfully submitted,

/s/ J. Michael Pennekamp

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Opposer's Memorandum of Law in Opposition to Applicant's Motion to Compel has been e-filed via ESTTA and served upon Bryan D. Hull, Esquire, counsel for Applicant United Yacht Transport, LLC, by email to [bhull@bushross.com](mailto:bhull@bushross.com), this 4<sup>th</sup> day of December, 2015.

/s/ Sandra I. Tart  
\_\_\_\_\_  
Sandra I. Tart



## Dockwise to sell Dockwise Yacht Transport

Monday, 7 November 2011

**Dockwise Ltd has today announced it has signed a letter of intent to sell its wholly-owned subsidiary, Dockwise Yacht Transport (DYT) to Coby Enterprises Corp, supported by private equity and with participation of the existing management of DYT. Closing of the transaction is conditional upon market customary conditions.**

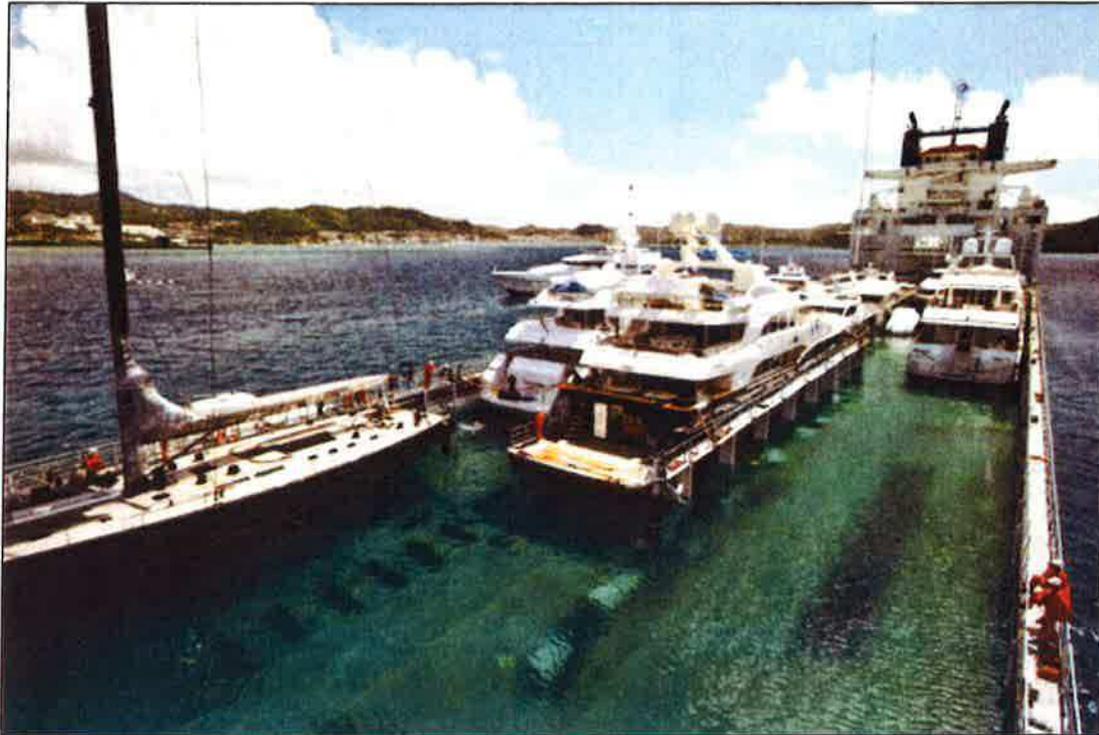
The proceeds of this cash deal will be disclosed upon completion of the transaction which is expected to take place during the next quarter. Following the disposal of DYT, Dockwise will be focused solely on its core Heavy Marine Transport (HMT), Transport and Installation (T&I) and Logistical Management activities.

DYT is the world leader in the transport of yachts and leisure craft between premier sailing regions around the globe. Its main market among others is the annual transatlantic migration, in the second and fourth quarters of the year, of luxury yachts from Florida and the Caribbean to the Mediterranean and back. The company owns three dedicated vessels; Super Servant 3, Super Servant 4 and Yacht Express and offers both premium float-on / float-off and lift-on / lift-off yacht transportation services.



DYT has long been operated independently from Dockwise and there was no significant overlap in customers or synergy with the remaining Dockwise fleet. DYT revenue and EBITDA further amounted to a small fraction of the overall Dockwise. It is the intention of the buyers to maintain an independent company with a single focus on the business of transporting leisure craft around the world.

Given the three-vessel structure of DYT, and plans both for the deployment and maintenance of the ships in the immediate future, a phased closure process is planned for the first quarter of 2012.



Andre Goedee, Chief Executive, Dockwise Ltd, said: *"DYT played a significant role in the origins of Dockwise, being the product of the merger between Dock Express and Wijsmuller, but with the evolution of our business it is no longer a strategic asset. Dockwise is now focused on the Oil & Gas Industry as a dedicated provider of transportation and installation services. Today's announcement will allow management within the business to focus exclusively on this task and to reallocate capital to supporting the development of our world-leading business."*

COBY Enterprises Inc. is a marine solutions, transportation and logistics company providing services in domestic and international markets. The company is headquartered in New York. The Company intends to provide maritime services to the highly evolved and modernized yacht transport business. Steven Byle CEO of COBY stated, "We are excited to get involved in this dynamic and interesting niche in marine transportation. DYT clients can look forward to uninterrupted service in the short term, and improved and expanded services as we go forward. The DYT team and vessels crews will stay in place, and there will be no change in routes or schedules. Moving toward the future, however, our plans include an immediate program for renewal and upgrade of the yacht carrier fleet. And we further intend to add new routes and services for our clients in the years to come."

Clemens Van der Werf, President, Dockwise Yacht Transport LLC, said: *"With Coby Enterprises we have found a solid partner who shares our long term vision on the yacht transport industry, and is willing to invest in the growth of our company in order to keep serving yacht owners with premium transport options for their travel needs all around the world"*

**Dockwise Yacht Transport**

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[www.yacht-transport.com](http://www.yacht-transport.com)

**SALE AND PURCHASE AGREEMENT**

**between**

**DOCKWISE TRANSPORT B.V.**  
**SUPER SERVANT 3 B.V.**  
**SUPER SERVANT 4 B.V.**  
**and**  
**YACHT EXPRESS B.V.**  
**as the Sellers**

**and**

**UYT HOLDING COÖPERATIEF U.A.**  
**as the Purchaser**

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in relation to the entire issued share  
capital of DYT Netherlands B.V. and the vessels Super Servant 3,  
Super Servant 4 and Yacht Express

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NautaDutilh N.V.

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## SALE AND PURCHASE AGREEMENT

### THE UNDERSIGNED

1. **Dockwise Transport B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, whose corporate seat is at Breda, the Netherlands ("**Dockwise Transport**");
2. **Super Servant 3 B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, whose corporate seat is at Breda, the Netherlands ("**SS3**");
3. **Super Servant 4 B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, whose corporate seat is at Breda, the Netherlands ("**SS4**"); and
4. **Yacht Express B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, whose corporate seat is at Breda, the Netherlands ("**YE**");

Dockwise Transport, SS3, SS4 and YE are hereinafter jointly also referred to as the "**Sellers**" and each of them also as a "**Seller**";

and

5. **UYT Holding Coöperatief U.A.**, a cooperative with exclusion of liability (*coöperatie met uitsluiting van aansprakelijkheid*, organised under the laws of the Netherlands, whose corporate seat is at [●], the Netherlands (the "**Purchaser**");

the Sellers and the Purchaser are hereinafter jointly also referred to as the "**Parties**" and each of them also as a "**Party**".

### RECITALS

- A. Dockwise Transport is mainly active in the heavy lift transportation industry. In addition, Dockwise Transport owns a division which is

involved in the transport of yachts and catamarans from or to the Caribbean or Mediterranean and - on return voyages - lift-boats and similar cargo's (the "**Yacht Transportation Business**"). Dockwise Transport initiated a controlled auction process to divest its Yacht Transportation Business. The Purchaser has been selected as the purchaser of the Yacht Transportation Business and by the acquisition thereof wishes to strengthen its position in yacht transportation.

- B. The Yacht Transportation Business consists of all issued and outstanding shares in the share capital of DYT Netherlands B.V. (the "**Shares**") and of Dockwise Yacht Transport LLC and DYT Europe Srl (the "**Subsidiary Shares**"), the Vessel SS3 (as defined hereafter), the Vessel SS4 (as defined hereafter) and the Vessel YE (as defined hereafter).
- C. Dockwise Transport is entitled to the Shares and DYT (as defined hereafter) is entitled to the Subsidiary Shares.
- D. SS3 has the right of ownership with respect to the Vessel SS3, SS4 has the right of ownership with respect to the Vessel SS4, and YE has the right of ownership with respect to the Vessel YE.
- E. The Sellers have complied with the provisions of the Works Council Act (*Wet op de ondernemingsraden*).
- F. Dockwise Transport wishes to sell and transfer and the Purchaser wishes to purchase and acquire the Shares and, indirectly, the Subsidiary Shares, and SS3, SS4 and YE wish to sell and transfer and the Purchaser wish to purchase and acquire respectively the Vessel SS3, the Vessel SS4 and the Vessel YE, all on the terms and conditions of this Agreement.

## **THE PARTIES AGREE AS FOLLOWS**

### **1. INTERPRETATION**

#### **1.1. Definitions**

The following capitalised terms and expressions in this Agreement shall have the following meanings:

<b>Accounts</b>	each of the unaudited balance sheet and profit and loss account of each
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	Company, and where relevant of SS3, SS4 and YE, for the period ended on 31 December 2011 together with the explanatory notes thereto
<b>Acquisition Transaction</b>	has the meaning ascribed thereto in Clause 5.7
<b>Affiliate</b>	in relation to any Person, any subsidiary or direct or indirect holding company of that Person and any other subsidiary of that holding company
<b>Agreement</b>	this sale and purchase agreement and the Schedules and Annexes
<b>Annex</b>	an annex to a Schedule
<b>Authority</b>	any supranational governmental commission, council, directorate, court, trade agency, regulatory body or other authority, or any other national government, any legislature, any political subdivision of a national government or of any state, county, province or local jurisdiction therein, or any agency or instrumentality of any such government or political subdivision to the extent it has jurisdiction
<b>Breach</b>	has the meaning ascribed thereto in Clause 9.1.2
<b>Business Day</b>	a day on which banks are generally open in the Netherlands for normal business
<b>Civil Law Notary</b>	a civil law notary of NautaDutilh, or any of his/her deputies
<b>Claim</b>	any claim for payment made by the Purchaser under this Agreement

<b>Closing Cash Payment</b>	has the meaning ascribed thereto in Clause 3.1
<b>Closing Conditions</b>	the conditions precedent ( <i>opschortende voorwaarden</i> ) set out in Clause 4
<b>Closing</b>	the completion of the transfer of the Shares (including, indirectly, the Subsidiary Shares), the Vessel SS3, the Vessel SS4 and the Vessel YE by the Sellers to the Purchaser
<b>Closing Date</b>	the date of the Closing
<b>Companies</b>	DYT and all of the Subsidiaries, and "Company" means any one of them
<b>Compensation</b>	an amount to be paid by the Sellers under a Claim pursuant to Clause 10.1
<b>Compensation Payment</b>	has the meaning ascribed thereto in Clause 11.9
<b>Curacao Notary</b>	a civil law notary of Notariskantoor Mr A.M.P. Eshuis, Rooi Catootjeweg 1, Willemstad Curacao, or any of his/her deputies
<b>Damage</b>	damage as set out in Article 6:96 of the DCC including direct, indirect and consequential loss and loss of profits ( <i>gederfde winst</i> ) established on a United States dollar-for-United States dollar basis and without applying any multiplier, valuation or valuation method
<b>Data Room</b>	the data room made available to the Purchaser, its Affiliates and their representatives and advisers from 11 November 2011 to 9 February 2012, which has been made available, together

with the Q&A log file, on cd-rom(s) at the signing of this Agreement, as attached hereto as Schedule 5

<b>DCC</b>	Dutch Civil Code ( <i>Nederlands Burgerlijk Wetboek</i> )
<b>Deed of Transfer Shares</b>	the notarial deed of transfer of the Shares referred to in Clause 2.3, in the agreed form as attached hereto as <u>Schedule 1.A</u>
<b>Deed of Transfer SS3</b>	the notarial deed of transfer of the Vessel SS3 referred to in Clause 2.4, in the agreed format as attached hereto as <u>Schedule 1.B</u>
<b>Deed of Transfer SS4</b>	the notarial deed of transfer of the Vessel SS4 referred to in Clause 2.4, in the agreed form as attached hereto as <u>Schedule 1.B</u>
<b>Deeds of Transfer Vessels</b>	the Deed of Transfer SS3, the Deed of Transfer SS4 and the Deed of Transfer YE
<b>Deed of Transfer YE</b>	the notarial deed of transfer of the Vessel YE referred to in Clause 2.4, in the agreed form as attached hereto as <u>Schedule 1.B</u>
<b>Defaulting Party</b>	has the meaning ascribed thereto in Clause 6.4.2
<b>Defaulting Vessel</b>	has the meaning ascribed thereto in Clause 7.1.3
<b>Disclosed Information</b>	(i) all information in the Data Room, (ii) all information provided to the Purchaser and/or its advisers via the information memorandum of 12 August 2011, the addendum to the information

memorandum of 24 August 2011 and the Net Assets and Net Debt Sheet, (iii) all information included in the Disclosure Letter and (iv) all information on the website: [www.yacht-transport.com](http://www.yacht-transport.com)

<b>Disclosure Letter</b>	the letter with Annexes thereto of even date with this Agreement from the Sellers to the Purchaser attached as <u>Schedule 6</u> (Disclosure Letter)
<b>Dockwise Transport</b>	Dockwise Transport B.V.
<b>Due Diligence Investigation</b>	has the meaning ascribed thereto in Clause 8.1.1
<b>DYT</b>	DYT Netherlands B.V., a private company with limited liability ( <i>besloten vennootschap met beperkte aansprakelijkheid</i> ) organised under the laws of the Netherlands, whose corporate seat is at Breda, the Netherlands
<b>Effective Date</b>	29 February 2012
<b>Employees</b>	the employees of the Companies
<b>Encumbrances</b>	any rights of pledge, mortgage or usufruct, liens or attachments or similar charges
<b>Environmental Licenses</b>	has the meaning ascribed thereto in section 10.4 of Part A of <u>Schedule 7</u> (Representations and Warranties)
<b>EUR, euro or €</b>	the basic unit of currency among participating European Union countries
<b>Excess Recovery</b>	has the meaning ascribed thereto in Clause 11.9

<b>Group</b>	in relation to any Person, such Person and its Affiliates
<b>Long Stop Date</b>	1 June 2012
<b>Material Adverse Effect</b>	has the meaning ascribed thereto in Clause 4.1.2
<b>NautaDutilh</b>	NautaDutilh N.V., lawyers, civil law notaries and tax advisers, acting as advisers to the Sellers
<b>Net Assets and Net Debt Sheet</b>	the sheet setting out the agreed quantum of net assets and net debt of the Companies as at 29 February 2012 as attached hereto as <u>Schedule 3</u>
<b>Note</b>	the loan by Dockwise Transport to the Purchaser referred to in Clause 3.1 and in <u>Schedule 4</u> (Closing), in the agreed form as attached hereto as <u>Schedule 2</u>
<b>Notary Account</b>	the bank account in the name of <i>Kwaliteitsrekeningen Notarissen</i> Rotterdam, NautaDutilh N.V. with ABN AMRO Bank N.V., account number 40.44.25.909, IBAN NL62ABNA0404425909 and BIC ABNANL2A
<b>Notary Letter</b>	the letter between the Parties, the Civil Law Notary, the Curacao Notary and the Agent (as defined therein) setting out the payment instructions at Closing, in the agreed form as attached hereto as <u>Schedule 10</u>
<b>Parties</b>	the parties to this Agreement and "Party" means any one of them
<b>Permit</b>	a licence, exemption, consent or other

	authorisation or clearance, howsoever named, granted by an Authority
<b>Person</b>	a natural person or a partnership, company, association, cooperative, mutual insurance society, foundation or any other body which operates externally as an independent unit or organisation
<b>Principals of Purchaser</b>	Principals of the ultimate parent company of the Purchaser: Steven Byle, Clemens van der Werf, and Michael Cohen jointly and severally
<b>Purchase Price</b>	the aggregate purchase price for the Shares and the Vessels referred to in Clause 3 (including the Note)
<b>Purchaser</b>	UYT Holding Coöperatief U.A.
<b>Purchaser's Warranties</b>	the representations and warranties of the Purchaser set out in part B of <u>Schedule 7</u> (Representations and Warranties)
<b>Representations and Warranties</b>	the Sellers' Warranties and the Purchaser's Warranties
<b>Repurchase Price</b>	has the meaning ascribed thereto in Clause 7.1.3
<b>Schedule</b>	a schedule to this Agreement
<b>Sellers</b>	Dockwise Transport, SS3, SS4 and YE, and "Seller" means any one of them
<b>Sellers' Warranties</b>	the representations and warranties of the Sellers set out in part A of <u>Schedule 7</u> (Representations and Warranties)
<b>Shares</b>	all of the 180 (one hundred eighty) issued shares with a nominal value of

	EUR 100 (one hundred euro) each in the share capital of DYT with numbers 1 (one) through 180 (one hundred eighty)
<b>SS3</b>	Super Servant 3 B.V.
<b>SS4</b>	Super Servant 4 B.V.
<b>Subsidiaries</b>	the wholly-owned subsidiaries of DYT, being Dockwise Yacht Transport LLC and DYT Europe Srl
<b>Subsidiary Shares</b>	all issued and outstanding shares in the share capital of each of the Subsidiaries
<b>Tax</b>	a tax, levy, duty, or other charge or withholding of a similar nature, as well as any contribution to any social security or employee social security scheme, including any penalty, interest or costs payable in connection with any failure to pay or any delay in paying any of the same
<b>Tax Authority</b>	an Authority competent to impose and/or collect Tax
<b>Third Party Claim</b>	a claim made by a third party against any of the Companies
<b>Third Party Sum</b>	has the meaning ascribed thereto in Clause 11.9
<b>Time Charter Agreement</b>	has the meaning referred to in Clause 7.3 and in <u>Schedule 4</u> (Closing), in the agreed form as attached hereto as <u>Schedule 11</u>
<b>Transaction</b>	the transactions contemplated by this Agreement
<b>USD or \$</b>	the basic unit of currency of the United

	States of America
<b>Vessel Registry</b>	the vessel registry ( <i>Scheepsregister</i> ) with the <i>Kadaster en Openbare Registers</i> of Curacao
<b>Vessel SS3</b>	the submersible heavy transport vessel named "Super Servant 3", registered at the Vessel Registry with number 1385 with a gross tonnage of 10,224 tons, owned by SS3
<b>Vessel SS3 Costs</b>	has the meaning ascribed thereto in Clause 5.6.c
<b>Vessel SS3 Time Charter</b>	has the meaning ascribed thereto in Clause 7.3
<b>Vessel SS4</b>	the submersible heavy transport vessel named "Super Servant 4", registered at the Vessel Registry with number 1386 with a gross tonnage of 12,642 tons, owned by SS4
<b>Vessel YE</b>	the motor vessel named "Yacht Express", registered at the Vessel Registry with number 1918 with a gross tonnage of 17,951 tons, owned by YE
<b>Vessels</b>	Vessel SS3, Vessel SS4 and Vessel YE and " <b>Vessel</b> " means any one of them
<b>Yacht Transportation Business</b>	has the meaning ascribed thereto in recital A
<b>YE</b>	Yacht Express B.V.

## 1.2. Interpretation

- a. No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.

- b. Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.
- c. English language words used in this Agreement intend to describe Dutch legal concepts only and the consequences of the use of those words in English law or any other foreign law shall be disregarded.
- d. Where in this Agreement a Dutch term is given in italics or in italics and in brackets after an English term and there is an inconsistency between the Dutch and the English term, the meaning of the Dutch term prevails.
- e. References to any Dutch legal concept shall, in respect of any jurisdiction other than the Netherlands, be deemed to include the concept which in that jurisdiction most closely approximates the Dutch legal concept.
- f. The words "include", "included" or "including" are used to indicate that the matters listed are not a complete enumeration of all matters covered.
- g. In this Agreement, a company is a subsidiary of another company, its holding company, if that other company:
  - i. holds a majority of the voting rights in it; or
  - ii. has the right, either alone or pursuant to an agreement with other shareholders or members to appoint or remove a majority of its management board or its supervisory board (if any); or
  - iii. is a shareholder or member of it and controls alone or together with other Persons, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it, or;
  - iv. if it is a subsidiary of a company which is itself a subsidiary of that other company.

- h. In this Agreement, a company is a wholly-owned subsidiary of another company if it has no shareholders or members except that other and that other's wholly-owned subsidiaries or Persons acting on behalf of that other or its wholly-owned subsidiaries.
- i. A claim, proceeding, dispute, action or other matter will only be deemed to have been threatened if any written demand or statement has been made or any written notice has been given.
- j. The headings used in this Agreement are for convenience or reference only and are not to affect the construction of this Agreement or to be taken into consideration in the interpretation of this Agreement.
- k. Unless otherwise stated, references to Clauses are to Clauses of this Agreement.

### **1.3. Schedules and Annexes**

Any Schedule and Annex referred to in this Agreement forms an integral and inseparable part of this Agreement.

## **2. SALE, PURCHASE AND TRANSFER OF THE SHARES AND VESSELS**

### **2.1. Sale and purchase of the Shares**

Subject to the terms and conditions set out in this Agreement, Dockwise Transport hereby sells the Shares to the Purchaser and the Purchaser hereby purchases the Shares from Dockwise Transport.

### **2.2. Sale and purchase of the Vessels**

Subject to the terms and conditions set out in this Agreement,

- a. SS3 hereby sells the Vessel SS3 to the Purchaser and the Purchaser hereby purchases the Vessel SS3 from SS3;
- b. SS4 hereby sells the Vessel SS4 to the Purchaser and the Purchaser hereby purchases the Vessel SS4 from SS4; and

- c. YE hereby sells the Vessel YE to the Purchaser and the Purchaser hereby purchases the Vessel YE from YE.

### **2.3. Transfer of the Shares**

On the Closing Date, Dockwise Transport shall transfer (*leveren*) the Shares to the Purchaser through the execution of the Deed of Transfer Shares before the Civil Law Notary. A draft of the Deed of Transfer Shares is attached hereto as Schedule 1.A (Deed of Transfer Shares).

### **2.4. Transfer of the Vessels**

On the Closing Date,

- a. SS3 shall transfer (*leveren*) the Vessel SS3 to the Purchaser through the execution of the Deed of Transfer SS3 before the Curacao Notary, and subsequent registration of such transfer in the Vessel Registry. A draft format of the Deed of Transfer SS3 is attached hereto as Schedule 1.B (Deeds of Transfer Vessels);
- b. SS4 shall transfer (*leveren*) the Vessel SS4 to the Purchaser through the execution of the Deed of Transfer SS4 before the Curacao Notary, and subsequent registration of such transfer in the Vessel Registry. A draft format of the Deed of Transfer SS4 is attached hereto as Schedule 1.B (Deeds of Transfer Vessels);
- c. YE shall transfer (*leveren*) the Vessel YE to the Purchaser through the execution of the Deed of Transfer YE before the Curacao Notary, and subsequent registration of such transfer in the Vessel Registry. A draft format of the Deed of Transfer YE is attached hereto as Schedule 1.B (Deeds of Transfer Vessels).

## **3. PURCHASE PRICE AND PAYMENT**

### **3.1. Purchase Price**

- 3.1.1 The purchase price for the Shares and the Vessels shall be a sum equal to (i) an amount payable in cash of USD 45,000,000 (fort-two million five hundred thousand United States dollars) as further specified in the Net Assets and Net Debt Sheet (the "**Closing Cash Payment**"), and (ii) a loan provided by Dockwise Transport to the Principals of the Purchaser in the amount of USD 13,671,000 (thirteen million six hundred seventy-one

thousand United States dollars) in accordance with the terms and conditions as set out in Schedule 2 (the "Note") (the aggregate of the Closing Cash Payment and the amount of the Note are hereafter together referred to as the "**Purchase Price**").

- 3.1.2 The sale and purchase of the Shares and the Vessels shall, as between the Parties, be deemed for all purposes to be made with effect from the Effective Date, subject to Closing.

### **3.2. Closing Cash Payment**

- 3.2.1 On the Closing Date, the Closing Cash Payment shall be paid by the Purchaser in same day funds. The Purchaser shall transfer the Closing Cash Payment, 1 (one) day before the Closing Date to the Notary Account with reference to "8005.1535 (Closing Project Three)".
- 3.2.2 Until the execution of the Deed of Transfer Shares and the Deeds of Transfer Vessels, the Civil Law Notary shall hold the Closing Cash Payment for the Purchaser. The Civil Law Notary is hereby instructed by the Parties immediately after the Deed of Transfer Shares and the Deeds of Transfer Vessels shall have been executed to release the Closing Cash Payment in accordance with, and all as further set out in the Notary Letter.

## **4. CONDITIONS PRECEDENT**

### **4.1. Closing Conditions**

#### **4.1.1 Conditions to Obligations of Sellers and Purchaser**

The obligations of the Sellers and the Purchaser to proceed with the Closing shall be subject to the following conditions precedent, which to the extent permitted by law may be waived in a written agreement of the Sellers and Purchaser:

- a. No order or other legal or regulatory restraint or prohibition preventing the consummation of the Transaction will be in effect, and no action will have been brought by an Authority seeking any of the foregoing be pending or threatened. No action taken by any Authority, and no statute, rule, regulation or order will have been enacted, entered, enforced or deemed applicable to the Transaction, which makes the consummation of the Transaction

illegal; and

- b. Purchaser and Sellers will have timely obtained from each Authority all approvals, waivers and consents, if any, necessary for consummation of, or in connection with, the Transaction.

#### 4.1.2 **Additional Conditions**

The obligations of the Purchaser to proceed with the Closing shall be subject to the satisfaction, or written waiver of the Purchaser at or before the Closing (such condition being solely for the benefit of the Purchaser and capable of being waived by the Purchaser in its sole discretion without notice, liability or obligation to any other Person) of any event or condition of any character that has had a Material Adverse Effect on any of the Companies, SS3, SS4 or YE not having occurred between the date of this Agreement and the Closing Date.

For purposes of this Clause "**Material Adverse Effect**" means any material adverse effect:

- i. in respect of SS3, SS4, YE and Dockwise Yacht Transport LLC, which, in respect of balance sheet items of, in the aggregate exceeds an amount of USD 500,000 (five hundred thousand United States dollars) to be determined on a United States dollar for United States dollar basis; and
- ii. in respect of all Companies, which in respect of recurring items on the profit and loss statement exceeds in the aggregate an amount of USD 250,000 (two hundred fifty thousand United States dollars) and in respect of non-recurring items on the profit and loss statement exceeds in the aggregate an amount of USD 500,000 (five hundred thousand United States dollars),

unless and to the extent insured.

The amounts referred to in i. and ii. above will be established on the basis of:

- A. the accounting principles used by the Companies, SS3, SS4 and YE in preparing its Accounts, consistently applied; and
- B. the amounts referred to in the Accounts.

**4.2. Satisfaction of the Closing Conditions**

The Parties shall, from the date hereof, each use their reasonable efforts to cause the Closing Conditions to be satisfied with a view to completing the Transaction in accordance with the timing described in Clause 6.1.

**5. PRE-CLOSING COVENANTS****5.1. Conduct of business**

Prior to the Closing Date, Dockwise Transport shall, to the extent permitted under the laws of the Netherlands, cause DYT, SS4, YE and SS3 to conduct their operations in the ordinary course of business as a going concern consistent with past practice.

**5.2. Negative Covenants**

Without limiting the generality or effect of Clause 5.1, from the date hereof until the earlier of the termination hereof and the Closing, Dockwise Transport will not, and will cause each of the Companies and SS4, YE and SS3 not to, cause or permit any of the following (except to the extent expressly provided otherwise herein, as expressly consented to in writing by Purchaser or as required by applicable law (in which case Dockwise Transport will notify Purchaser before taking any such action)):

- a. cause or permit any amendments to its organizational documents, except as expressly contemplated by this Agreement;
- b. issue or grant any securities or agree to issue or grant any securities;
- c. reduce the amount of any insurance coverage provided by existing insurance policies;
- d. terminate or waive any right or claim of a value greater than USD 10,000 (ten thousand United States Dollars);
- e. take or agree in writing or otherwise to take, any of the actions described in the foregoing clauses of this Clause 5.2 or any action which would (i) make any of the Sellers' Warranties untrue or incorrect, (ii) prevent Dockwise Transport from performing or causing the Companies or SS4, YE and SS3 not to perform in any material respect one or more covenants required hereunder to be performed by it, or (iii) delay the consummation of the

Transaction.

**5.3. No shareholder's resolutions**

Dockwise Transport shall procure that until the Closing Date, no shareholder's resolutions relating to respectively DYT, SS4, YE and SS3 will be passed whether at or outside of any general meeting of shareholders without the prior written consent of the Purchaser, except for those resolutions which are required in order to prepare for or complete the Transaction.

**5.4. Access**

5.4.1 Until the earlier of the termination of this Agreement and the Closing Date, (1) Dockwise Transport will afford the Purchaser and its accountants, counsel and other representatives (including but not limited to its financing sources and their representatives) reasonable access during normal business hours to (A) all of the properties, books, contracts, commitments and records of the Companies and (B) all other information concerning the business, intellectual property, properties and personnel of the Companies as such persons may reasonably request, and (2) Dockwise Transport will provide to Purchaser and its accountants, counsel and other representatives (including but not limited to its financing sources and their representatives) copies of internal financial statements promptly upon request.

5.4.2 Until the earlier of the termination of this Agreement and the Closing Date, Dockwise Transport will cause the officers, counsel or other representatives of it and the Companies to promptly notify Purchaser of, and to confer from time to time as requested by Purchaser with one or more representatives of Purchaser during ordinary business hours to discuss, any material changes or developments in the operational matters of the Companies and the general status of the ongoing business and operations of the Companies.

**5.5. Vessel inventory**

The Sellers shall procure that before the Closing Date, all vessel inventory owned by Dockwise Shipping B.V. but belonging to respectively the Vessel SS4, the Vessel YE and the Vessel SS3, shall be transferred to DYT on terms and at a cost that is no greater than fair market value of such items, taking into account wear and tear. The

Purchaser is entitled to engage an independent surveyor to confirm the purchase price for the vessel inventory not exceeding the fair market value of such items.

#### **5.6. Vessel SS3**

The Parties agreed that Dockwise Transport performed a voyage with the Vessel SS3 from the Far East. This voyage has been combined with required dry docking for the Vessel SS3 in a Chinese yard, wherein such activities were procured at a lower cost. Given the mutual benefit to the Parties, Dockwise Transport and the Purchaser agree that:

- a. prior to the signing of this Agreement, the Vessel SS3 has sailed to China;
- b. Dockwise Transport has cooperated with the Purchaser in contracting a Chinese yard and Dockwise Transport has tendered and contracted the yard and other service providers to perform the dry docking scope of work, which scope of work has been confirmed by the Purchaser, primarily to fulfil class required special survey maintenance, upon the arrival of the Vessel SS3;
- c. the cost of the services referred to under b. above (including all the non-yard costs of services and parts procured by Anglo Eastern to conclude all works during the special survey repair period), and all costs (excluding depreciation and capital charges of the Vessel SS3) of mobilization to China and of demobilization back to Sierra Leone, being an agreed total amount of USD 2,300,000 (two million three hundred thousand United States dollars) (the "**Vessel SS3 Costs**") have been set-off in the calculation of the Closing Cash Payment;
- d. the Purchaser shall, at its discretion and risk and cost, arrange to replace the sidewalls to the Vessel SS3, which sidewalls will be transferred to the Purchaser at the Closing at no additional cost. Dockwise Transport shall be responsible for storage of the sidewalls until the Closing.

#### **5.7. No Shop**

From the date hereof until the earlier of the termination of this Agreement pursuant to its terms and 1 July 2012, the Sellers will not, and will cause

the officers, directors, employees, financial advisors, representatives, agents and Affiliates of the Sellers not to, directly or indirectly, take any action to solicit, initiate, seek, entertain, encourage, support, assist, participate in any negotiations or communications regarding, or cooperate with any inquiry, proposal or offer from, or furnish any information to, any third party regarding any merger, recapitalization or consolidation with or involving the Companies, the Vessels or any acquisition of stock or right to acquire stock (including any conversion right) or acquisition or exclusive license of any assets of the Company or any financing transaction (or any other similar transaction), all to the extent the consummation thereof would interfere with the Sellers' ability to consummate the Transaction contemplated hereby (an "**Acquisition Transaction**"). Upon execution of this Agreement, the Sellers will, and will cause their officers, directors, employees, financial advisors, representatives, agents and Affiliates, immediately cease and cause to be terminated any existing direct or indirect discussions with any Person (other than Purchaser) that are in respect of an Acquisition Transaction.

**5.8. Notification**

Each Party undertakes to notify the other Parties in writing promptly after becoming aware of any breach of the covenants set out in this Clause 5.

**6. CLOSING**

**6.1. Timing**

The Parties shall undertake their reasonable best efforts to complete the Closing by 1 June 2012 subject to the satisfaction of the Closing Conditions.

**6.2. Place of Closing**

The Closing shall take place at the offices of NautaDutilh in Rotterdam, the Netherlands at 10 a.m. CET on the date specified in Clause 6.1, or, alternatively, on the 5<sup>th</sup> (fifth) Business Day after the date on which the Closing Conditions have been satisfied or, where permitted, waived by the beneficiary of such Closing Condition, or at such other time and on such other date as the Parties may agree in writing.

**6.3. Repayment of debt and release of guarantees**

6.3.1 At or before the Closing, Dockwise Transport shall procure that all debt due from Dockwise Transport and any member of the Dockwise Transport Group to any Company, is satisfied in full.

6.3.2 At or before the Closing, Dockwise Transport shall procure that all debt due from any Company to Dockwise Transport or any member of the Dockwise Transport Group or any third party, is satisfied in full.

6.3.3 Any payment obligations under this Clause 6.3 shall, to the extent possible, be discharged by way of set-off (*verrekening*) against other payment obligations referred to in this Clause 6.3.

6.3.4 The adjustments set forth in this Clause 6.3 are reflected in the Net Assets and Net Debt Sheet and Dockwise Transport shall provide such documentation to evidence the completion of the matters above as is reasonably requested by the Purchaser.

**6.4. Further action to be taken at Closing**

6.4.1 At the Closing, each Party shall further take such action and shall sign such documents listed in relation to it or its Group in Schedule 4 (Closing).

6.4.2 If for any reason a Party (the "**Defaulting Party**") does not or does not procure to do all things listed in relation to it or its Group in this Clause or Schedule 4 (Closing), any Party not belonging to the Defaulting Party's Group may, notwithstanding any other provision set out in this Agreement, elect (in addition and without prejudice to any other rights or remedies available to it) to terminate this Agreement (except for Clause 14.1 (Confidentiality), Clause 16 (Miscellaneous) and the relevant provisions of Clause 1 (Interpretation) or to fix a new date for the relevant Closing.

**7. POST CLOSING COVENANTS**

**7.1. Further cooperation**

7.1.1 The Parties will positively consider any suggestion relating to opportunities for further cooperation in the field of their respective activities.

7.1.2 For a period of 5 (five) years from Closing, if the Purchaser and/or the Companies are given any opportunity in the heavy lift transportation industry, which for the purpose of this Clause shall mean having a total cargo weight of 3,000 tons or more, or any jackup or other mobile drilling rig, the Purchaser shall, or shall arrange for the Companies, to notify Dockwise Transport and shall co-operate and cause Companies to co-operate with Dockwise Transport in the pursuit and execution of the opportunity by Dockwise Transport, against a market conform commission. If Dockwise Transport does not accept this opportunity, then the Purchaser and/or the Companies shall be entitled to pursue and execute any such opportunity on its own.

7.1.3 Should one or more of the Vessels be used in the execution of any such above opportunity without this opportunity having been offered to Dockwise Transport first (the "**Defaulting Vessel**"), then Dockwise Transport shall have the right to repurchase the Defaulting Vessel(s) for a consideration payable by Dockwise Transport to the Purchaser (the "**Repurchase Price**"), upon Dockwise Transport exercising its above right, of:

- i. USD 5,000,000 (five million United States dollars) each, if it concerns either the Vessel SS3 or the Vessel SS4; and
- ii. USD 40,000,000 (forty million United States dollars) if it concerns the Vessel YE.

The Repurchase Price shall be set-off against the balance of the Note at the time of the exercise of the above right by Dockwise Transport and the remainder shall be payable by Dockwise Transport to the Purchaser in cash prior to or concurrently with the transfer of ownership of the Defaulting Vessel(s).

7.1.4 If Dockwise Transport does not invoke its right of repurchase as set out under Clause 7.1.3, then the event making one or more of the Vessels a Defaulting Vessel(s) shall constitute an event of default under the Note as a consequence of which the balance of the Note shall become immediately and unconditionally payable by the Purchaser to Dockwise Transport.

7.1.5 For a period of 5 (five) years from Closing, if Dockwise Transport or any member of the Dockwise Transport Group are given any opportunity in

the transport of yacht or personal pleasure craft or any cargo having a total cargo weight of 3,000 tons or less, Dockwise Transport shall itself notify or shall procure that any member of the Dockwise Transport Group notifies the Purchaser and shall co-operate with the Purchaser in the pursuit and execution of the opportunity by Purchaser or the Companies against a market conform commission. If the Purchaser or any of the Companies do not accept this opportunity, then Dockwise Transport or any member of the Dockwise Transport Group shall be entitled to pursue and execute any such opportunity on its own.

- 7.1.6 Should Dockwise Transport or any member of the Dockwise Transport Group execute any opportunity set out in Clause 7.1.5 above without this opportunity first having been offered to the Purchaser or any of the Companies, Dockwise Transport shall pay to the Purchaser or such company as Purchaser shall designate, a commission of 5% (five) percent of the amount invoiced by Dockwise Transport or the relevant member of the Dockwise Transport Group for that opportunity.

**7.2. Dockwise trade name, logo etc.**

- 7.2.1 Subject to Clause 7.2.2, the Purchaser shall not, and shall procure that the Companies that are under its, direct or indirect, control shall not after the Closing Date:

- a. carry on business under the trade name "Dockwise" or any trade or service mark, logo, trading or company name or domain name that is the same or contains "Dockwise" or is confusingly similar to that of Dockwise Transport or any member of the Dockwise Transport Group; or
- b. hold itself out as being connected with the Dockwise Transport Group or any member thereof.

- 7.2.2 Without limiting Clause 7.2.1, the Purchaser shall be entitled to use the phrase "*formerly known as Dockwise Yacht Transport*" only between brackets and in italics as set out in this Clause 7.2.2 until 1 (one) year after the Closing Date.

7.2.3 Without limiting Clause 7.2.1 but subject to Clause 7.2.2, the Purchaser shall, as soon as practical after the Closing Date but in any event before 1 September 2012:

- a. procure the amendment of the articles of association (*statuten*) or similar organizational documents of each Company to the extent necessary to give effect to the provisions of this Clause 7.2; and
- b. procure the removal of such trade marks, service marks, logos, trading names, company names and domain names from all assets acquired in connection with this Agreement.

7.2.4 Without limiting this Clause 7.2, Dockwise Transport shall as soon as practical after the Closing but in any event before 1 July 2012, procure that the Purchaser will be granted full ownership or license for the permanent use of the name "United Yacht Transport" and "DYT", and that the domain name "[yacht-transport.com](http://yacht-transport.com)" will be transferred to the Purchaser.

### 7.3. Vessel SS3 Time Charter

Dockwise Transport and the Purchaser agree that Dockwise Transport or any of its Affiliates shall at Closing hire the Vessel SS3 from the Purchaser, or the Person in the Purchaser's Group which at Closing acquires the right of ownership with respect Vessel SS3, on a time charter basis (the "**Vessel SS3 Time Charter**") in accordance with the terms and conditions as set out in Schedule 11 (the "**Time Charter Agreement**"). The Vessel SS3 Time Charter shall be in place until 15 May 2012 or such later date as Dockwise Transport or any of its Affiliates requires to finalize its commitment for which the Vessel SS3 Time Charter is in place. For this Vessel SS3 Time Charter, no rent or hire shall be payable by either Dockwise Transport or any of its Affiliates. For the avoidance of doubt all operating expenses in relation hereto (including crewing costs, maintenance and insurance) will be for the account of the Purchaser or such other Person in the Purchaser's Group from which the Vessel SS3 is hired. Dockwise Transport or its Affiliate which is a party to the Vessel SS3 Time Charter shall redeliver the Vessel SS3 after the Vessel SS3 Time Charter in Port Louis, Mauritius or at a port in the Shanghai area in China, such port to be mutually agreed between Dockwise Transport and the Purchaser with at least 200 (two hundred) metric tons heavy fuel oil and 50 (fifty) metric tons marine gas oil in its fuel tanks, for which an amount of USD 200,000 (two hundred thousand

United States dollars) is included as advance payment in the Net Assets and Net Debt Sheet. Any balance of fuel or fuel cost on board Vessel SS3 shall be payable by or to the Purchaser by or to the Sellers against the Bunkerworld price at Singapore at the date of re-delivery and any such payment by Purchaser shall at Closing be guaranteed by Coby Enterprises LLC and Valkor, LLC as members of the Purchaser, by means of a parent company guarantee in accordance with the format as attached hereto as Schedule 13.

#### **7.4. Access to records**

7.4.1 After the Closing, the Purchaser shall, and shall procure, to the extent permitted by applicable laws, that the Companies shall retain for a period of 7 (seven) years from the Closing, or such longer period as may be prescribed by applicable law, regulations, orders and statutes, all books, records and other written information relating to the Companies and the Vessels delivered to the Purchaser in connection with the consummation of the Transaction or held by the Companies or at the Vessels as of the Closing Date. The Purchaser shall, and shall procure that each of the Companies shall allow Dockwise Transport upon reasonable prior written notice, access during normal business hours to such books, records and other information, including the rights to inspect and make copies, as may be reasonably required by Dockwise Transport at Dockwise Transport's expense. Dockwise Transport shall treat any and all information disclosed under this Clause 7.3 by Purchaser or the Companies to Dockwise Transport as Purchaser's confidential information under terms no less protective than the terms set forth in Clause 14. Notwithstanding the foregoing, Purchaser shall have no obligation to provide such access to Purchaser's or Companies' books, records and other information to the extent that providing the same to Dockwise Transport would break the attorney-client privilege for an ongoing or imminent litigation.

7.4.2 No later than the Closing Date, the Sellers shall provide a copy of all Vessel SS4, Vessel YE and Vessel SS3 related records and information in Sellers' possession to the Purchaser, including but not limited to drawings, technical data, regulatory compliance data, and maintenance data.

#### **7.5. Umbrella arrangements**

The Purchaser acknowledges that Sellers have informed Purchaser that (i)

all agreements and arrangements (for the avoidance of doubt excluding any trade relations in the ordinary course of business) between the Sellers or any other member of the Sellers' Group on the one hand and the Companies on the other, and (ii) all insurance policies, the arrangements with Anglo-Eastern and KPMG shall, to the extent they relate to the Companies and the Vessels, terminate at the Closing Date, without any liability of the Sellers or any member of the Sellers' Group.

#### **7.6. Tax matters**

The Purchaser acknowledges and agrees to all covenants contained in Schedule 8 (Tax Schedule).

The Purchaser further acknowledges and agrees that prior to the Closing Date, the Sellers' Group shall have cancelled each and every indemnity, standby letter, agreement for the subscription of shares or other equity instruments, guarantee, or other form of commitment for the benefit of all Companies at the Closing Date, with regard to any payment of Tax, or other claims or liabilities that any of the Companies incurred or will incur, or any shortfall in equity of solvability.

### **8. DUE DILIGENCE INVESTIGATION**

#### **8.1. Scope of due diligence**

The Purchaser acknowledges and agrees that:

- 8.1.1 it has performed, a due diligence investigation into, amongst others, the commercial, financial, legal, tax, IT, pensions and operational aspects of the Companies, their businesses and the Vessels during the period 11 November 2011 to 9 February 2012 on the basis of the information provided by the Sellers and certain of their advisers (the "**Due Diligence Investigation**");
- 8.1.2 the Due Diligence Investigation was in a form, scope and substance to the Purchaser's satisfaction;
- 8.1.3 the Due Diligence Investigation formed the basis on which the Purchaser has decided to enter into this Agreement on the terms stated herein;
- 8.1.4 for the purposes of the Due Diligence Investigation the Purchaser's Group has had (and its advisers have had) sufficient opportunity to

review any and all information made available to the Purchaser and its advisers, by having had, amongst others, access to the Data Room for the purposes of reviewing information about, amongst others, the commercial, financial, legal, tax, IT, pensions and operational aspects of the Companies, their businesses and the Vessels. In addition, the Purchaser was given the opportunity to have interviews with, *inter alia*, the management of DYT (Mr. C.J. van der Werf) and was allowed to submit questions during its Due Diligence Investigation, which questions were answered by the Sellers to the satisfaction of the Purchaser;

- 8.1.5 the Purchaser has raised with the Sellers any and all specific issues which it considered relevant in connection with the Transaction.

## **8.2. Disclosed Information**

- 8.2.1 The Disclosed Information shall be deemed disclosed to the Purchaser. Accordingly, notwithstanding any other provisions of this Agreement, the Sellers:

- a. shall not be in Breach; and
- b. shall not be liable in respect of any matter giving rise to a Breach;

to the extent that, at the date of this Agreement respectively the Closing Date, the Purchaser or its advisers were or should have been aware of such matter referred to under Clause 8.2.1(b) above, because the facts and circumstances giving rise thereto:

- i. were known, or should have been known, to the Purchaser or its advisers on the basis of (i) the Disclosed Information, and/or (ii) the Due Diligence Investigation; or
- ii. have been disclosed or excepted in the Representations and Warranties themselves and/or otherwise in this Agreement and/or in the Schedules or Annexes hereto;

provided that, in relation to sub i. and ii. above, to the extent that any disclosures have been fairly made in the Disclosed Information, the Due Diligence Investigation, the Representations and Warranties and/or otherwise in this Agreement and/or in the Schedules or Annexes hereto. The Parties acknowledge and agree that (i) where matters which do not appear clearly on the face of the documents disclosed or (ii) where

reference is made to a document but such document has not been disclosed to Purchaser, such matter or reference of document shall not be cleared to have been fairly disclosed to Purchaser;

or

iii. are, or should have been, otherwise known to the Purchaser or its advisers on the basis of their knowledge of the businesses of the Companies and the Vessels.

8.2.2 The Sellers shall have no obligation to update any Disclosed Information.

## **9. REPRESENTATIONS AND WARRANTIES**

### **9.1. Sellers' Warranties**

9.1.1 The Sellers represent and warrant (*garandeert*) to the Purchaser that each of the Sellers' Warranties set out in part A of Schedule 7 (Representations and Warranties) is true and accurate at the date of this Agreement and will be true and accurate in respect of the Shares, the Companies and the Vessels at the Closing Date.

9.1.2 The liability of the Sellers in connection with a breach of any of the Sellers' Warranties (a "**Breach**") or of any of the indemnities set out in Clause 12 and the Tax Schedule shall be subject to the limitations and the other provisions set out in Clause 11. For the avoidance of doubt, this limitation does not apply to the obligation of the Sellers to transfer any of the Shares and any of the Vessels to the Purchaser in accordance with Clause 2.3.

### **9.2. Purchaser's Warranties**

The Purchaser represents and warrants (*garandeert*) to the Sellers that each of the Purchaser's Warranties set out in part B of Schedule 7 (Representations and Warranties) is true and accurate at the date of this Agreement and will be true and accurate at the Closing Date (or the specific date mentioned).

## **10. COMPENSATION**

### **10.1. General principle**

In the event of a Breach, the Purchaser shall be entitled to submit to the Sellers a Claim for Compensation. In that event, the Sellers shall pay to the Purchaser, to the extent possible by way of correction of the Purchase Price, an amount necessary to compensate the Purchaser's Damage; for the purpose of this Clause such Damage incurred by one of the Companies shall be deemed to be Purchaser's Damage (the "Compensation").

### **10.2. Information with respect to Claim**

Where the Purchaser considers making a Claim for Compensation it shall, promptly, but in any event within 30 (thirty) Business Days, after discovery of the circumstances giving rise to such Claim, notify the Sellers giving full particulars of the facts that give rise to such Claim and specifying the Purchaser's best estimate of the likely amount of the Claim; provided, however, that the provision of an estimate shall not limit the Purchaser's ability to recover Damages should the Damages exceed the estimate. Such a notification given within such period shall be considered a notification within the meaning of article 7:23(1) of the DCC. Any failure or delay on the part of the Purchaser to notify the Sellers shall not prejudice the Purchaser's right to make a Claim, but shall reduce the Compensation by the amount of the damage attributable to such failure or delay.

### **10.3. Defence against Third Party Claims**

10.3.1 Where a Claim of the Purchaser for Compensation is based upon or relates to a Third Party Claim, the Purchaser shall notify the Sellers of such Third Party Claim as soon as reasonably possible after having become aware thereof. As soon as reasonably possible following the date of that notification, the Parties shall consult each other on the course of action to be taken. The Sellers shall, however, at their sole discretion and subject only to any restriction under any insurance policy, be entitled at their own cost to take, or require the Purchaser to procure that the relevant Company shall take, at Sellers' cost, any action necessary to defend or settle the Third Party Claim, provided that the Sellers shall not settle or admit liability for the Third Party Claim without the prior written

consent of the Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed.

10.3.2 Notwithstanding any other provision of this Agreement, any costs and expenses of defense and investigation, including court costs and reasonable attorneys fees incurred or suffered by the Purchaser or Sellers in connection with the defense of any Third Party Claim alleging matters that would constitute a Breach, whether or not it is ultimately determined that there was such a Breach, will constitute losses subject to Compensation under this Clause 10.

10.3.3 The Parties shall cooperate with each other in dealing with any Third Party Claim at Sellers' expense and upon reasonable prior written notice shall allow each other access to all books and records which might be useful for such purpose, during normal business hours and at the place where the same are normally kept, with full right to make copies thereof or take extracts therefrom. Such books and records shall be subject to a duty of confidentiality except for disclosure necessary for resolving such Third Party Claim or otherwise required by applicable law or stock exchange rules. The recipient shall treat any and all information disclosed under this Clause 10.3 by Purchaser or Sellers as such party's confidential information under terms no less protective than the terms set forth in Clause 14. Notwithstanding the foregoing, the recipient shall have no obligation to provide such access to Purchaser's or Sellers' books, records and other information to the extent that providing the same to Sellers would break the attorney-client privilege for an ongoing or imminent litigation.

#### **10.4. Effect of Tax, provisions and insurance**

In determining the amount of any Compensation or whether the threshold referred to in Clause 11.3.2 has been reached, the following factors shall be taken into account:

- a. (i) any Tax refund actually received by any of the Companies or the Purchaser, and (ii) any reduction in Tax payable by any of the Companies or the Purchaser, to the extent that such refund or reduction is attributable to the facts giving rise to the Claim to the extent proven by clear and convincing evidence; and/or

- b. the amount of any provision, which is attributable to the facts giving rise to the Claim, in the Accounts or in the Net Assets and Net Debt Sheet; and/or
- c. any amount actually received by any of the Companies or the Purchaser under an insurance policy or from a third party, to the extent that such amount is attributable to the facts giving rise to the Claim.

#### **10.5. Costs of the Sellers**

Where the Purchaser has made a Claim which thereupon has been withdrawn or dismissed by a final court judgment or arbitral award, the Purchaser shall reimburse the Sellers for all reasonable costs incurred by the Sellers in connection with such Claim.

### **11. LIMITATIONS**

#### **11.1. Acknowledgement**

The Purchaser acknowledges and agrees that:

- a. the Sellers' Warranties are the only representations, warranties or other assurances of any kind given by or on behalf of the Sellers and collectively and exhaustively reflect all of the characteristics the Purchaser may reasonably expect the Companies, the Shares, the business of the Companies and the Vessels to have;
- b. notwithstanding any other provision of this Agreement, no other statement, promise or forecast (written or oral) made by or on behalf of the Sellers may form the basis of, or be pleaded in connection with any Claim;
- c. the Sellers nor any of their advisers make any representation or warranty as to the accuracy of, without limitation, forecasts, estimates, projections, statements of intent or statements of opinion given to the Purchaser, its Affiliates or its advisers on or prior to the date of this Agreement or contained in the Disclosed Information;
- d. it will not be allowed to set-off (*verrekenen*) any (alleged) Claims with any of its obligations under the Note; and

- e. at the time of entering into this Agreement, it nor any of its direct or indirect shareholders or any of their representatives is aware of any matter or thing which is inconsistent or constitutes or may constitute a Breach at present or in the foreseeable future.

#### **11.2. Limitations in time**

Without prejudice to any rights the Purchaser may have under the Sellers' Warranties set out in sections 1 (Capacity), 3 (Shares and Subsidiary Shares) and 6 (Vessels) of Part A of Schedule 7 (Representations and Warranties), which shall survive the relevant Closing Date for 5 (five) years, the Purchaser shall no longer be entitled to claim any Compensation for breach of any of the other Sellers' Warranties, upon expiry of 18 (eighteen) months from the Closing Date.

#### **11.3. Limitations as to amount**

##### 11.3.1 Maximum Compensation

The Sellers shall not be liable for a Breach to the extent the aggregate Compensation due (including, for the avoidance of doubt, any reasonable cost payable by the Sellers under Clause 10.1) exceeds an amount equal to 20% (twenty percent) of the Closing Cash Payment.

##### 11.3.2 *De minimis* Threshold

The Sellers shall not be liable for a Breach unless the aggregate amount of all Claims exceeds USD 600,000 (six hundred thousand United States dollars) in which case the Sellers shall be liable for the whole amount of such Claim(s) and not merely for the excess.

#### **11.4. Exclusions**

##### 11.4.1 The Sellers shall not be liable in respect of a Claim if and to the extent that it relates to any liability or obligation on the part of a Company:

- a. which would not have resulted in a Breach (or which Claim would have been reduced) but for (i) any change in applicable legislation coming into effect after the date of this Agreement, whether or not such change purports to have retroactive effect, or

- (ii) a new interpretation of existing law by an Authority in a judgment or decision published after the date of this Agreement;
- b. which would not have arisen but for a change after the Closing Date in the accounting bases on which the Companies value their assets or a change in the tax structure or corporate structure of the Companies, or a wilful change in the conduct of business;
- c. which arises as a result of any change after the Closing Date of the date to which the Companies make up their statutory accounts or in the bases, methods or policies of accounting of the Companies other than a change which is reported by the auditors of the Companies to be necessary in their opinion because such bases, methods or policies of accounting as at the Closing Date are not in accordance with any published accounting practice or principle then current; or
- d. if a Breach becomes apparent after the date of this Agreement and prior to Closing, to the extent that such Breach results from acts or omissions by the Sellers and/or any of the Companies at the instructions of the Purchaser.

11.4.2 The Sellers shall not be liable in respect of a Claim if and to the extent that the facts and circumstances giving rise to a Breach are disclosed or excepted in this Agreement and/or in the Disclosed Information.

### **11.5. Mitigation**

11.5.1 Nothing in this Agreement shall be deemed to relieve the Purchaser from any duty under applicable law to mitigate any Damage incurred by it as a result of any Breach.

11.5.2 The Purchaser shall procure that all reasonable steps are taken and all reasonable assistance is given to avoid or mitigate any Claims or Damage in the absence of mitigation might give rise to a liability in respect of any Claims.

### **11.6. Liability limited to Purchaser's Group**

Any liability for a Breach of the Sellers will cease and any Claim will be withdrawn upon the relevant Company, the business of that Company or the relevant Vessel ceasing to be a part of the Purchaser's Group.

#### 11.7. No double recovery

The Purchaser shall not be entitled to recover from the Sellers more than once in respect of any one matter if more than one Sellers' Warranty is breached.

#### 11.8. Remedy

If a Breach is capable of remedy, the Purchaser shall only be entitled to Compensation if the Purchaser gives the Sellers written notice of the Breach and the Breach is not remedied within 30 (thirty) Business Days after the date on which such notice is served on the Sellers. Without affecting its duty to mitigate any Damage, the Purchaser shall (or shall procure that any relevant member of the Purchaser's Group shall) at Sellers' cost provide all reasonable assistance to the Sellers to remedy any such Breach.

#### 11.9. Recovery from third parties

If:

- a. a Seller makes a payment in respect of a Claim (the "**Compensation Payment**"); and
- b. any Company or the Purchaser receives any sum (or makes any savings or receives any quantifiable financial benefit, including for the avoidance of doubt in respect of insurance or Tax) which would not have been received but for the circumstance which gave rise to that Claim (the "**Third Party Sum**"); and
- c. the receipt of that Third Party Sum was not taken into account in calculating the Compensation Payment; and
- d. the aggregate of the Third Party Sum and the Compensation Payment exceeds the amount required to compensate the Purchaser in full for the Damage which gave rise to the Claim in question, such excess being the "**Excess Recovery**",

then, the Purchaser shall, promptly on receipt of the Third Party Sum by it or the relevant Company, repay to the Sellers an amount equal to the Excess Recovery, after deducting all reasonable costs incurred by the

Purchaser or the relevant Company in recovering that sum and any Tax payable by the Purchaser or any Company by virtue of its receipt.

If, before a Seller pays any amount in respect of any Claim, the Purchaser or the Company is entitled to recover (whether by payment, discount, credit, relief, insurance, set off or otherwise) from a third party a sum which indemnifies or compensates the Purchaser or the Company (in whole or in part) in respect of the Damage which is the subject-matter of the Claim, the Purchaser shall procure that before steps are taken against the Sellers, all reasonable steps are, to the extent possible, taken to enforce recovery for a period of 60 (sixty) Business Days against the third party and any actual recovery shall reduce or satisfy decreased with reasonable costs of recovery, as the case may be, such claim to the extent for such recovery.

After a Seller made the Compensation Payment, that Seller shall be subrogated to all rights that the Purchaser has or would otherwise have in respect of the claim against the third party.

#### **11.10. No recourse**

In the event of a Breach and if and to the extent the Sellers are liable to the Purchaser for any Damage, the Sellers shall refrain from seeking recourse against (*regres nemen op*) any of the Companies, its management or its Employees in respect of a Claim of the Purchaser under this Agreement, save in the event of wilful intent (*opzet*) or gross negligence (*bewuste roekeloosheid*).

#### **11.11. Fraud and gross negligence**

The limitations of Sellers' liability set forth in this Agreement shall not apply in the case of fraud or gross negligence on the part of the Sellers or of a person acting on Sellers' behalf and/or in case the breach was known or should have been known to Sellers or any person acting on its behalf.

### **12. SPECIFIC INDEMNITIES**

The Sellers shall indemnify and hold the Purchaser harmless for any Damage suffered by the Purchaser and/or the Companies, as a result of or related to:

- a. the litigation and arbitration proceedings listed on Annex 9.2 to Schedule 7 Part A (Sellers' Warranties); and
- b. fines and penalties from inaccuracies in pre-Closing accounting periods,

including all reasonable costs and expenses incurred by the Purchaser and/or the Companies in respect thereof.

### **13. NON-COMPETITION**

The Sellers hereby undertake towards the Purchaser that they will not themselves or allow any of the companies of their Group without the prior written consent of the Purchaser for a period of 2 (two) years from the Closing Date in any capacity or in any way whatsoever in the world, either directly or indirectly be engaged in or concerned with, or approach any Person with a view to being engaged in or concerned with, the conduct of any yacht transportation business or the provision of yacht transportation services as conducted or provided by the Companies at the Closing Date, provided that the following activities of the Sellers' Group shall be permitted and not be in conflict with the above undertaking: (i) load-out of yachts, (ii) dry-docking of yachts, and (iii) salvage and onward transportation of yachts.

### **14. CONFIDENTIALITY AND PRESS RELEASE**

#### **14.1. Confidentiality**

Each Party undertakes that it will not at any time disclose or use, potentially causing any detrimental effect to the other Party, any confidential information concerning this Agreement or any agreement resulting therefrom or relating thereto, or concerning the business and affairs of the other Party, except:

- a. to the extent required by applicable law or stock exchange rules or by any Authority but in that case only after consultation with the other Party about the timing and content of such disclosure and assistance in obtaining a protective order if the disclosing party seeks one, at the disclosing party's cost;
- b. to its professional advisers subject to a duty of confidentiality and only to the extent necessary for any lawful purpose; and

- c. to the extent that at the date hereof or hereafter such information is public knowledge other than through unlawful disclosure of which that Party at the time of disclosure was or could reasonably have been aware that it was unlawful.

**14.2. Press release**

Upon signing this Agreement, the Parties shall issue a joint press release in the form of Schedule 9 (Joint Press Release).

**15. TERMINATION PRIOR TO CLOSING**

**15.1. Termination**

Prior to the Closing this Agreement may only be terminated and the Transaction may be abandoned

- a. by the Sellers or the Purchaser in any of the following events:
  - i. the Closing Conditions are not fulfilled or waived on or before the Long Stop Date or in the event the Closing is not completed on or before the Long Stop Date; or
  - ii. the Purchaser respectively any of the Sellers applies for an order or an order is made declaring it bankrupt, or granting the Purchaser respectively any of the Sellers a moratorium, or a liquidator is appointed for the Purchaser respectively any of the Sellers or any similar event occurs with respect to the Purchaser respectively any of the Sellers or any substantial part of its assets in any other jurisdiction than the Netherlands.
- b. by the Sellers in the event that:
  - i. a creditor of the Purchaser levies execution against, forecloses on, or takes possession of, all or a material part of its assets; or
  - ii. Purchaser fails to perform in a timely or proper manner an obligation under any other agreement to which it is a party or which arises by law, as a result of which the

Purchaser's ability to perform its obligations under this Agreement or any agreement resulting therefrom or relating thereto would be materially and adversely affected.

- c. by the Purchaser in the event that:
  - i. a creditor of any of the Sellers levies execution against, forecloses on, or takes possession of, all or a material part of its assets; or
  - ii. any of the Sellers fails to perform in a timely or proper manner an obligation under any other agreement to which it is a party or which arises by law, as a result of which the Seller's ability to perform its obligations under this Agreement or any agreement resulting therefrom or relating thereto would be materially and adversely affected.

## 15.2. Effect of Termination

- 15.2.1 In the event that this Agreement is terminated pursuant to the provisions of this Clause 15, this Agreement shall have no further effect with the exception of Clause 14.1 (Confidentiality), this Clause 15 and Clauses 16.13 (Choice of law) and 16.15 (Disputes), which Clauses shall survive any termination of this Agreement.
- 15.2.2 In the event of termination pursuant to Clause 15.1(a)(i), such termination will not prejudice the liability of the Purchaser or the Sellers, as the case may be, for Damage and/or costs incurred by the Sellers or the Purchaser, as the case may be, as a result of the liable Party failing to fulfil any of its obligations under this Agreement.

Notwithstanding the above paragraph, if Closing does not occur by the Long Stop Date due to failure by the Purchaser to pay the Purchase Price, the liability of the Purchaser (also pursuant to paragraph f. of part B of Schedule 7) will be limited to USD 5,000,000 (ten million United States dollars). Purchaser shall procure that its members Coby Enterprises, LLC and Valkor, LLC shall both sign **at the date of this Agreement** a parent company guarantee in the agreed form as attached hereto as Schedule 12, guaranteeing the payment by the Purchaser of Damages and/or costs incurred by the Sellers as mentioned in this Clause.

15.2.3 In the event of termination pursuant to Clause 15.1(a) (ii) or Clause 15.1(b), such termination will not prejudice any liability of the Purchaser or the Sellers, as the case may be, for any Damage and/or costs incurred by the Sellers or the Purchaser, as the case may be, as a result of this Agreement being terminated.

## **16. MISCELLANEOUS**

### **16.1. Invalid provisions**

In the event that a provision of this Agreement is null and void or unenforceable (either in whole or in part), the remainder of this Agreement shall continue to be effective to the extent that, given this Agreement's substance and purpose, such remainder is not inextricably related to the null and void or unenforceable provision. The Parties shall make every effort to reach agreement on a new clause which differs as little as possible from the null and void or unenforceable provision, taking into account the substance and purpose of this Agreement.

### **16.2. Further action**

If at any time after Closing any further action is necessary or desirable in order to implement this Agreement, each Party shall at its own cost execute and deliver any further documents and take all such necessary action as may reasonably be requested from each of it.

### **16.3. Amendment**

No amendment to this Agreement shall have any force or effect unless it is in writing and signed by the Parties, except where a more stringent form (e.g. notarisation) is required under applicable law.

### **16.4. Costs**

Except as specifically provided otherwise in this Agreement, each Party shall bear its own costs in connection with the preparation, negotiation, signing and completion of this Agreement, provided that all Tax which becomes due (i) by the Purchaser or the Companies in relation to the entering into of this Agreement and the actions contemplated therein, or (ii) in relation to the sale and transfer of the Vessels, will be for the account of the Purchaser. The costs of the Civil Law Notary for the

execution of the Deed of Transfer Shares and of the Curacao Notary for the execution of the Deeds of Transfer Vessels will be for the account of the Sellers.

#### **16.5. Payments**

16.5.1 Save as otherwise specifically set out in this Agreement, if a Party defaults in the payment when due of any sum payable under this Agreement, it shall pay statutory interest (*wettelijke rente*) on the basis of Article 6:119 of the DCC on that sum from the date on which payment is due until the date of actual payment (as well as before judgment or arbitral award), which interest shall accrue from day to day and be compounded monthly.

16.5.2 If a Party is required by law to make a deduction or withholding in respect of any sum payable under this Agreement, this Party shall, at the same time as the sum which is the subject of deduction or withholding is payable, pay to the other Party such additional amount as shall be required to ensure that the net amount received by this other Party will equal the full amount which would have been received by it had no such reduction or withholding been required to be made.

#### **16.6. No implied waiver; no forfeit of rights**

16.6.1 Any waiver under this Agreement must be given by notice to that effect.

16.6.2 Where a Party does not exercise any right under this Agreement (which shall include the granting by a Party to any other Party of an extension of time in which to perform its obligations under any provision hereof), this shall not be deemed to constitute a forfeit of any such rights (*rechtsverwerking*).

#### **16.7. No rescission or nullification; non-conformity**

16.7.1 To the extent permitted by law, the Parties hereby waive their rights under Articles 6:265 to 6:272 inclusive and 6:228 and 6:230, respectively, of the DCC to rescind (*ontbinden*) or nullify (*vernietigen*) on the ground of error (*dwaling*), or demand in legal proceedings the rescission (*ontbinding*), nullification (*vernietiging*) or amendment (*wijziging*) of, this Agreement.

16.7.2 The Purchaser hereby waives its rights, if any, to invoke any of the provisions of title 1 of volume 7 of the DCC with respect to this Agreement.

**16.8. Entire Agreement**

16.8.1 This Agreement contains the entire agreement between the Parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing between the Parties relating to the Transaction.

16.8.2 If and to the extent the laws of any jurisdiction give the Purchaser more protection in addition to the provisions of this Agreement (such as additional rights exercisable vis-à-vis the Sellers or implied representations and warranties in addition to the Representations and Warranties), the Purchaser hereby excludes or (if incapable of exclusion) irrevocably waives (*afstand van recht*) the right to invoke this additional protection, if any, and the Sellers hereby accept such waiver.

16.8.3 Each Party acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of any other Party before the signing of this Agreement. Each Party waives all rights and remedies which, but for this Clause 16.8, might otherwise be available to it in respect of any such representation, warranty or other assurance.

**16.9. Notice**

16.9.1 Any notice or other communication under or in connection with this Agreement shall be in English, in writing and delivered by hand or sent by facsimile, by courier, or by registered mail and shall be effective, in the absence of earlier receipt:

- a. if sent by facsimile, 2 (two) business hours after receipt. Receipt shall be deemed to have occurred when transmission of such facsimile communication has been completed and a positive transmission report has been produced by the transmitting machine. For the purposes of this provision, "business hour" shall mean any time between 09.00 and 18.00 hours on a Business Day.
- b. if sent by courier service, 3 (three) days after dispatch,

c. if sent by registered mail, 3 (three) days after dispatch.

16.9.2 Notices under this Agreement shall be sent to the addresses of the Parties as specified below:

**Dockwise Transport B.V.**

**Super Servant 3 B.V.**

**Super Servant 4 B.V.**

**Yacht Express B.V.**

Address	Lage Mosten 21 4822 NJ Breda The Netherlands
Fax number	+31 76 5484290
Attn	the Board
With copy to	NautaDutilh
Address	Weena 750 3014 DA Rotterdam The Netherlands
Fax number	+31 10 2240007
Attn	Joost den Engelsman and/or Paul Verkleij

**UYT Holding Coöperatief U.A.**

Address	[●]
Fax number	[●]
Attn	the Board
With copy to	[●]
Address	[●]
Fax number	[●]
Attn	[●]

or at such other address as the Party to be given notice may have notified to the other Parties from time to time in accordance with this Clause for that purpose.

16.9.3 The provisions of this Clause 16 shall not apply in relation to the service of documents for the purpose of litigation.

**16.10. No third party enforcement rights**

A Person who is not a Party shall have no right under any statutory provision or otherwise to enforce any term of this Agreement.

**16.11. Assignment or Encumbrance**

No Party may assign this Agreement (*contractsoverneming*) or assign or Encumber any of its rights thereunder without the prior written consent of the other Party.

**16.12. Civil Law Notary**

The Parties are aware of the fact that the Civil Law Notary works with NautaDutilh, the firm that advises the Sellers in respect of the Transaction. With reference to the Code of Conduct (*Verordening beroeps- en gedragsregels*) established by the Royal Notarial Professional Organisation (*Koninklijke Notariële Beroepsorganisatie*), the Parties hereby explicitly agree (i) that the Civil Law Notary shall execute any notarial deeds related to this Agreement, and (ii) that the Sellers are assisted and represented by NautaDutilh in relation to this Agreement and any agreements that may be concluded, or disputes that may arise, in connection therewith.

**16.13. Joint and several liability of the Sellers**

The Sellers shall be jointly and severally (*hoofdelijk*) liable for the performance of their obligations under this Agreement.

**16.14. Choice of law**

This Agreement and any agreement resulting therefrom shall be exclusively governed by and construed in accordance with the laws of the Netherlands, without regard to any conflict of law rules under Dutch private international law.

**16.15. Disputes**

The Parties agree that any dispute in connection with this Agreement or any agreement resulting therefrom shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*) as at present in force.

- a. The arbitral proceedings and all documents delivered to or by the arbitrators shall be conducted in English.
- b. The place of arbitration shall be Rotterdam, the Netherlands.
- c. The arbitral tribunal shall comprise 3 (three) arbitrators.
- d. The arbitral tribunal shall decide in accordance with the rules of law.
- e. Neither the Sellers nor the Purchase shall be precluded from applying for injunctive relief, including an order for specific performance in summary proceedings (*kort geding*) before any competent court instead of arbitrators.
- f. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided for in Article 1046 of the Code of Civil Procedure, shall be excluded.

- *Signature page follows* -

This Agreement has been signed in 2 (two) identical copies on [●] 2012. This Agreement may be signed in counterparts, which together shall constitute one and the same agreement.

For and on behalf of  
**Dockwise Transport B.V.**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

For and on behalf of  
**Super Servant 3 B.V.**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

For and on behalf of  
**Super Servant 4 B.V.**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

For and on behalf of  
**Yacht Express B.V.**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

For and on behalf of  
**UYT Holding Coöperatief U.A.**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

*Signature page to Share Sale and Purchase Agreement*

**SCHEDULE 1.A****DEED OF TRANSFER SHARES**

On this, the [...] day of [...] two thousand twelve, appeared before me, Albert Hendrik Geerling, civil law notary at Rotterdam:

1. [...] working at the offices of myself, civil law notary, at Weena 750, 3014 DA Rotterdam, born in [...] on [...], and acting for the purposes of this deed as the holder of a written power of attorney from **Dockwise Transport B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), having its corporate seat at Breda, the Netherlands (address: Lage Mosten 17, 4822 NJ Breda, the Netherlands, trade register number 20100825), which company is hereinafter referred to as the "Seller";
2. [...] working at the offices of myself, civil law notary, at Weena 750, 3014 DA Rotterdam, born in [...] on [...], and acting for the purposes of this deed as the holder of a written power of attorney from **UYT Holding Coöperatief U.A.**, a cooperative with exclusion of liability (*coöperatie met uitsluiting van aansprakelijkheid*), having its corporate seat at [...], the Netherlands (address: [...], trade register number [...]), which company is hereinafter referred to as the "Purchaser";
3. [...] working at the offices of myself, civil law notary, at Weena 750, 3014 DA Rotterdam, born in [...] on [...], and acting for the purposes of this deed as the holder of a written power of attorney from **DYT Netherlands B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), having its corporate seat at Breda, the Netherlands (address: Lage Mosten 17, 4822 NJ Breda, the Netherlands, trade register number 20131381), which company is hereinafter referred to as the "Company".

The persons appearing, acting in the above capacities, declared the following:

**1. LEGAL BASIS (TITEL) FOR TRANSFER; DEFINITION OF SHARES**

By written sale and purchase agreement, dated the [...] day of [...] two thousand twelve, hereinafter referred to as the "Agreement" the Seller sold to the Purchaser and the Purchaser purchased from the Seller one hundred and eighty (180) ordinary shares in the capital of the Company, bearing the numbers 1 up to and including 180, each share having a nominal value of one hundred euro (EUR 100), which shares are

hereinafter referred to as the "Shares".

The provisions of the Agreement which are still applicable at this time shall remain in force insofar as not inconsistent with this deed.

A photocopy of the Agreement will be attached to this deed.

**2. ACQUISITION OF THE SHARES**

The Seller acquired the Shares by means of an issue by the Company to the Seller under the deed of incorporation of the Company, executed on the twenty-seventh day of April two thousand and seven before Wijnand Matthijs van Eijck, civil law notary at Rotterdam.

**3. PURCHASE PRICE AND PAYMENT**

The amount of the purchase price for the Shares and the method of payment thereof has been stipulated in the Agreement.

**4. SHARE TRANSFER RESTRICTIONS**

The articles of association of the Company contain a share transfer restriction in the form of an approval requirement (*goedkeuringsregeling*). In its capacity as the holder of all issued shares in the capital of the Company and acting pursuant to the provisions of Article 19 of the articles of association of the Company, the Seller hereby passes a resolution approving the transfer of the Shares by means of this deed.

The Company hereby confirms that the managing directors of the Company have been given the opportunity to advise on the above resolution of the Seller.

**5. TRANSFER**

In satisfaction of its obligation as laid down in the Agreement, the Seller hereby transfers the Shares to the Purchaser, which hereby accepts this transfer.

**6. REPRESENTATIONS AND WARRANTIES**

The representations and warranties with respect to the Shares have been stipulated in the Agreement.

**7. COSTS**

The costs of this deed and of its implementation shall be borne by the Seller.

**8. INCOME AND EXPENSES**

All income deriving from and expenses attached to the Shares shall accrue to or, as the case may be, be borne by the Purchaser with effect from the date hereof.

**9. DISSOLUTION**

Seller and Purchaser have waived their rights to annul, rescind or dissolve or-amend the Agreement, as the agreement underlying the present transfer of the Shares, in accordance with Section 16.7.1 of the Agreement.

**10. DOCUMENTS RELATING TO THE SHARES**

The Seller has given the Purchaser all documents relating to the Shares that were in its possession and the Purchaser declared that it has received them.

**11. ACKNOWLEDGEMENT**

The Company has taken cognisance of and hereby acknowledges the transfer of the Shares and will immediately enter the transfer in its register of shareholders.

The Company has always accepted as valid all acquisitions of the Shares preceding the present transfer.

**12. APPLICABILITY ARTICLE 2:204c OF THE NETHERLANDS CIVIL CODE**

The provisions laid down in Article 2:204c of the Netherlands Civil Code did not apply to the acquisition of the Shares by the Seller. Consequently, the nullity, as referred to in these provisions, of the said acquisition cannot be invoked.

The provisions laid down in Article 2:204c of the Netherlands Civil Code do not apply to this transfer of the Shares to the Purchaser, because more than two years have elapsed between the Purchaser's first registration in the trade register and the date of execution of this deed.

**13. CHOICE OF LAW AND JURISDICTION**

This deed shall be governed by and construed in accordance with the laws of the Netherlands. Any dispute, controversy or claim arising out of or in connection with this deed, shall be exclusively and finally settled by arbitration in accordance with the arbitration rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*) and whereby:

- (i) the arbitral tribunal will be composed of three arbitrators appointed in accordance with those rules;
- (ii) the arbitrators will decide according to the rules of law;
- (iii) the seat of arbitration shall be Rotterdam, the Netherlands; and
- (iv) the language to be used in the arbitral proceedings shall be English.

The Seller shall not be precluded from applying for injunctive relief in summary proceedings (*kort geding*) before any competent court instead of arbitrators. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided for in Article 1046 of the Code of Civil Procedure, shall be excluded.

**14. CIVIL LAW NOTARY**

The parties to this deed are aware that the undersigned civil law notary works with NautaDutilh N.V., the firm that has advised the Seller in this transaction. With reference to the Code of Conduct (*Verordening beroeps- en gedragsregels*) established by the Royal Notarial

Professional Organisation (*Koninklijke Notariële Beroepsorganisatie*), the parties hereby explicitly consent to (i) the undersigned civil law notary executing this notarial deed and (ii) the Seller being assisted and represented by NautaDutilh N.V. in relation to the Agreement and this deed and any agreements that may be concluded, or disputes that may arise, in connection herewith.

**15. POWER OF ATTORNEY**

The persons appearing have been authorised to act under three powers of attorney in the form of private instruments, which will be attached to this deed.

**16. FINAL PROVISION**

The sole purpose of the headings appearing in capital letters in this deed is to increase its readability. None of the parties is entitled to derive any rights therefrom.

**CONCLUSION**

The persons appearing are known to me, civil law notary.

This deed was executed in Rotterdam on the date mentioned in its heading.

After I, civil law notary, had conveyed and explained the contents of the deed in substance to the persons appearing, they declared that they had taken note of the contents of the deed, were in agreement with the contents and did not wish them to be read out in full. Following a partial reading, the deed was signed by the persons appearing and by me, civil law notary.

**SCHEDULE 1.B**

**DEED OF TRANSFER VESSELS**

*[Curacao Notary to deliver draft]*

**SCHEDULE 2**

**NOTE**

**USD 13,671,000 LOAN NOTE**

dated [●] 2012

Between

UYT Holding Coöperatief U.A.  
as Borrower

and

Dockwise Transport B.V.  
as Lender

\_\_\_\_\_  
\_\_\_\_\_

**THIS LOAN NOTE** is dated [●] 2012 and made between:

1. **UYT Holding Coöperatief U.A.**, a cooperative with exclusion of liability (*coöperatie met uitsluiting van aansprakelijkheid*) organised under the laws of the Netherlands, whose corporate seat is at [●] and its registered office at [●] as borrower ("**Borrower**"); and
2. **Dockwise Transport B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, whose corporate seat is at Breda, the Netherlands and its registered office at Lage Mosten 17, 4822 NJ, Breda, the Netherlands, as lender ("**Lender**"),

**WHEREAS:**

- A. Pursuant to a sale and purchase agreement dated [●] 2012 between the Lender, Super Servant 3 B.V., Super Servant 4 B.V. and Yacht Express B.V. as sellers and the Borrower as principal equity holders of the parent companies to the Purchaser (the "**Sale and Purchase Agreement**"), the Purchaser acquired or will acquire the Shares, indirectly the Subsidiary Shares and the Vessel SS3, the Vessel SS4 and the Vessel YE;
- B. In accordance with Clause [3.1] of the Sale and Purchase Agreement, the Purchase Price for the Shares and the Vessels consists of a Closing Cash Payment and a payment in the form of a loan in the amount of USD 13,671,000 granted by the Lender to the Borrower.
- C. The Lender has agreed to make available to the Borrower the loan, subject to and upon the terms and conditions set forth in this Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions Sale and Purchase Agreement**

Unless otherwise defined in this Agreement, capitalised words and expressions defined in the Sale and Purchase Agreement have the same meanings when used in this Agreement (including its recitals).

## 1.2. Definitions

The following capitalised terms and expressions in this Agreement shall have the following meanings:

<b>Agreement</b>	this loan note
<b>Change of Control</b>	<p>any party (alone or acting in concert), which currently does not control the Borrower, gains control of the Borrower and for the purposes of this definition "control" means:</p> <p>(a) the power (whether by way of ownership of membership interests, proxy, contract, agency or otherwise) to:</p> <p>(A) cast, or control the casting of 50% or more of the maximum number of votes that might be cast at a members' meeting of the Borrower; or</p> <p>(B) appoint or remove the managing directors or other equivalent officers of the Borrower; or</p> <p>(b) the holding beneficially of 50% or more of the membership interests of the Borrower.</p> <p>For the purpose of this definition: <b>"acting in concert"</b> means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of interests in the Borrower by any of them, either directly or indirectly to obtain or consolidate control of the Borrower</p>
<b>Event of Default</b>	means any event or circumstance set out

	in Clause 10 of this Agreement
<b>Loan</b>	has the meaning attributed thereto in Clause 2 of this Agreement
<b>Material Adverse Change</b>	means any event or circumstance which, in the reasonable opinion of the Lender, has a material adverse effect on (a) the financial condition, business, assets or prospects of the Borrower or any of its subsidiaries, (b) the ability of the Borrower to perform its obligations under this Agreement, or (c) the validity or enforceability of this Agreement or the rights or remedies of the Lender thereunder
<b>Party</b>	means a party to this Agreement
<b>Sale and Purchase Agreement</b>	has the meaning attributed thereto in the recitals of this Agreement
<b>Security Documents</b>	a (i) security agreement with each Borrower individually pledging as collateral all personal assets, in joint and several liability for the NOTE, (ii) second ranking demand parent company guarantee for the shares of Coby Enterprises LLC and Valkor, LLC held by the Borrower in favour of the Lender, in the form attached as <u>Annex 1</u> , and (iii) [●], in each case securing all present and future obligations and liabilities of the Borrower to the Lender under this Agreement and each of the Security Documents
<b>Senior Loan Agreement</b>	means the loan agreement, dated [●] between the Borrower as borrower and [●] as lender
<b>Termination Date</b>	means the fifth anniversary of the date

of this Agreement

**Vessel Proceeds** any proceeds of the sale, chartering or other disposal of a Vessel to a third party

### 1.3. Interpretation

- a. No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- b. this "**Agreement**" or any other agreement or instrument is a reference to this Agreement or other agreement or instrument as amended, novated, supplemented, extended or restated;
- c. "**Lender**", "**Party**" or "**Borrower**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees.
- d. Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.
- e. English language words used in this Agreement intend to describe Dutch legal concepts only and the consequences of the use of those words in English law or any other foreign law shall be disregarded.
- f. Where in this Agreement a Dutch term is given in italics or in italics and in brackets after an English term and there is an inconsistency between the Dutch and the English term, the meaning of the Dutch term prevails.
- g. References to any Dutch legal concept shall, in respect of any jurisdiction other than the Netherlands, be deemed to include the concept which in that jurisdiction most closely approximates the Dutch legal concept.
- h. The words "include", "included" or "including" are used to indicate that the matters listed are not a complete enumeration of all matters covered.

- i. A claim, proceeding, dispute, action or other matter will only be deemed to have been threatened if any written demand or statement has been made or any written notice has been given.
- j. The headings used in this Agreement are for convenience or reference only and are not to affect the construction of this Agreement or to be taken into consideration in the interpretation of this Agreement.
- k. Unless otherwise stated, references to Clauses are to Clauses of this Agreement.

1.4. **Third party rights**

A person who is not a Party has no right under article 6:253 DCC to enforce or to enjoy the benefit of any term of this Agreement.

**2. THE LOAN AND PURPOSE**

Subject to the terms of this Agreement, the Lender makes available to the Borrower a loan in an aggregate amount equal to USD 13,671,000 (two million five hundred thousand United States dollars) (the "**Loan**"). The Loan consists of the amount payable by the Borrower to the Sellers as described in clause [3.1.1(ii)] of the Sale and Purchase Agreement and shall be deemed to have been drawn down by the Borrower in its entirety on the date of this Agreement.

**3. CONDITIONS OF UTILISATION**

The Lender will only be obliged to make the Loan available if (i) it has received the amounts to be transferred to it by the Civil Law, Notary in accordance with the relevant provisions of the Notary Letter, (ii) it has received a copy of the duly signed Security Documents and (iii) on the date of this Agreement, no event or circumstance mentioned in Clause 10 has occurred or, in the opinion of the Lender, is reasonably likely to occur.

**4. REPAYMENT AND PREPAYMENT**

- 4.1. The Borrower shall repay the Loan in full on the Termination Date.

- 4.2. If it becomes unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by this Agreement, the Borrower shall immediately upon request of the Lender repay the Loan.
- 4.3. If the Borrower suspends or ceases to carry on all or a substantially all of its business, the Borrower shall repay the Loan and any other outstanding amount payable to the Lender under this Agreement or any of the Security Documents.
- 4.4. If a Change of Control occurs:
  - (a) the Borrower shall promptly notify the Lender upon becoming aware of that event; and
  - (b) the Lender shall by notice to the Borrower declare the Loan, together with accrued interest, and all other amounts accrued or outstanding under this Agreement immediately due and payable, whereupon all such outstanding amounts will become immediately due and payable.
- 4.5. For so long the Loan or any other amount payable to the Lender under this Agreement or the Security Documents is or may become outstanding under this Agreement or any of the Security Documents, the Borrower shall not declare, make or pay an amount as dividend, fee, charge or other distribution on or in respect of its membership interests or repay or distribute of any premium on its membership interests.
- 4.6. The Borrower may at any time prepay the whole or any part of the Loan made to it.
- 4.7. Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid without premium or penalty.
- 4.8. The Borrower may not reborrow any part of the Loan which is repaid or prepaid.

## **5. INTEREST AND PROVISION**

- 5.1. The rate of interest on the Loan is [6.75 (six point seven five)] per cent. per annum and will be due as from the date of this Agreement up to and including the date of repayment.

- 5.2. Accrued interest in relation to the Loan will be added to the principal amount of the Loan on the last day of the year. If, however, any such day is not a Business Day, the interest payment date will instead be the preceding Business Day.
- 5.3. Any interest, commission or fee accruing under this Agreement will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 (three hundred sixty) days.
- 5.4. If the Borrower fails to pay any amount payable by it on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment, as if the overdue amount had, during the period of non-payment, constituted a Loan and at the rate per annum as confirmed by the Lender to the Borrower pursuant to clause 5.1 increased by [3 (three)] per cent.<sup>1</sup>. Any interest accruing pursuant to this Clause 5.4 shall be immediately payable by the Borrower on demand of the Lender. Any unpaid interest arisen on an overdue amount will be compounded with the overdue amount but will remain immediately due and payable.

## **6. TAX GROSS UP**

- 6.1. All payments (whether of principal, interest or otherwise) to be made by the Borrower shall be made without set-off or counterclaim and free and clear of and without deduction for any present or future Tax.
- 6.2. At any time when the Borrower is required to make any deduction or withholding in respect of any Tax from any payment due under this Agreement, the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lender receives on the due date for such payment (and retain, free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.

## **7. COSTS**

Except as provided otherwise in this Agreement or in the Sale and Purchase Agreement, each Party shall bear its own costs in connection with the preparation, negotiation, signing and completion of this Agreement.

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<sup>1</sup> To be confirmed by Dockwise.

## 8. SUBORDINATION

- 8.1. The Lender hereby agrees that all of its claims and rights against the Borrower under or in connection with this Agreement and the terms and conditions thereof shall be subject and subordinated in all respects to and rank after all unsubordinated claims and rights [●] may have against the Borrower under the Senior Loan Agreement.
- 8.2. The Borrower hereby acknowledges to have taken notice of and agrees to the contents of the subordination pursuant to this Clause 8.

## 9. REPRESENTATIONS OF THE BORROWER

The Borrower makes the representations and warranties as set out in part B of Schedule 7 (*Representations and Warranties*) of the Sale and Purchase Agreement to the Lender on the date of this Agreement. References to "this Agreement" as used in part B of Schedule 7 (*Representations and Warranties*) of the Sale and Purchase Agreement shall for the purpose of this Clause 9 be read, construed and interpreted as references to this Agreement.

## 10. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 10 is an Event of Default, save for Clause 10.13 (*Acceleration*).

### 10.1. Non-payment

The Borrower does not pay on the due date any amount payable pursuant to this Agreement at the place and in the currency in which it is expressed to be payable.

### 10.2. Repudiation

The Borrower repudiates this Agreement or evidences an intention to repudiate this Agreement.

### 10.3. Other obligations

The Borrower does not comply with any provision of this Agreement.

### 10.4. Obligations binding

The obligations expressed to be assumed by the Borrower in this Agreement are not legal and valid obligations, or not binding on it or not enforceable in accordance with the terms thereof.

**10.5. Unlawfulness**

It is or becomes unlawful for the Borrower to perform any of its obligations under this Agreement.

**10.6. Misrepresentation**

Any representation or statement made or deemed to be made by the Borrower in this Agreement is or proves to have been incorrect or misleading when made or deemed to be made.

**10.7. Cross default**

The Borrower defaults in the timely and adequate performance or acts in breach of any obligation under or in connection with the Sale and Purchase Agreement or any other financing agreement entered into with any other lender, irrespective of the name given to such agreement.

**10.8. Immunity**

The Borrower or its assets are entitled to immunity from suit, execution, attachment or other legal process.

**10.9. Cessation of business**

All or substantially all of the business or assets (including, for the avoidance of doubt, shares) of the Borrower or any of its subsidiaries are sold or the Borrower or any of its subsidiaries suspends or ceases to carry on all or substantially all of its business.

**10.10. Insolvency**

- (a) The Borrower or any of its subsidiaries is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to readjustment or rescheduling any of its indebtedness or makes a general assignment for the benefit of its creditors.
- (b) The value of the assets of the Borrower or any of its subsidiaries is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Borrower or any of its subsidiaries.

**10.11. Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken or threatened in relation to:

- (a) the (provisional) suspension of payments, a moratorium of any indebtedness, bankruptcy, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or any of its subsidiaries;
- (b) a composition, compromise, assignment or arrangement with any creditor of the Borrower or any of its subsidiaries;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer (for example, in respect of Dutch law: *vereffenaar*, *bewindvoerder* or *curator*) in respect of the Borrower or any of its subsidiaries or any of their assets; or
- (d) enforcement of any encumbrance over any assets of the Borrower or any of its subsidiaries,

or any analogous procedure or step is taken in any jurisdiction.

**10.12. Material adverse change**

Any Material Adverse Change occurs or is reasonably likely to occur.

**10.13. Acceleration**

On and at any time after the occurrence of an Event of Default the Lender may by notice to the Borrower:

- (a) cancel its commitment to make the Loan available;
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under this Agreement be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under this Agreement to be immediately payable on demand, whereupon they shall immediately become payable on demand by the Lender.

**11. SECURITY**

The Borrower shall create in favour of the Lender, as security for its payment obligations under this Agreement, the security contained in the Security Documents.

**12. CHANGES TO THE PARTIES**

- 12.1. The Borrower may not transfer all or part of its rights and obligations under this Agreement without the prior written consent of the Lender.
- 12.2. The Lender may assign or transfer (whether by means of an assignment of rights (*cessie*), transfer of debt (*schuldoverneming*) or transfer of contract (*contractsoverneming*) or any other means) all or any part of its rights under this Agreement or legal relationship (*rechtsverhouding*) with the Borrower under this Agreement to any party. The Lender may pledge (*verpanden*) all or any part of its rights under this Agreement.

**13. SET-OFF**

- 13.1. Lender may set-off any matured obligation due from the Borrower under this Agreement against any matured obligation owed by the Lender to the Borrower (including, but not limited to, any obligation of the Lender to the Borrower under or pursuant to clause 7.1 of the Sale and Purchase Agreement).
- 13.2. The Borrower hereby waives its rights under any of the articles 6:37, 6:52 up to and including 6:57 and 6:262 up to and including 6:265 of the DCC, which waivers are hereby accepted the Lender.
- 13.3. The Borrower hereby waives its right to set-off any (alleged) Claims against any matured obligation owed by the Borrower to the Lender under this Agreement, which waiver is hereby accepted the Lender.

**14. NOTICES**

Any notice or other communication under or in connection with this Agreement must be made in accordance with the Sale and Purchase Agreement.

**15. CALCULATIONS AND CERTIFICATES**

- 15.1. In any litigation or arbitration proceedings arising out of or in connection with this Agreement, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

- 15.2. Any certification or determination by the Lender of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**16. PARTIAL INVALIDITY**

In the event that a provision of this Agreement is null and void or unenforceable (either in whole or in part), the remainder of this Agreement shall continue to be effective to the extent that, given this Agreement's substance and purpose, such remainder is not inextricably related to the null and void or unenforceable provision. The Parties shall make every effort to reach agreement on a new clause which differs as little as possible from the null and void or unenforceable provision, taking into account the substance and purpose of this Agreement.

**17. NO IMPLIED WAIVER; NO FORFEIT OF RIGHTS**

- 17.1. Any waiver under this Agreement must be given by notice to that effect.
- 17.2. Where a Party does not exercise any right under this Agreement (which shall include the granting by a Party to any other Party of an extension of time in which to perform its obligations under any provision hereof), this shall not be deemed to constitute a forfeit of any such rights (*rechtsverwerking*).

**18. AMENDMENT**

No amendment to this Agreement shall have any force or effect unless it is in writing and signed by the Parties, except where a more stringent form (e.g. notarisation) is required under applicable law.

**19. GOVERNING LAW AND JURISDICTION**

- 19.1. This Agreement and any agreement resulting therefrom shall be exclusively governed by and construed in accordance with the laws of the Netherlands, without regard to any conflict of law rules under Dutch private international law.
- 19.2. If the Borrower is represented by an attorney in connection with the signing and/or execution of this Agreement or any other deed, agreement or document referred to in this Agreement or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the

other Parties that the existence and extent of the attorney's authority and the effects of the attorney's exercise or purported exercise of his authority shall be governed by the laws of the Netherlands.

- 19.3. The Parties agree that any dispute in connection with this Agreement or any agreement resulting therefrom shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*) as at present in force.
- (a) The arbitral proceedings and all documents delivered to or by the arbitrators shall be conducted in English.
  - (b) The place of arbitration shall be Rotterdam, the Netherlands.
  - (c) The arbitral tribunal shall comprise 3 (three) arbitrators.
  - (d) The arbitral tribunal shall decide in accordance with the rules of law.
  - (e) The Lender shall not be precluded from applying for injunctive relief in summary proceedings (*kort geding*) before any competent court instead of arbitrators.
  - (f) Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided for in Article 1046 of the Code of Civil Procedure, shall be excluded.

This Agreement has been signed in 2 (two) identical copies on [●] 2012. This Agreement may be signed in counterparts, which together shall constitute one and the same agreement.

*SIGNATURE PAGE FOLLOWS*

**SIGNATURES**

For and on behalf of  
**THE BORROWER**

**Steven Byle**

Address: [●]

Attn. [●]

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

**Clemens van der Werf**

Address: [●]

Attn. [●]

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

**Michael Cohen**

Address: [●]

Attn. [●]

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

For and on behalf of  
**THE LENDER**

**Dockwise Transport B.V.**

Address: Lage Mosten 17, 4822 NJ Breda, the Netherlands

Attn. [●]

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

ANNEX 1

**PARENT COMPANY GUARANTEE**

DELETED

**SCHEDULE 3** Error! Reference source not found.

**NET ASSETS AND NET DEBT SHEET**

**SCHEDULE 4****CLOSING****A. In respect of the Closing, the following shall apply:**

*[Note: to be amended in accordance with Notary Letter (to be drafted upon agreement on transaction and after consultation with the Agent and the Curacao Notary)]*

- a. 1 (one) day prior to the Closing Date, the Purchaser shall transfer the Closing Cash Payment to the Notary Account;
- b. at the Closing Date, the Sellers shall procure the delivery to the Purchaser of:
  - i. the shareholders' register of DYT;
  - ii. an excerpt of the minutes of the shareholders' meeting of the Sellers in which the Transaction is approved;
  - iii. a certificate dated on the Closing Date, executed on behalf of the Sellers by its Chief Executive Officer and Chief Financial Officer to the effect that each of the Closing Conditions relating to Seller in Clause 5 have been satisfied;
  - iv. letters of resignation, in form acceptable to Purchaser, effective immediately prior to the Closing, executed by each of the directors and officers of DYT;
  - v. [reserved]
- c. at the Closing Date and after confirmation by the Civil Law Notary that the Closing Cash Payment has been received in the Notary Account, the Parties shall sign the Deed of Transfer Shares before the Civil Law Notary and shall procure that the Civil Law Notary shall sign the Deed of Transfer Shares and that DYT will acknowledge the transfer of the Shares by signing the Deed of Transfer Shares;

- d. at the Closing Date and after confirmation by the Civil Law Notary to the Curacao Notary that the Closing Cash Payment has been received in the Notary Account, the Parties shall sign the Deed of Transfer SS3, the Deed of Transfer SS4 and the Deed of Transfer YE before the Curacao Notary and shall procure that the Curacao Notary shall sign the Deeds of Transfer Vessels and the Curacao Notary shall subsequently register the transfer of the Vessels in the Vessel Registry;
- e. after the above signing of the Deed of Transfer Shares and Deeds of Transfer Vessels, the Civil Law Notary shall release the Closing Cash Payment in accordance with the Notary Letter;
- f. at the Closing Date, Dockwise Transport and the Purchaser shall sign the Note;
- g. at the Closing Date, the Time Charter Agreement shall be signed;
- h. at the Closing Date, the parent company guarantee in the agreed form as attached hereto as Schedule 13 shall be signed by Coby Enterprises, LLC, Valkor, LLC and Dockwise Transport;
- i. [reserved].

**SCHEDULE 5**

**DATA ROOM**

*[To follow]*

**SCHEDULE 6**

**DISCLOSURE LETTER**

**DOCKWISE TRANSPORT B.V.  
SUPER SERVANT 3 B.V.  
SUPER SERVANT 4 B.V.  
YACHT EXPRESS B.V.**

To: UYT Holding Coöperatief U.A.

[date]

Dear Sirs,

**PROJECT THREE - DISCLOSURE LETTER**

**1. INTRODUCTION**

- a. Reference is made to the Sale and Purchase Agreement (the "**Agreement**") to be entered into between yourselves as the Purchaser and ourselves as the Sellers relating to the entire issued share capital of DYT Netherlands B.V. and the vessels Super Servant 3, Super Servant 4 and Yacht Express (the "**Transaction**")
- b. This letter constitutes the Disclosure Letter defined in the Agreement.
- c. You hereby acknowledge that you have been given the opportunity to carry out a due diligence investigation into the Companies and their business and the Vessels, and have had access to the management of the Companies, as well as to the Companies' corporate documents.

**2. DEFINITIONS AND REFERENCES**

- a. Terms defined in the Agreement have the same meanings in this Disclosure Letter.

- b. This Disclosure Letter makes reference, for convenience only, to the corresponding numbers of Part A of Schedule 7 (Sellers' Warranties) to the Agreement. Each disclosure shall, however, be deemed to be a disclosure with respect to all of the Sellers' Warranties and shall not be limited to the particular Representation and Warranty corresponding to the number of the relevant disclosure.
- c. In the event of any inconsistency between the contents of any document disclosed and any reference to it or summary of it in this Disclosure Letter, that document is to be taken as being correct, unless otherwise expressly stated in this Disclosure Letter and we shall not be liable towards you in respect of the inconsistency.

### **3. GENERAL DISCLOSURES**

This Disclosure Letter shall be deemed to include all the information disclosed or otherwise available to you by virtue of:

- a. the Agreement, and its Schedules;
- b. the Accounts;
- c. the corporate documents of each of the Companies;
- d. the trade register in respect of each of the Companies;
- e. the Vessel Registry
- f. the fact that it is in the public domain.

### **4. ACCEPTANCE**

Please confirm your acceptance of this Disclosure Letter by signing the enclosed copy and returning it to us.

Yours faithfully,

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By:  
Title:  
Date:

The Purchaser accepts the disclosures set out herein.

For and on behalf of

---

By:  
Title:  
Date:

**ANNEX 1**

**SCHEDULE 7****REPRESENTATIONS AND WARRANTIES****PART A****SELLERS' WARRANTIES**

Except where specifically provided otherwise herein, the defined term "Companies" in this Schedule shall comprise the Subsidiaries.

Wherever the expression "to the best knowledge of the Sellers" or any similar expression is used in this Schedule, such expression shall mean the actual knowledge of Messrs. Peter Wit, Peter Koets and Bas Kolenburg, after having made enquiries, also with Mr. Clemens van der Werf, and having reviewed the representations and warranties.

**1. CAPACITY AND CONSEQUENCES OF SALE**

- 1.1. Each Seller is duly incorporated and validly existing under the laws of the Netherlands.
- 1.2. Each Seller has full power and authority to enter into this Agreement, to exercise its rights and to perform its obligations thereunder, and all necessary corporate, governmental, statutory or other approvals have been obtained (other than the Closing Conditions) and any other action required to authorise the execution by such Seller of this Agreement and the performance by such Seller of its obligations hereunder has been properly taken.
- 1.3. Subject to the Closing Conditions, this Agreement is legally valid and binding upon each of the Sellers and enforceable against each of the Sellers in accordance with its terms.
- 1.4. The execution of this Agreement, the exercise of its rights hereunder and the performance by each of the Sellers do not (1) conflict with, result in or constitute any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, renegotiation, modification or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person in accordance with, any laws of the Netherlands or any provision

of the organizational documents of the Companies, (2) result in the creation of an Encumbrance on any properties or assets of the Companies or the Vessels, (3) conflict with, result in or constitute a violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, renegotiation, modification or acceleration of any obligation or loss or modification of any benefit under, or require consent, approval or waiver from any Person in accordance with any contracts, Permits or laws with respect to the Companies or their respective properties or assets or the Vessels, or (4) otherwise have an adverse effect upon the ability of each of the Sellers to consummate the Transaction.

- 1.5. There is no action, lawsuit or legal proceeding or, as far as each of the Sellers is aware, any investigation pending or threatened against any of the Sellers before any court or arbitrator or any Authority, agency or official that would in any manner adversely affect any of the Sellers' ability to enter into or perform its obligations under this Agreement.

## **2. THE COMPANIES**

- 2.1. Each of the Companies has been duly incorporated and validly exists under the laws of the jurisdiction of its incorporation.
- 2.2. Except to the extent immaterial, all statutory books and registers including the shareholders' registers of members of the Companies have been properly kept and no notice or allegation that any of them is incorrect or should be rectified has been received from any authority.
- 2.3. None of the Companies, nor any part of their assets or undertakings is involved in or subject to any form of bankruptcy, liquidation, receivership, administration, arrangement or scheme with creditors, moratorium, interim or provisional supervision by the court or court appointee, whether in the jurisdiction of its incorporation or in any other jurisdiction.
- 2.4. No proposal has been made or resolution adopted for the dissolution or liquidation of any of the Companies, no circumstances exist which may result in the dissolution or liquidation of any of the Companies, and no proposal has been made or resolution adopted for a statutory merger (*juridische fusie*) or division (*splitsing*), or a similar arrangement under the laws of any applicable jurisdiction, of any of the Companies.

- 2.5. No Company holds or beneficially owns or has agreed to acquire any securities of any other corporation other than the Subsidiaries.

### **3. SHARES AND SUBSIDIARY SHARES**

- 3.1. The Shares constitute the entire issued share capital of DYT.
- 3.2. Dockwise Transport is entitled to all Shares and DYT is entitled to all Subsidiary Shares.
- 3.3. There is no Encumbrance on, over or affecting any of the Shares or Subsidiary Shares, nor is there any commitment to give or create any Encumbrance. There are no outstanding depositary receipts (*certificaten*) in relation to the Shares or the Subsidiary Shares.
- 3.4. No rights, including but not limited to option rights, warrants, convertibles and similar rights, have been granted or issued relating to any shares (whether already issued or not) in the share capital of any of the Companies.

### **4. NET ASSETS AND NET DEBT SHEETS AND ACCOUNTS**

- 4.1. The Net Assets and Net Debt Sheet shall give a true and fair view of the financial position of the relevant Companies at the date and for the period indicated.
- 4.2. The Companies have kept their books in all material respects in accordance with the applicable statutory requirements.
- 4.3. The Accounts of SS3, SS4, YE and DYT (i) comply with all applicable statutory and legal requirements in force at the time of their preparation and adoption, (ii) have been prepared in accordance with IFRS, which accounting principles have been applied on a basis consistent with previous years, and (iii) provide such a view as enables a sound judgement to be formed on the assets and liabilities (*vermogen*) and results (*resultaat*) of each of these companies and, insofar as the nature of the Accounts permits, of their solvency and liquidity.
- 4.4. The Accounts of SS3, SS4, YE and DYT truly and fairly (*getrouw*), clearly (*duidelijk*) and systematically (*stelselmatig*) reflect (i) the net assets (*vermogen*) and composition of the assets and liabilities of each of

these companies as of 31 December 2011, and (ii) the results of each of these companies for the financial year ended on 31 December 2011.

- 4.5. SS3, SS4, YE and DYT do not have any liabilities (including but not limited to tax liabilities, due, accrued, or attributable to the period up to and including 31 December 2011), obligations, commitments or risks whether actual, contingent or latent, conditional or unconditional as per 31 December 2011, other than those either included or provided for in full on the balance sheet(s) in the Accounts.
- 4.6. None of the Companies has entered into any transaction, commitment or other obligation outside its ordinary course of business.
- 4.7. At the Closing Date, there is no outstanding guarantee, indemnity, suretyship or security given by any of the Companies or for the benefit of any of the Companies outside its ordinary course of business.

## **5. CONDUCT OF BUSINESS**

Since 31 August 2011, the Companies have operated as a going concern consistent with past practice other than as a consequence of preparing the Transaction.

## **6. VESSELS**

At Closing, each of SS3, SS4 and YE has the right of ownership with respect to the respective Vessel it holds:

- a. which is unconditional;
- b. which has not been charged with any mortgages and/or attachments or registrations thereof;
- c. which is not subject to any qualitative (*kwalitatieve*) obligations and in respect of which no perpetual clauses (*kettingbedingen*) which are to be imposed on the Purchaser have been agreed;
- d. which is not subject to any limited (*beperkte*) rights; and
- e. which has not been charged with any other Encumbrance or restriction based on an agreement.

**7. EMPLOYEES AND PENSIONS**

- 7.1. None of the Companies is bound by any collective labour agreement.
- 7.2. There is no material dispute pending or, to the best knowledge of the Sellers, threatened with respect to any of the Employees.
- 7.3. All premiums that have fallen due on or before the Closing Date in respect of the pension arrangements of the Companies have been paid or are adequately provided for. None of the Companies is under any obligation to pay to any of the Employees, former employees or directors of the Companies any remuneration or provide them with any fringe benefit, other than as disclosed in the Disclosed Information.

**8. AGREEMENTS AND COMMITMENTS**

- 8.1. None of the Companies is, or has agreed to become, a member of any joint venture, consortium, partnership or other association (other than a recognised trade association in relation to which the Companies has no liability or obligation except for the payment of annual subscription or membership fees) as at the date of this Agreement.
- 8.2. To the Sellers' best knowledge, none of the Companies has received any information that its customers are considering to terminate their relationship with the Companies as a result of the Transaction.

**9. VIOLATIONS AND LITIGATION**

- 9.1. None of the Companies has with respect to any aspect of its activities received notice, summons or an official request of any kind from the Netherlands Competition Authority or the European Commission or from any authority with respect to a material violation and/or failure to comply with any applicable law or requiring it to take or omit any action.
- 9.2. Except as set out in Annex 9.2 no Company is engaged in any litigation or arbitration proceedings which are currently in progress (except as claimant for collection of debts in the ordinary course of business).

## **10. PERMITS, LEGALITY OF BUSINESS OPERATIONS AND ENVIRONMENT**

All of the Warranties contained in this section are given to the best knowledge of the Sellers only.

- 10.1. Each of the Companies has at its disposal all material Permits necessary for carrying out and continuing its operations and business as presently carried out.
- 10.2. No event has occurred as a result of which any of the material Permits may be suspended, withdrawn or negatively affected.
- 10.3. The operations and the business of each of the Companies are carried on in a manner which is consistent with, and within the limits prescribed by, the Permits, and there are no circumstances or events as a result of which any of the Companies will no longer be able to comply with any of the Permits.
- 10.4. Each Company has obtained all environmental licences, Permits, authorisations, exemptions, consents or permissions reasonably required under environment law and the absence of which would have a material impact on the Business (the "**Environmental Licences**") and has in all material respects complied with applicable environmental law and with the terms and conditions of the Environmental Licences.

## **11. DISCLOSURE**

To the Sellers' best knowledge, all Disclosed Information is true and accurate in all material respects.

**ANNEX 9.2 TO SCHEDULE 7.A****LIST OF MATERIAL LITIGATION AND ARBITRATION  
PROCEEDINGS***Dockwise Yacht Transport LLC – damage to catamaran “Cartouche”:*

In June 2011 Dockwise Yacht Transport LLC was ordered before the court in Marseille where owners of the mv “Cartouche”, transported in April 2011 on board the Vessel SS4 to the Caribbean, have demanded a court expert to be appointed to investigate the cause and extent of bottom damage to its yacht. Dockwise Yacht Transport LLC on its turn commenced arbitration proceedings against the owners of the “Cartouche” in Rotterdam, in accordance with the provision on the booking note, with the defense that the French court is not competent and that according to the conditions of contract Dockwise Yacht Transport LLC cannot be held liable for damages to the yacht. The amount of damage is not known at this stage.

The expert recently issued his survey report to the court. We are awaiting the date for a court hearing.

*Vessel SS4 – Oil Spillage Ceuta*

Vessel SS4 was detained in Ceuta, Spain on 3<sup>rd</sup> of September 2011 because of an oil spill. An amount of EUR 90,000 was paid to the Central Maritime Authorities in September for clean-up costs and as a fine following which the vessel was released. Final decision on the total amount payable is awaited and expected to remain below the amount already paid to the Authorities.

*Vessel SS4 – crew member Valentyn Byanov*

In October 2011 a claim for permanent disablement amounting to USD 89,100 was received from a lawyer representing cadet Byanov who served on board of Vessel SS4 from August 2010 to December 2010 and, amongst others, suffers from his kidneys.

Liability has been rejected as no causal connection can be established between his diseases and his period on board the vessel during which he never reported ill and/or unfit for work.

**PART B**

**PURCHASER'S WARRANTIES**

- a. The Purchaser is duly incorporated and validly existing under the laws of the Netherlands.
- b. The Purchaser has full power and authority to enter into this Agreement, to exercise its rights and to perform its obligations thereunder, and all necessary corporate, governmental, statutory or other approvals have been obtained (other than the Closing Conditions) and any other action required to authorise the execution by the Purchaser of this Agreement and the performance by the Purchaser of its obligations hereunder has been properly taken or will be taken prior to the relevant Closing Date.
- c. Subject to the Closing Conditions, this Agreement is legally valid and binding upon the Purchaser and enforceable against the Purchaser in accordance with its terms.
- d. The execution of this Agreement, the exercise of its rights hereunder and the performance by the Purchaser do not (1) conflict with, result in or constitute any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, renegotiation, modification or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person (other than Purchaser's financiers for the Transaction) in accordance with, any applicable laws, or (2) otherwise have an adverse effect upon the ability of the Purchaser to consummate the Transaction.
- e. There is no action, lawsuit or legal proceeding or investigation pending or threatened against the Purchaser before any court or arbitrator or any Authority, agency or official that would in any manner adversely affect the Purchaser's ability to enter into or perform its obligations under this Agreement.
- f. The Purchaser has sufficient cash, or will have no later than 1 (one) day before Closing available lines of credit or immediately available funds necessary, to enable it to make payment of the Purchase Price or any amounts contemplated by this Agreement on a fully committed and unconditional basis.

**SCHEDULE 8****TAX SCHEDULE**

The following capitalised terms and expressions in this Tax Schedule shall have the following meanings:

<b>CIT Fiscal Unity</b>	the fiscal unity for Dutch corporate income tax purposes pursuant to article 15 of the Dutch Corporate Income Tax Act 1969 ( <i>Wet op de vennootschapsbelasting 1969</i> ) between Dockwise Transport and DYT
<b>Profits</b>	includes income, profits or gains of any description and from any source, and " <b>Profits earned</b> " includes profits earned, accrued or received, or treated as, or deemed to be, earned, accrued or received for Tax purposes, and profits earned on or before a certain date or in respect of a certain period include profits treated as, or deemed to be, earned on or before that date or in respect of that period for Tax purposes
<b>Relief</b>	any relief allowance, amortisation, depreciation, credit, deduction, loss compensation, exemption, set-off or other relief of a similar nature granted or availability in relation to Tax and any repayment of right to repayment of Tax
<b>Tax Liability</b>	a liability to or claim for Tax or a non-availability, loss, reduction or cancellation of any Relief
<b>Termination Date</b>	the date as from which a Company no longer forms part of the CIT Fiscal Unity, which shall ultimately be the Closing Date

**VAT Fiscal Unity** the fiscal unity for Dutch value added tax purposes pursuant to article 7(4) of the Dutch Value Added Tax Act 1968 (*Wet op de omzetbelasting 1968*) between Dockwise Transport and DYT

## 1. GENERAL

Save to the extent this Schedule contains specific provisions, the provisions of the Agreement shall, where relevant, apply to this Schedule. Where the same matter is addressed in both the body of the Agreement and this Schedule, the provisions of this Schedule shall prevail.

## 2. DOCKWISE TRANSPORT INDEMNITY

Subject to the provisions of this Schedule, Dockwise Transport shall indemnify (*vrijwaren*) and hold harmless the Purchaser for:

- a. an amount of any Tax Liability of any of the Companies related to the period up to and including the Closing Date; and
- b. a secondary liability for Tax for which a Company is liable on the basis of article 39 and 43 Dutch Collection Act 1990 (*Invorderingswet 1990*) which arises as a result of any transaction, event, act or omission occurring before the Closing Date (other than Tax arising in respect of income, profits or gains earned after that date as a result of any such transaction, event, act or omission) or in respect of any Profits earned before that date.

## 3. FISCAL UNITIES

- 3.1 Dockwise Transport shall procure that the CIT Fiscal Unity for DYT will be terminated as from the Closing Date.
- 3.2 Dockwise Transport will inform the Tax Authorities of the termination of the VAT Fiscal Unity with respect to DYT as from the Closing Date.

#### 4. PAYMENT

- 4.1 A payment to be made by Dockwise Transport under Clause 2 of this Schedule shall be made within 30 (thirty) Business Days after the date on which notice setting out the amount due is received by Dockwise Transport from the Purchaser in accordance with Clause 10.2 of this Schedule.
- 4.2 Dockwise Transport shall not be obliged to make a payment under Clause 4.1 of this Schedule to the extent that a pro forma objection (*bezwaarschrift*), objection or appeal is pending in respect of a Tax Liability, irrespective whether such a pro forma objection (*bezwaarschrift*), objection or appeal is dealt by a Company, a member of the Dockwise Transport Group or any member of the Purchaser's Group.
- 4.3 If any Party fails to pay any sum due from it under this Schedule on the due date for payment then, save to the extent that the relevant Party is Dockwise Transport and the liability of Dockwise Transport under Clause 2 of this Schedule compensates the Purchaser for a late payment of the sum by virtue of its extending to interest and penalties, that Party shall pay statutory interest (*wettelijke rente*) at the then applicable rate on that sum from the date on which payment is due until the date of actual payment (as well after as before judgment or arbitral award), which interest shall accrue from day to day and be compounded monthly.

#### 5. LIMITATIONS AND EXCLUSIONS

- 5.1 The indemnity contained in Clause 2 of this Schedule shall not cover any Tax Liability to the extent that:
- a. an allowance, provision or reserve in respect of that Tax Liability has been made in the Accounts or the Net Assets and Net Debt Sheet or the liability is otherwise reflected in the Accounts or in the Net Assets and Net Debt Sheet or in calculating the Purchase Price; or
  - b. the payment is:
    - i. interest arising from a failure to pay Tax to a Tax Authority within a reasonable time after Dockwise Transport has made a payment under Clause 4 of this

Schedule in respect of that Tax Liability; or

- ii. interest attributable to a period after the Closing Date on an amount where the indemnity contained in Clause 2 of this Schedule does not extend to that amount by virtue of Clause 5.1(a) of this Schedule; or
  - iii. a penalty or fine incurred after the Closing Date in connection with such an amount; or
- c. it would not have arisen (or would have been reduced) but for any act or omission of or on behalf of Dockwise Transport or any Company on or before the Closing Date carried out at the request of the Purchaser or any act or omission of the Purchaser or any of its Affiliates after the Closing Date; or
  - d. recovery has been made or can be made (including, for the avoidance of doubt, the right to recover Taxes from employees), recovery is available under an insurance policy, or the Tax Liability is otherwise compensated for without cost to the Purchaser, a Company or any of member of the Purchaser's Group; or
  - e. any Profits to which the payment under Clause 4 of this Schedule is attributable were actually earned or received by or actually accrued to a Company but were not reflected in the Accounts or in the Net Assets and Net Debt Sheet; or
  - f. it arises or is increased or not resisted as a consequence of a failure by the Purchaser or a Company to comply with any of their respective obligations under this Schedule; or
  - g. it arises or is increased as a result of the failure or omission of a Company to make any valid claim, election, surrender or disclaimer, to give any valid notice or consent or to do any other thing under the provisions of any enactment or regulation relating to Tax after the Closing Date, the making, giving or doing of which was taken into account in computing the provisions for Tax in the Accounts or the Net Assets and Net Debt Sheet, or was referred to in the Disclosed Information; or

- h. it arises or is increased as a result of any claim, election, surrender, revocation or disclaimer made or notice or consent given after the Closing Date by any Company or any member of the Purchaser's Group under the provisions of any enactment or regulation relating to Tax other than any claim, election, surrender, revocation, disclaimer, notice or consent assumed to have been made, given or done in computing the amount of any allowance, provision or reserve in the Accounts or the Net Assets and Net Debt Sheet, or which is made at the prior request of Dockwise Transport pursuant to its rights under this Schedule; or
- i. it arises as a result of any change after the Closing Date of (A) the date to which a Company makes up its accounts, or (B) in the bases, methods, principles or policies of accounting of any Company, other than a change which is reported by the auditors for the time being of a Company to be necessary in their opinion because such bases, methods or policies of accounting as at the Closing Date are not in accordance with any generally accepted accounting practice or principle then current; or
- j. it would not have arisen but for a cessation, or any change in the nature or conduct, of any trade carried on by any Company at the Closing Date, being a cessation or change occurring on or after such date; or
- k. it arises as a result of any transaction, event, act or omission occurring, in respect of a Company, after the Closing Date, or in respect of any Profits earned after that date; or
- l. it is mitigated by a Relief that has been taken into account in the Accounts or the Net Assets and Net Debt Sheet, arising to a Company (or any successor to all or any part of its business) as a result of any transaction, event, act or omission occurring (or deemed to occur) on or before the Closing Date ("**Pre-Closing Date Relief**"), or would have been mitigated had a Pre-Closing Date Relief not been used against one or more Tax Liabilities which do not give rise to a liability of Dockwise Transport under this Schedule; or
- m. to the extent that a Company (or any successor to all or any part of its business), a member of the Purchaser's Group or a fiscal unity in which a Company will be included as from or after the

Closing Date, has a right to receive a Relief or a right to extinguishment of Tax resulting from the matter giving rise to the Tax Liability under Clause 2 of this Schedule.

- 5.2 Clauses 11.1, 11.2, 11.3, 11.6 and 11.10 of the Agreement apply *mutatis mutandis* to Dockwise Transport's Tax Liability under Clause 2 of this Schedule.

**6. CORRESPONDING BENEFIT**

- 6.1 If a Company (or any successor to all or any part of its business) or any member of the Purchaser's Group is entitled to a benefit or enjoys a saving which it would or could not have enjoyed but for the circumstances giving rise to a claim under this Schedule or which it would or could not have enjoyed but for the circumstance causing a member of the Dockwise Transport Group to suffer Tax, to realise an increased profit or a decreased loss for Tax purposes, then:
- a. the Purchaser shall procure that full details of the benefit or saving are given to Dockwise Transport as soon as practicable and in any event within 10 (ten) Business Days of Dockwise Transport or the Purchaser becoming aware of any such benefit or saving;
  - b. the Purchaser shall procure that, as soon as is practicable and in any event within 10 (ten) Business Days after the date on which Dockwise Transport has paid the amount relating to the relevant claim under this Schedule to the Purchaser or the Dockwise Transport Group suffered Tax and/or an increased profit or a decreased loss for Tax purposes, the amount of the actual benefit or saving is forthwith paid to Dockwise Transport; and
  - c. the amount of the benefit or saving under this Clause that should be realised over time, including increased depreciations or the potential to take more or higher expenses into account than expected due to a lower allowed provision at the level of the Dockwise Transport Group, is equal to the aggregate nominal amount of the potential future savings or reductions multiplied with the rates of Tax reasonably applicable for the relevant year(s).

- 6.2 If a Company or, to the extent relating to a Company, a member of the Purchaser's Group is or may be entitled to receive from any Tax Authority a repayment or credit in respect of Tax relating to any period on or before the Closing Date then, to the extent not taken into account in an exclusion on the liability under Clause 2 of this Schedule as a result of Clause 5.1(m) or Clause 11.9 of the Agreement:
- a. the Purchaser shall give Dockwise Transport full details of the entitlement as soon as practicable and in any event within 10 (ten) Business Days of the Purchaser or a Company becoming aware of the entitlement arising;
  - b. the Purchaser shall at the request of Dockwise Transport take all appropriate steps to procure that the repayment or credit shall be obtained, keeping Dockwise Transport fully informed of the progress of any action taken; and
  - c. an amount equal to the repayment or credit (including any repayment supplement or interest) received by the relevant Company or the relevant member of the Purchaser's Group less any amount taken into account in the Accounts in respect of the repayment or credit shall be paid by the Purchaser to Dockwise Transport within 5 (five) Business Days of receipt.
- 6.3 The provisions of Clause 7.2 up to and including Clause 7.5 of this Schedule shall apply *mutatis mutandis* to Clause 6 of this Schedule.

## 7. OVERPROVISION

- 7.1 Without limiting Clause 7.2 up to and including Clause 7.5 of this Schedule, if Dockwise Transport and the Purchaser agree that the total amount of any provision, reserve or accrual in respect of a Tax liability proves to have been too high ("**Overprovision**") and have put this agreement in writing, the amount of the Overprovision shall:
- a. first be set against any payment then due from Dockwise Transport under this Schedule; and
  - b. to the extent there is an excess, be paid by the Purchaser to Dockwise Transport within 10 (ten) Business Days of the

moment of which Dockwise Transport and the Purchaser agreed in writing on the amount of the Overprovision.

- 7.2 Dockwise Transport may by notice, on or before the 7<sup>th</sup> (seventh) anniversary of the Closing Date, request the Purchaser to procure that the auditors for the time being of the relevant Company report whether in their opinion an Overprovision is present and the Purchaser shall instruct such auditors to deal expeditiously with the production of the report and shall provide, or procure that the relevant Company provides, any information or assistance required for the purpose of enabling the auditors to produce such report and the amount of the Overprovision shall:
- a. first be set against any payment then due from Dockwise Transport under this Schedule; and
  - b. to the extent there is an excess, be paid by the Purchaser to Dockwise Transport within 10 (ten) Business Days of the moment of which Dockwise Transport and the Purchaser agreed in writing on the amount of the Overprovision.
- 7.3 If written agreement has been reached in accordance with Clause 7.1 of this Schedule or if any report has been made under Clause 7.2 of this Schedule, Dockwise Transport or the Purchaser may at any time on or before the 7<sup>th</sup> (seventh) anniversary of the Closing Date request the auditors for the time being of the relevant Company to review at the expense of Dockwise Transport, the report, if any, in the light of all relevant circumstances, including any facts which have become known only since that report was made, and to report whether in their opinion the written report or the earlier report, as the case may be, remains correct or whether, in the light of those circumstances, it should be amended.
- 7.4 If, following a request under Clause 7.3 of this Schedule, the auditors issue their report and the amount of any Overprovision or liability to Tax in respect of which a balancing payment should be made is revised, that revised amount shall be substituted for the amount previously reported and, if an adjusting payment is required by virtue of substitution, it shall be made by or to Dockwise Transport, as the case may be, as soon as practicable, but in any event within 10 (ten) Business Days from the date of the amendment of the report.

- 7.5 If Dockwise Transport does not agree with the contents of a report issued by the auditors as referred to in Clauses 7.2 and 7.3 of this Schedule, Dockwise Transport is allowed to request, at its own expense other auditors than the auditors who issued the report, to review the report and to issue a second opinion (the "**Second Opinion**"). If the Second Opinion implies that the report includes a too low amount of Overprovision, Dockwise Transport and the Purchaser will perform their best endeavours to agree on the amount of Overprovision. If Dockwise Transport and the Purchaser, having negotiated in good faith for a period of 30 (thirty) days after the Second Opinion is issued, fail to reach agreement on the amount of Overprovision, either Dockwise Transport or the Purchaser may refer the matter for determination by a member of *de Nederlandse Orde van Belastingadviseurs* (the "**Expert**"). The Expert shall be appointed either by agreement between Dockwise Transport and the Purchaser or (if they do not agree within 7 (seven) days after the Party wishing to make the reference notifying the other of the proposed reference) on the application of either Dockwise Transport or the Purchaser to the President for the time being of *de Nederlandse Orde van Belastingadviseurs*. The Expert shall decide on the matter in question as an expert (and not as an arbitrator), in which capacity the Expert is allowed in his sole discretion to retain specific expert advice in the applicable jurisdictions and his decision shall be final, except in the case of manifest error. Both Dockwise Transport and the Purchaser shall make all relevant information available to the Expert. The costs of the Expert shall be borne by Dockwise Transport and the Purchaser in such proportions as the Expert considers to be fair and reasonable in the light of all the circumstances.

## 8. MITIGATION

The Purchaser shall, at the direction of Dockwise Transport or a Company, procure that the relevant member of the Purchaser's Group or, as the case may be, a Company takes all such steps as Dockwise Transport or a Company may require to:

- a. use any Relief available to the Purchaser's Group or a Company to reduce or eliminate any Tax Liability in respect of which the Purchaser would have been able to make a claim against Dockwise Transport under Clause 2 of this Schedule;
- b. make all such claims and elections specified by Dockwise Transport or a Company in respect of any period commencing

before the Closing Date having the effect of reducing or eliminating any Tax Liability referred to under Clause 2 of this Schedule; and

- c. reduce or eliminate any Tax Liability by surrendering or transferring, or procuring the surrender or transfer, by any company other than a Company of a Relief to a Company to the extent permitted by applicable law but without any payment being made in consideration for such surrender or transfer.

## **9. CONDUCT OF TAX AFFAIRS BY DOCKWISE TRANSPORT**

- 9.1 Within 30 (thirty) days after the Closing Date and in relation to the Companies that were part of a VAT Fiscal Unity, Dockwise Transport shall deliver to the Purchaser a copy of a letter sent by Dockwise Transport and/or such Company of the above date informing the Tax Authority in the Netherlands that such Company is no longer part of any such fiscal unity with Dockwise Transport or any other member of the Dockwise Transport Group.
- 9.2 Dockwise Transport shall provide the Purchaser with a draft opening balance sheet as per the Termination Date, and explanatory notes thereto, for Dutch corporate income tax purposes of all relevant Companies, within 30 (thirty) Business Days following the Closing Date as a consequence of which such Company no longer forms part of the CIT Fiscal Unity, for the Purchaser's comments. If Dockwise Transport has not received any comments within 10 (ten) Business Days after providing the Purchaser with the draft opening balance sheet and explanatory notes, Dockwise Transport is entitled to file the opening balance sheet with its corporate income tax return for the financial year in which the Termination Date occurs.
- 9.3 Any tax sharing arrangements to which any of the Companies is a party shall be terminated as per the Closing Date. As from that date, the Company shall no longer have any obligations towards Dockwise Transport or any other member of the Dockwise Transport Group under any agreement or arrangement in relation to the company having been included in a fiscal unity (either for VAT or corporate income tax purpose), including any obligation in respect of the utilisation of Tax losses or allocation of Tax costs or benefits between the members of such fiscal unity, save as provided in the Accounts or in the Net Assets and

Net Debt Sheet.

- 9.4 Dockwise Transport shall procure and cause the Companies to procure that between the date of this Agreement and the Closing Date all Tax affairs of the Companies shall be conducted in a normal and prudent manner, consistent with past practice and applicable laws, as a going concern in the ordinary course of business and that good relationships with any Tax Authority shall be preserved and that the bases, methods or policies of Tax accounting or transfer pricing of the Companies shall not be changed, save to the extent a change is required under applicable law.
- 9.5 To the extent not yet submitted to the relevant Tax Authority at the Closing Date, Dockwise Transport (or its duly authorised agents) shall at its own expense be responsible for, and have the sole conduct of preparing, submitting to and agreeing with the relevant Tax Authority all returns and computations, preparing and submitting all correspondence relating to such returns and computations and the agreeing of all matters relevant to the Tax position of each of the Companies (the "**Tax Documents**") for all Tax accounting periods ending on the Closing Date (a "**Relevant Period**"), and in connection therewith:
- a. Dockwise Transport (or its duly authorised agents) shall be provided promptly with all information received by the Purchaser or a Company, or of which the Purchaser or the Company otherwise becomes aware, which may be relevant for the conduct of Dockwise Transport of the Tax Documents, and with such assistance (including assistance from employees of the Purchaser or a Company) and access to such documents and records of, or relating to, the Company, as Dockwise Transport (or its duly authorised agents) may reasonably require in connection with the conduct of Dockwise Transport of the Tax Documents;
  - b. the relevant Company shall immediately authorise, sign and submit to the relevant Tax Authority such Tax Documents relating to a Relevant Period and make such claims and elections and give such consents and comply with all procedural requirements in respect of the making or giving of any Tax Documents or such claims, elections or consents as Dockwise Transport (or its duly authorised agents) may, in its absolute discretion, direct in writing; and

- c. if Dockwise Transport directs a Company to make a payment on account to any Tax Authority in respect of a matter which Dockwise Transport has conducted and Dockwise Transport has paid an equivalent amount to the Purchaser, the Purchaser shall procure that the relevant Company will make the payment to the relevant Authority within 2 (two) Business Days of the Purchaser receiving the money from Dockwise Transport.

9.6 Dockwise Transport and the Purchaser hereby agree that nothing in Clause 9.5 of this Schedule shall in any way change the liability of Dockwise Transport under the indemnity set out in Clause 2 of this Schedule. If Dockwise Transport makes a payment to the Purchaser pursuant to Clause 9.5(c) of this Schedule such payment shall, to the extent of the payment, be deemed to discharge the liability of Dockwise Transport to the Purchaser under Clause 2 of this Schedule in respect of such liability.

9.7 Where any Tax Document is required to be submitted for, or in respect, Tax liabilities regarding a Relevant Period, a draft shall be submitted by Dockwise Transport to the Purchaser at least 21 (twenty one) Business Days before its intended submission to any Tax Authority and the Purchaser and its advisers shall be given access to all information reasonably necessary to determine its accuracy.

9.8 The Purchaser shall be kept informed by Dockwise Transport of any negotiations regarding the Tax liabilities of each Company relating to a Relevant Period and before any agreement in respect of any Tax liabilities relating to a Relevant Period is reached with any Tax Authority, details of the proposed agreement shall be given by Dockwise Transport to the Purchaser at least 21 (twenty one) Business Days before the proposed conclusion of such agreement and Dockwise Transport take and reasonable comments into account the final agreement.

9.9 Clause 10.3 applies *mutatis mutandis* in relation to any claim made by the Purchaser under Clause 2 of this Schedule, save to the extent that this Schedule explicitly provides otherwise.

## **10. CONDUCT OF TAX AFFAIRS BY THE PURCHASER**

10.1 In relation to Tax accounting periods of a Company ending after the Closing Date, the Purchaser (or its duly authorised agents) shall, at its own expense, be responsible for, and have the conduct of preparing,

submitting to and agreeing with the relevant Tax Authority all Tax returns and computations of the Companies.

10.2 If the Purchaser or a Company:

- a. receives any letter, enquiry, notice, demand, determination, assessment or other document from any Tax Authority from which it appears that the relevant Company may incur or suffer a Tax Liability, the Purchaser shall, or shall procure that the relevant Company will:
  - i. inform Dockwise Transport by written notice as soon as reasonably practicable but ultimately within 10 (ten) Business Days of receipt thereof; and
  - ii. to the extent legally entitled thereto, file a pro forma objection (*bezwaarschrift*) ultimately 1 (one) Business Day before the date of expiry of the applicable time limit for such objection or appeal;
- b. is, or becomes, aware of:
  - i. any facts included in a Tax return of a Company which may give rise to a Tax Liability;
  - ii. any pending or threatened audit, investigation or assessment with respect to Tax matters of any Company for any period or portion of a Relevant Period which may give rise to a Tax Liability,

the Purchaser shall, or shall procure that the relevant Company, will notify Dockwise Transport of such facts or facts as soon as reasonably possible but no later than ultimately 10 (ten) Business Days upon receipt of a notice or after becoming otherwise aware of any such occurrence.

- 10.3 On the giving of a notice referred to in Clause 10.2 of this Schedule, Dockwise Transport shall be entitled (but no later than 21 (twenty one) Business Days after the receipt of that notice) to elect that Clause 9.5 of this Schedule shall apply to the Tax Liability and shall be entitled to resist the Tax Liability in the name of the relevant Company and have the conduct of any appeal, dispute, compromise or defence of the Tax

Liability and of any incidental negotiations relating thereto. The Purchaser shall and shall procure that each relevant Company will give Dockwise Transport such assistance as may reasonably be requested in order to ensure the proper and adequate resistance of any such Tax Liability.

- 10.4 If Dockwise Transport elects not to assume the resistance of a Tax Liability as set out in Clause 10.3 of this Schedule, the Purchaser shall have the right to employ counsel and to settle and compromise any claim or action provided, however, that the Purchaser shall not and shall procure that each Company will not, compromise or settle any Tax Liability or agree any matter which may affect the outcome of any dispute or negotiation with any Tax Authority in relation to any Tax Liability without the written consent of Dockwise Transport. Dockwise Transport shall give the Purchaser such assistance as may reasonably be requested in order to ensure the proper and adequate resistance of any such Tax Liability.
- 10.5 The Party conducting the resistance of any claim or proceeding in relation to a Tax Liability shall at all times keep the other Party informed of any developments in the resistance of any such claim or proceeding and of its intentions as to how to proceed.

## **11. COUNTER INDEMNITY BY THE PURCHASER**

The Purchaser shall indemnify (*vrijwaren*) and hold each member of the Dockwise Transport Group harmless from any Tax liability or increased Tax liability of the Dockwise Transport Group which arises as a result of any transaction, event, act or omission relating to a member of the Purchaser's Group or a Company occurring on or after the Closing Date, including any net VAT liability attributable to any Company on a stand-alone basis as accounted for by Dockwise Transport a parent of the VAT Fiscal Unity until the Closing Date to the extent not reimbursed by the relevant Companies to Dockwise Transport at the Closing Date, any failure of a member of the Purchaser's Group or a Company to apply an amount provided for in the Accounts or an amount paid by Dockwise Transport to the Purchaser pursuant to Clause 2 of this Schedule to discharge a liability for Tax to which that amount relates and an amount equal to any costs and expense incurred by a member of the Dockwise Transport Group in investigating, assessing or contesting any such Tax liability or increased Tax liability.

**SCHEDULE 9**

**JOINT PRESS RELEASE**

*[Dockwise to provide a draft]*

**SCHEDULE 10**

**NOTARY LETTER**

*[Dockwise to provide a draft]*

**SCHEDULE 11**

**TIME CHARTER AGREEMENT**

*[Dockwise to provide a draft]*

**SCHEDULE 12**

**PARENT COMPANY GUARANTEE I**

**THE UNDERSIGNED**

1. **Coby Enterprises, LLC**, a company organised under the laws of [●], whose corporate seat is at [●], ("**Coby**");
2. **Valkor, LLC**, a company organised under the laws of [●], whose corporate seat is at [●], ("**Valkor**");

Coby and Valkor together jointly referred to as the "**Guarantors**", and each one of them as a "**Guarantor**",

and

3. **Dockwise Transport B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, whose corporate seat is at Breda, the Netherlands ("**Dockwise Transport**");

**RECITALS**

- A. The Guarantors are the sole members of UYT Holding Coöperatief U.A. ("**UYT**");
- B. On [●] 2012, Dockwise Transport, Super Servant 3 B.V., Super Servant 4 B.V. and Yacht Express B.V. entered into a sale and purchase agreement with UYT in relation to the entire issued share capital of DYT Netherlands B.V. and the vessels Super Servant 3, Super Servant 4 and Yacht Express (the "**SPA**");
- C. In accordance with the SPA under Clause 15.2.2, the Guarantors are obliged to enter into this guarantee on the terms and conditions set out below (the "**Parent Guarantee**");

**HEREBY DECLARE AS FOLLOWS**

1. The Guarantors unconditionally and irrevocably guarantee to Dockwise Transport any payment obligations of UYT arising out Clause 15.2.2 of the SPA (the "**Guaranteed Obligations**"), however, the Guarantors'

liability shall be limited to liability of UYT as mentioned in that same Clause 15.2.2 of the SPA.

2. In the event UYT defaults in the performance of any of the Guaranteed Obligations, the Guarantors will, upon the first written demand by Dockwise Transport stating that UYT has not fulfilled any of the Guaranteed Obligations, perform the Guaranteed Obligation or, if the Guaranteed Obligation cannot be performed by the Guarantors, procure that the Guaranteed Obligation will be performed by UYT in accordance with the terms and conditions of the SPA at no additional cost to Dockwise Transport.
3. The Guarantors may in the performance of the Guaranteed Obligations engage the services of third parties. Nevertheless the Guarantors remain at all times responsible for the performance of the Guaranteed Obligations.
4. This Parent Guarantee is entered into by the Guarantors by way of their own and independent obligation (*bij wege van eigen zelfstandige verbintenis*), and not as surety (*borg*).
5. An insolvency including bankruptcy or suspension of payments (*surseance van betaling*), liquidation or reorganisation of UYT, or any similar event or situation will not affect the obligations and liability of the Guarantors under this Parent Guarantee.
6. This Parent Guarantee shall be a continuing guarantee and shall remain in full force and effect until all Guaranteed Obligations have been performed and no further Guaranteed Obligations can arise under or in connection with the SPA.
7. The Guarantors hereby, to the extent legally possible, waive their right under articles 6:265 to 6:272 inclusive and 6:228 and 6:230, respectively, of the Dutch Civil Code to rescind (*ontbinden*) or nullify (*vernietigen*) on the ground of error (*dwalings*), or demand in legal proceedings the rescission (*ontbinding*), nullification (*vernietiging*) or amendment (*wijziging*) of, this Parent Guarantee.
8. Amendments and supplements to this Parent Guarantee must be made in writing.
9. The Guarantors shall be jointly and severally (*hoofdelijk*) liable for the

performance of their obligations under this Parent Guarantee.

10. This Parent Guarantee is governed by and construed in accordance with Dutch law.
11. Any dispute in connection with this Parent Guarantee or any agreement resulting therefrom shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*) as at present in force.
  - a. The arbitral proceedings and all documents delivered to or by the arbitrators shall be conducted in English.
  - b. The place of arbitration shall be Rotterdam, the Netherlands.
  - c. The arbitral tribunal shall comprise 3 (three) arbitrators.
  - d. The arbitral tribunal shall decide in accordance with the rules of law.
  - e. Neither the Guarantors nor Dockwise Transport shall be precluded from applying for injunctive relief, including an order for specific performance in summary proceedings (*kort geding*) before any competent court instead of arbitrators.
  - f. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided for in Article 1046 of the Code of Civil Procedure, shall be excluded.

For the purpose of any dispute in connection with this Parent Guarantee or any agreement resulting therefrom, the Guarantors have chosen domicile in the Netherlands to serve process in the Netherlands and to deliver any documents relating to dispute resolution at the office of UYT Holding Coöperatief U.A. at the following address: [●], the Netherlands, marked for the attention of [●].

This Parent Guarantee has been signed in 3 (three) identical copies on [●] 2012.

For and on behalf of  
**Dockwise Transport B.V.**

\_\_\_\_\_  
By:

For and on behalf of  
**Coby Enterprises, LLC**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

For and on behalf of  
**Valkor, LLC**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

**SCHEDULE 13**

**PARENT COMPANY GUARANTEE I**

**THE UNDERSIGNED**

1. **Coby Enterprises, LLC**, a company organised under the laws of [●], whose corporate seat is at [●], ("**Coby**");
2. **Valkor, LLC**, a company organised under the laws of [●], whose corporate seat is at [●], ("**Valkor**");

Coby and Valkor together jointly referred to as the "**Guarantors**", and each one of them as a "**Guarantor**",

and

3. **Dockwise Transport B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of the Netherlands, whose corporate seat is at Breda, the Netherlands ("**Dockwise Transport**");

**RECITALS**

- D. The Guarantors are the sole members of UYT Holding Coöperatief U.A. ("**UYT**");
- E. On [●] 2012, Dockwise Transport, Super Servant 3 B.V., Super Servant 4 B.V. and Yacht Express B.V. entered into a sale and purchase agreement with UYT in relation to the entire issued share capital of DYT Netherlands B.V. and the vessels Super Servant 3, Super Servant 4 and Yacht Express (the "**SPA**");
- F. In accordance with the SPA under Clause 7.3, the Guarantors are obliged to enter into this guarantee on the terms and conditions set out below (the "**Parent Guarantee**");

**HEREBY DECLARE AS FOLLOWS**

1. The Guarantors unconditionally and irrevocably guarantee to Dockwise Transport any payment obligations of UYT arising out Clause 7.3 of the SPA (the "**Guaranteed Obligations**"), however, the Guarantors' liability

shall be limited to liability of UYT as mentioned in that same Clause 7.3 of the SPA.

2. In the event UYT defaults in the performance of any of the Guaranteed Obligations, the Guarantors will, upon the first written demand by Dockwise Transport stating that UYT has not fulfilled any of the Guaranteed Obligations, perform the Guaranteed Obligation or, if the Guaranteed Obligation cannot be performed by the Guarantors, procure that the Guaranteed Obligation will be performed by UYT in accordance with the terms and conditions of the SPA at no additional cost to Dockwise Transport.
3. The Guarantors may in the performance of the Guaranteed Obligations engage the services of third parties. Nevertheless the Guarantors remain at all times responsible for the performance of the Guaranteed Obligations.
4. This Parent Guarantee is entered into by the Guarantors by way of their own and independent obligation (*bij wege van eigen zelfstandige verbintenis*), and not as surety (*borg*).
5. An insolvency including bankruptcy or suspension of payments (*surseance van betaling*), liquidation or reorganisation of UYT, or any similar event or situation will not affect the obligations and liability of the Guarantors under this Parent Guarantee.
6. This Parent Guarantee shall be a continuing guarantee and shall remain in full force and effect until all Guaranteed Obligations have been performed and no further Guaranteed Obligations can arise under or in connection with the SPA.
7. The Guarantors hereby, to the extent legally possible, waive their right under articles 6:265 to 6:272 inclusive and 6:228 and 6:230, respectively, of the Dutch Civil Code to rescind (*ontbinden*) or nullify (*vernietigen*) on the ground of error (*dwaling*), or demand in legal proceedings the rescission (*ontbinding*), nullification (*vernietiging*) or amendment (*wijziging*) of, this Parent Guarantee.
8. Amendments and supplements to this Parent Guarantee must be made in writing.
9. The Guarantors shall be jointly and severally (*hoofdelijk*) liable for the

performance of their obligations under this Parent Guarantee.

10. This Parent Guarantee is governed by and construed in accordance with Dutch law.
11. Any dispute in connection with this Parent Guarantee or any agreement resulting therefrom shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*) as at present in force.
  - g. The arbitral proceedings and all documents delivered to or by the arbitrators shall be conducted in English.
  - h. The place of arbitration shall be Rotterdam, the Netherlands.
  - i. The arbitral tribunal shall comprise 3 (three) arbitrators.
  - j. The arbitral tribunal shall decide in accordance with the rules of law.
  - k. Neither the Guarantors nor Dockwise Transport shall be precluded from applying for injunctive relief, including an order for specific performance in summary proceedings (*kort geding*) before any competent court instead of arbitrators.
  - l. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided for in Article 1046 of the Code of Civil Procedure, shall be excluded.

For the purpose of any dispute in connection with this Parent Guarantee or any agreement resulting therefrom, the Guarantors have chosen domicile in the Netherlands to serve process in the Netherlands and to deliver any documents relating to dispute resolution at the office of UYT Holding Coöperatief U.A. at the following address: [●], the Netherlands, marked for the attention of [●].

This Parent Guarantee has been signed in 3 (three) identical copies on [●] 2012.

For and on behalf of  
**Dockwise Transport B.V.**

\_\_\_\_\_  
By:

For and on behalf of  
**Coby Enterprises, LLC**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

For and on behalf of  
**Valkor, LLC**

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:

\_\_\_\_\_  
By:



**Clemens Vanderwerf**

---

**From:** USA - Viren VATSA <VatsaV@angloeasterngroup.com>  
**Sent:** Wednesday, February 01, 2012 10:21 PM  
**To:** Jonathan Zier; Clemens van der Werf; TEC Team - DW  
**Subject:** Yacht Express work progress summary report - Feb 01, 2011  
**Attachments:** CATWALK SHIFTING COMPLETED.JPG; DOCK WALL.JPG

Good day Jon,

Please note below YE progress summary report:

- 1) Catwalk shifting completed and tack welded. Final welding in progress.
- 2) Hull treatment work completed. Sign on dock wall changed from "DOCKWISE" TO "UNITED".
- 3) Works on main engines' conversion and thrusters' shafts renewal are progressing.

Please find attached some photographs.

ETC Dry docking – Feb 02, 2012.

ETC all repairs for trial – Feb 25.

ETD Tampa – Feb 27.

Best regards,

Viren Vatsa

# UNITED YACHT TRAINING

## Clemens Vanderwerf

---

**From:** Catalina Bujor  
**Sent:** Thursday, February 02, 2012 4:29 PM  
**To:** Clemens van der Werf  
**Subject:** FW: Tampa Bay Shipbuilding aerials 2-1-12  
**Attachments:** Tampa Bay Shipbuilding 2-1-12 proof1.jpg; Tampa Bay Shipbuilding 2-1-12 proof2.jpg; Tampa Bay Shipbuilding 2-1-12 proof3.jpg

Clemens,

Attached photos of Yacht Express in drydock with new company name painted on. She's looking good!

## Cat

**From:** Julie Valdes [mailto:julie@aerialinnovations.com]  
**Sent:** Thursday, February 02, 2012 4:27 PM  
**To:** Catalina Bujor  
**Subject:** Tampa Bay Shipbuilding aerials 2-1-12



*Aerial Innovations, Inc.*  
*"Florida's Choice for Aerial & Ground Photography"*

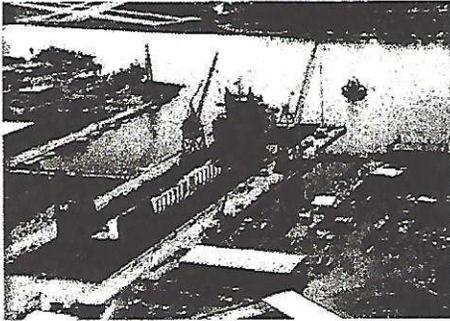
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3703 W. Azelee St. • Tampa, FL 33609 • (813) 254-7339  
Toll Free: 1-800-223-1701 • Orlando: (407) 859-9995  
Fax: (813) 254-7239 • [www.flythis.com](http://www.flythis.com)

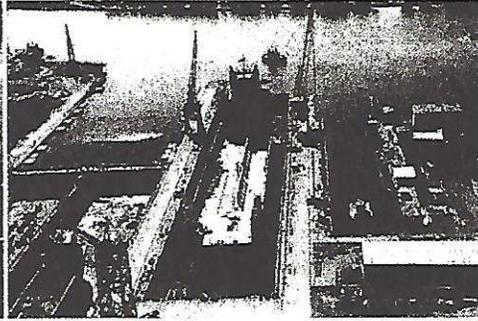
Catalina,

Attached are the images I photographed yesterday. Very impressive vessel!

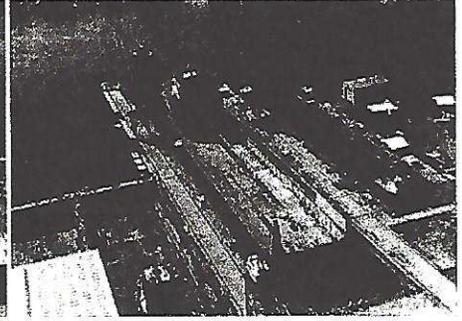
Julie Palermo Valdes  
Vice President  
(813) 254-7339  
(800) 223-1701  
[julie@aerialinnovations.com](mailto:julie@aerialinnovations.com)



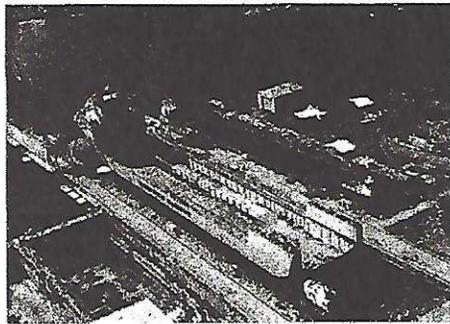
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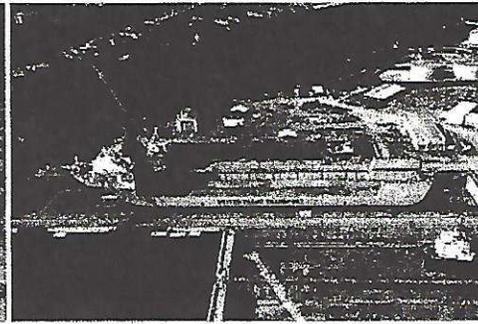
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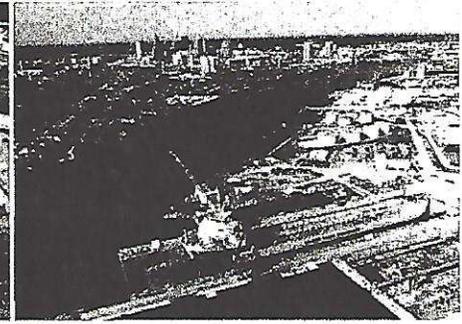
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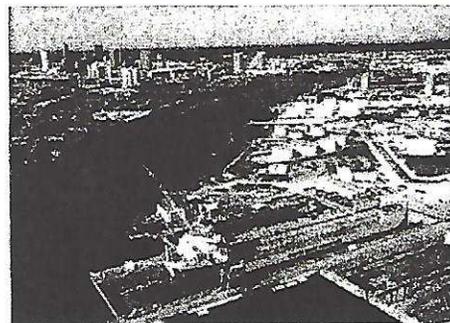
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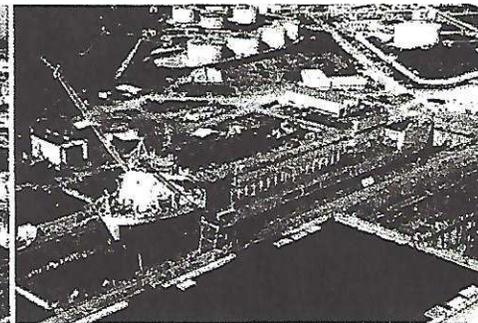
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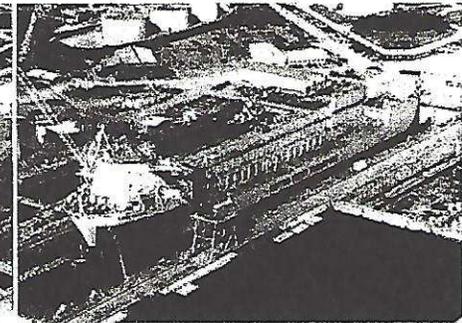
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DSC\_0490.JPG



DSC\_0491.JPG



DSC\_0492.JPG

**Last, Gina**

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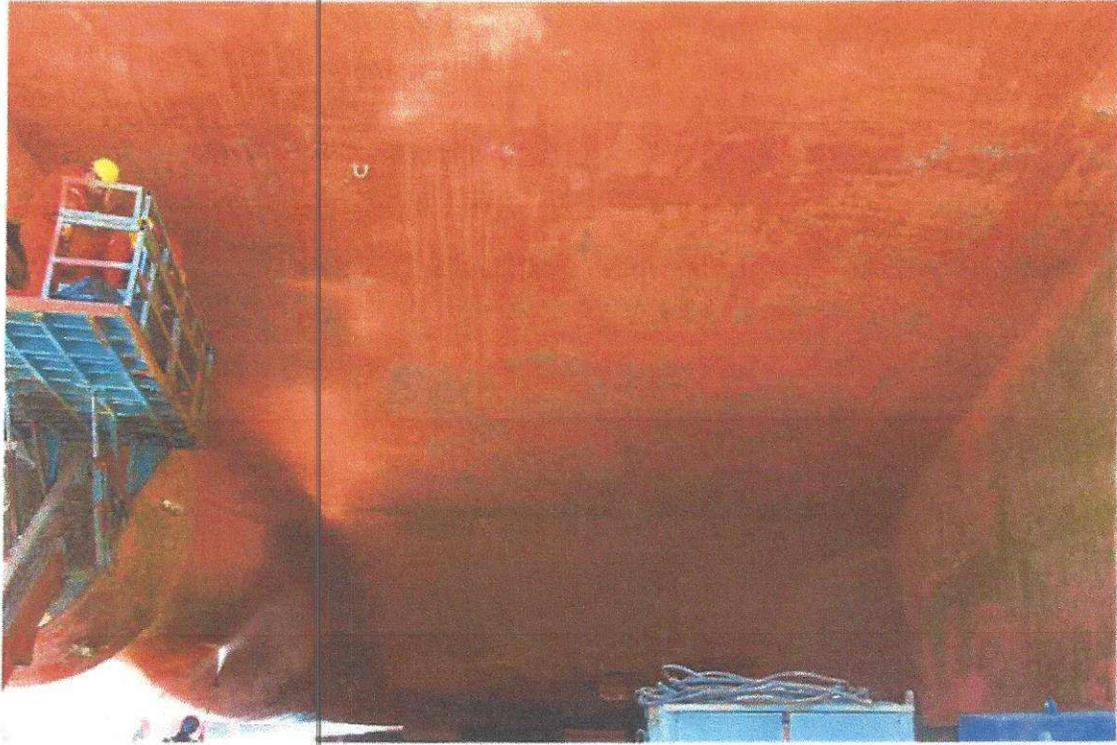
**From:** Jonathan Zier  
**Sent:** Thursday, July 19, 2012 2:58 PM  
**To:** DYT.Europe; DYT.France; Aaron Baker; Ana Santana; Ann Souder; Egge Kloosterboer; Gina Last; Jeff Last; Laura Tempest; Lorraine Nugent  
**Cc:** OPERATIONS  
**Subject:** FW: Super Servant 4 Dry dock update-19th July 12  
**Attachments:** Hull aft.jpg; rudder drain plug removal.jpg; Flat bottom.jpg; Vertical side stbd.jpg; Vertical side port.jpg

Good Day All,

Please note that SS4 has entered dry-dock in Tuzla today, for 10 days.

ETC shipyard repair period 23 August. Synergy schedule as it is now can remain in effect.

Best Regards,  
Jon



SPLIETHOFF001707



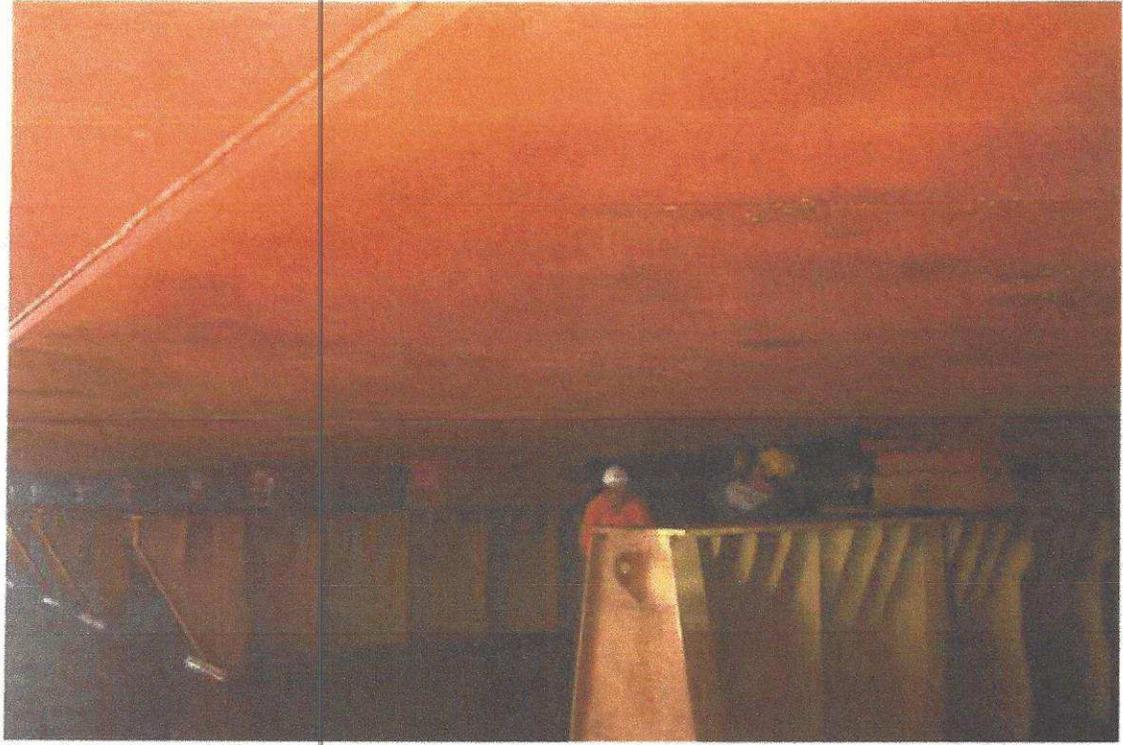
SPLIETHOFF001708



SPLIETHOFF001709



SPLIETHOFF001710



SPLIETHOFF001711

**Last, Gina**

---

**From:** Jonathan Zier  
**Sent:** Tuesday, July 31, 2012 10:04 AM  
**To:** Clemens van der Werf  
**Subject:** FW: Super Servant 4- update  
**Attachments:** Yacht power supply cable renewal.jpg; Hull final coat.jpg

Clemens,

FYI.

Vessel undocked today already, schedule to go back into dry-dock 05/06 August to install rudders.

Brgds..

Jon

---

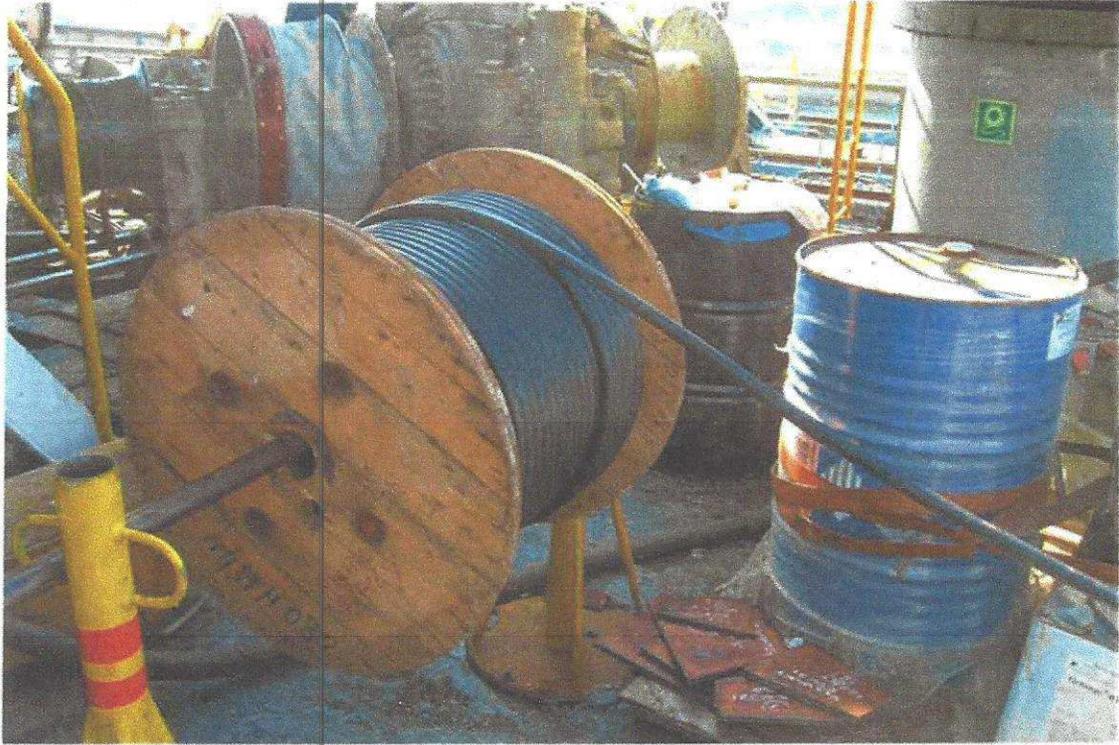
**From:** HKG - Sathish Kumar GOPINATH [mailto:kumarg@angloeasterngroup.com]  
**Sent:** Thursday, July 26, 2012 4:50 PM  
**To:** Jonathan Zier  
**Cc:** USA - Viren VATSA; HKG - Anand SHARMA  
**Subject:** Super Servant 4- update

Dear Jon

Vessel will undock on 29<sup>th</sup> July. Hull painting completed. Logo renamed as 'United Yacht Transport'-attached photo

ETD-23 August 12

Thanks and Best regards  
Sathish Kumar GOPINATH  
Technical Superintendent  
Anglo Eastern Ship management, Hong Kong  
(as agents only)  
Office phone- +852-2863 6535  
Mobil- +852-93665220

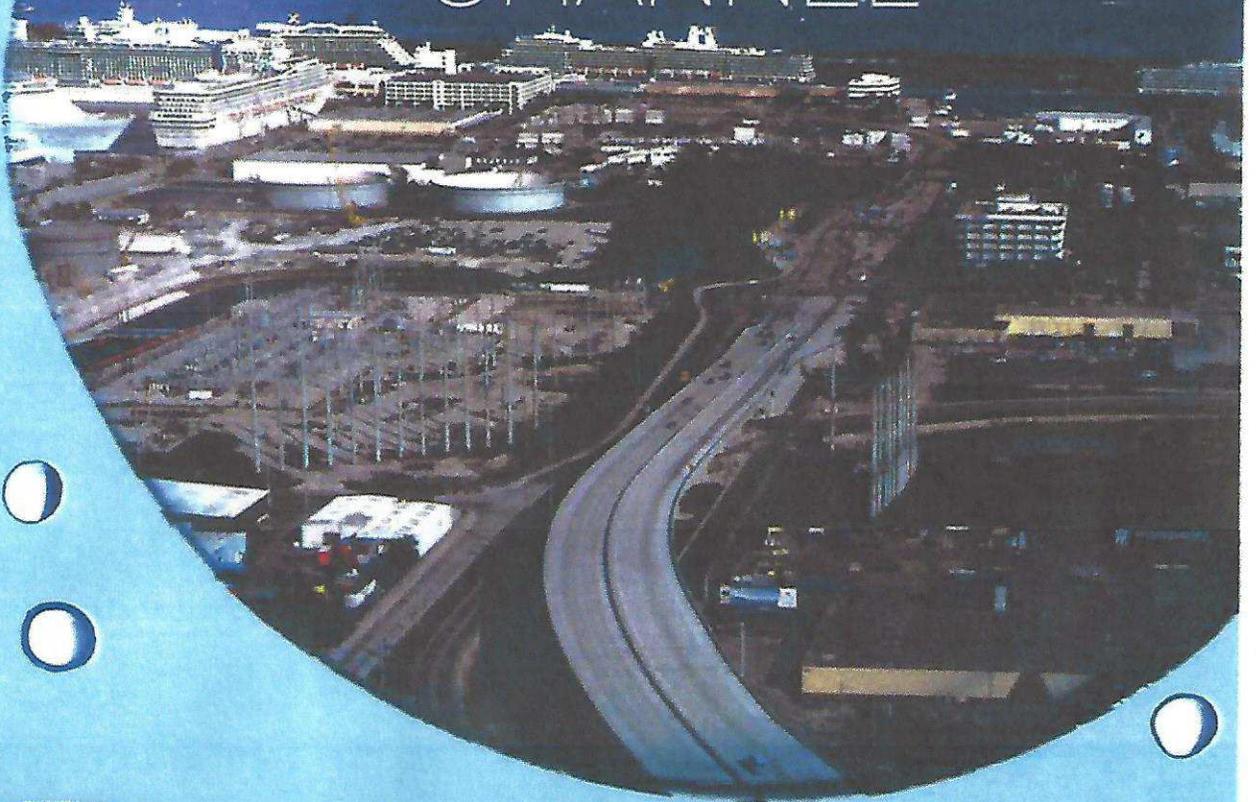


SPLIETHOFF001713



SPLIETHOFF001714

CONNECTIVITY  
ACROSS EVERY  
CHANNEL



# Directory

## COMPANHIA SUDAMERICANA DE VAPORES (CSAV)

8350 N.W. 52nd Ter., Ste. 300, Miami, FL 33166  
Tel: 732-635-2600 Fax: 732-635-2601  
csav.com

## CROWLEY LINER SERVICES, INC.

4300 McIntosh Rd., Ft. Lauderdale, FL 33316  
Tel: 954-760-7900  
crowley.com/partner • salvador.monayo@crowley.com

## DYT/DOCKWISE/UNITED YACHT TRANSPORT

1535 S.E. 17th St., Ste. 200, Ft. Lauderdale, FL 33316  
Tel: 954-525-8707 Fax: 954-525-8711  
yacht-transport.com • dyt.usa@dockwise-yl.com

## DOLE OCEAN LINER EXPRESS

P.O. Box 350651, Ft. Lauderdale, FL 33335  
Tel: 305-591-7500 Fax: 954-522-0364  
doleoceancargo.com

## FRONTIER LINER SERVICES

8390 N.W. 53rd St., Ste. 201, Miami, FL 33166  
Tel: 305-471-7800 Fax: 305-471-7002  
frontierliner.com • bookings@frontierliner.com

## HAMBURG SUD NORTH AMERICA, INC.

2550 Eisenhower Blvd., Bldg. 611, Ste. 304-308, Ft. Lauderdale, FL 33316  
Tel: 954-761-3134 Fax: 954-761-2656  
hamburgsud.com • info.sll@os.hamburgsud.com

## HAPAG-LLOYD (AMERICA), INC.

2550 Eisenhower Blvd. Bldg. 611, Ste. 302, Ft. Lauderdale, FL 33316  
Tel: 954-356-0101 (Regional HQ) Fax: 954-356-0102  
hapag-lloyd.com • tom.feley@htlog.com

## HYDE SHIPPING CO./HYBUR, LTD.

1801 SE 28 St., Hollywood, FL 33316  
Tel: 305-913-4933 Fax: 305-913-4900  
hydeshipping.com  
SEE AD ON PAGE 23

## INTEROCEAN LINES

703 Waterford Way, Miami, FL 33126  
Tel: 305-375-8004 Fax: 305-372-2997  
interoceannlines.com

## KING OCEAN SERVICE

11000 N.W. 29th St., Ste. 201, Miami, FL 33172  
Tel: 305-591-7595 Fax: 305-593-9842  
kingocean.com • info@king-ocean.com

## MAILBOAT CO.

1800 S.E. 19th Ave, Alex Bravo Warehouse #4, Ft. Lauderdale, FL 33316  
Tel: 954-527-0034 Fax: 954-522-4828  
mailboatbahamas.com

## MISC-MEDITERRANEAN SHIPPING CO.

8240 NW 52nd Terrace, Ste. 200, Miami, FL 33166  
Tel: 305-477-9277  
misc.com • info@misc.us

## SC LINE

8669 N.W. 36th St., Ste. 335, Doral, FL 33166  
Tel: 305-767-1900  
scline.com • usa@scline.us

## SCM LINES

7610 NW 25th St., Ste. 4, Miami, FL 33122  
Tel: 305-471-0059 Fax: 305-405-7119  
scmlines.com • miami@scmlines.com

## SEACOR ISLAND LINES

1300 Eller Dr., Ft. Lauderdale, FL 33316  
Tel: 954-920-9292 Fax: 954-922-8316  
seacorislandlines.com

## SEAFREIGHT AGENCIES USA, INC.

9950 NW 17 St., Doral, FL 33172  
Tel: 305-592-6060 Fax: 305-718-9541  
seafreightagencies.com • roteaccess@seafreightagencies.com  
SEE AD ON PAGE 29

## TRINITY SHIPPING LINE

8950 S.W. 74th Ct., Ste. 1612, Miami, FL 33156  
Tel: 305-888-2277  
trinityshippingline.com • yonofra@trinityshippingline.com

## ZIM AMERICAN INTEGRATED SHIPPING SERVICES CO., INC.

8095 N.W. 12th St., Ste. 100, Miami, FL 33126  
Tel: 305-423-7400 Fax: 305-423-7414  
zim.co.il

## SHIPYARDS & REPAIR SERVICES

### MILLMAC CORPORATION

12457 N.W. 44th St., Coral Springs, FL 33065  
Tel: 954-345-4406 Fax: 954-345-4347  
millmac.com • tudor@millmac.com

## STEVEDORING & CARGO HANDLING SERVICES

### CERES MARINE TERMINALS, INC.

1931 Cordova Rd., Ste. 502, Ft. Lauderdale, FL 33316  
Tel: 321-799-9035  
ceresglobal.com

### COLEARY TRANSPORT INC.

2550 Eisenhower Blvd., Ste. 308, Ft. Lauderdale, FL 33316  
Tel: 954-527-0673 Fax: 954-527-0676  
bcoleman@coleary.com

### CONTINENTAL FLORIDA MATERIALS, INC.

P.O. Box 13128, Fort Lauderdale, FL 33316  
Tel: 954-523-8442

### CROWLEY LINER SERVICES, INC.

P.O. Box 359004, Fort Lauderdale, FL 33335  
Tel: 954-760-7900

### ELLER - ITO STEVEDORING COMPANY, LLC

1007 N. America Way, Ste. 501, Miami, FL 33132  
Tel: 305-379-3700 Fax: 305-371-9969  
ellerito.com

### FARONI SHIPPING CORPORATION

125 NE Ninth St., Miami FL 33132  
Tel: 305-373-4765

### FILLETTE GREEN SHIPPING SERVICES (USA) CORP

3333 W. Kennedy Blvd., Ste. 207, Tampa, FL 33609  
Tel: 813-348-1481

### FLORIDA INTERNATIONAL TERMINALS

3800 McIntosh Rd., Ft. Lauderdale, FL 33316  
Tel: 954-761-3880 Fax: 954-524-3859  
fitpev.com • info@fitpev.com

### FLORIDA STEVEDORING INC.

2541 S.W. 27th Ave., Miami, FL 33133  
Tel: 305-373-4765 Fax: 305-371-6874 • farovi@farovi.com

### FLORIDA TRANSPORTATION SERVICES, INC.

412 S.E. 18th St., Ft. Lauderdale, FL 33316  
Tel: 954-764-8988 Fax: 954-764-3069  
Jcgiii@fltranserv.com

### HST TERMINALS, INC.

1800 SE 10th Ave., Ste. 435, Ft. Lauderdale, FL 33316  
Tel: 954-900-3986 Fax: 954-252-4627  
hostterminals.com • contact@hostterminals.com  
SEE AD ON PAGE 8

### HYDE SHIPPING CORPORATION

10025 NW 116th Way, Ste. 2, Maudley, FL 33178  
Tel: 305-913-4945  
SEE AD ON PAGE 23

### INTERCRUISES SHORESIDE & PORT SERVICES, INC.

1850 Eller Dr., Ste. 403, Fort Lauderdale, FL 33316  
Tel: 305-373-5011

### METRO CRUISE SERVICES, LLC

720 East E St., Wilmington, CA 90744  
Tel: 310-816-6506 Fax: 301-816-6519  
metrocruseservices.com

### PORT CONTRACTORS - SOUTHEAST, LLC

529 Terminal Ave., New Castle, DE 19720  
Tel: 302-655-7300 Fax: 302-658-4075

### PORT EVERGLADES STEVEDORING, INC.

1775 N.W. 70th Ave., Miami, FL 33126  
Tel: 954-463-2202 Fax: 954-463-2203  
hjtchn@discovarycruise.com

## PORTUS-PEV

3505 SE 19th Ave., PO Box 13105, Ft. Lauderdale, FL 33316  
Tel: 954-527-0034 Fax: 954-522-4828  
portus-us.com • jimllins@portus-us.com  
SEE AD ON PAGE 31

## SEACOR ISLAND LINES LLC

1300 Eller Dr., Fort Lauderdale, FL 33316  
Tel: 954-920-9292

## SOL SHIPPING SERVICES

1751 S.W. 8th St., Pompano Beach, FL 33069  
Tel: 954-781-0003 Fax: 954-946-5167

## SUN TERMINALS, INC.

P.O. Box 460820, Ft. Lauderdale, FL 33346  
Tel: 954-524-8600 Fax: 954-524-1258  
kingocean.com

## T. PARKER HOST, INC.

500 Pluma St., Ste. 600, Norfolk, VA 23510  
757-627-6286  
SEE AD ON PAGE 8

## TFMARINE, INC.

1001 N. America Way, Ste. 213, Miami, FL 33132  
Tel: 305-579-9236

## UNITED STEVEDORING OF AMERICA, INC.

2550 Eisenhower Blvd., Ste. 1, Ft. Lauderdale, FL 33316  
Tel: 310-466-8032 Fax: 786-409-2806  
unitedstevedoring.com • shanl@unitedstevedoring.com

## VALLS SHIP AGENCIES, LP

P. O. Box 13025, Fort Lauderdale, FL 33316  
954-764-8434

## TAXIS/LIMOS SHUTTLES

### 1818 CORP

Tel: 305-935-3182

### 212, LLC

Tel: 954-741-5466

### 7871 TOURS, INC.

Tel: 954-499-9108

### A & J MANAGEMENT CORP.

Tel: 954-923-9999

### A ABA - CAB AIRPORT SERVICE, INC.

Tel: 954-981-0720

### A2Z LIMOUSINE, INC.

Tel: 954-792-2005

### AAA WHEELCHAIR WAGON SERVICE, INC

Tel: 954-523-2254

### ACE LIMO FORT LAUDERDALE, INC.

Tel: 954-771-5466

### ADMIRAL LIMOUSINE SERVICE INC.

Tel: 954-753-1644

### AIR & SEA TRANSFER, INC.

Tel: 800-515-6580

### AIRBUS EXPRESS

Tel: 786-332-5222

### AIRPORT SHUTTLE SERVICE

Tel: 954-652-9571

### ALEXANDRE, ERICK

Tel: 954-502-0816

### ALEXIS, LUDEERS E

Tel: 954-200-2026

### ALL BROWARD SERVICES INC

Tel: 954-359-7900

### ALL SERVICE SHUTTLE

Tel: 954-205-0690

### ALL STARS TOURS & TRANSPORTATION LLC

Tel: 954-226-7828

### ALLENBY ENTERPRISES, INC

Tel: 954-971-6861

# Alphabetical Directory Listings

## A

<b>1800 ELLER BUILDING</b>	
Real Estate - Industrial, Office Space & Property Mgmt.	954-760-4360
<b>15TH STREET FISHERIES RESTAURANT</b>	
Restaurant	954-763-2777
<b>ACE RENT A CAR</b>	
Auto Rental	954-764-1008
<b>ADVANCED BONDED AND CUSTOMS SERVICES, INC. (ABCS)</b>	
Logistics & Intermodal Services	954-467-0343
<b>AECOM TECHNOLOGY CORP.</b>	
Engineering Services	305-444-4691
<b>AIR OCEAN TRANSPORT, INC.</b>	
Trucking Services	305-592-7676
<b>ALAMO RENTAL (US) INC.</b>	
Auto Rental	954-377-6848
<b>ALL FLORIDA CHARTERS</b>	
Tourism Offices	786-399-5451
<b>ALL PORTS TRANSPORT OF FLORIDA, INC.</b>	
Customs Brokers & Freight Forwarders	305-463-7625
<b>ALLEGIANCE CRANE &amp; EQUIPMENT, INC.</b>	
Crane Services	954-973-3030
<b>ALLIEDBARTON SECURITY SERVICES LLC</b>	
Cruise Ship Services & Equipment	954-415-7419
Security Systems, Services & Technologies	954-698-5888
<b>ALPHA MARINE SURVEYORS</b>	
Marine Surveyors	305-324-1555
<b>AMCAR FREIGHT</b>	
NVOCCs	305-599-8866
<b>AMERICAN ASSOCIATION OF PORT AUTHORITIES (AAPA)</b>	
Associations & Trade Organizations	703-684-5700
<b>AMERICAN GUARD SERVICES, INC.</b>	
Security Systems, Services & Technologies	954-462-6907
<b>AMERICAN MARITIME OFFICERS</b>	
Labor/Unions	954-921-2221
<b>AMERICAN MERCHANT MARINE VETERANS, GULFSTREAM CHAPTER</b>	
Associations & Trade Organizations	954-759-9985
<b>AMERICAN NAUTICAL SERVICES, INC.</b>	
Charts, Books & Maps	954-522-3321
Marine Surveyors	954-522-3321
<b>AMIKIDS GREATER FT. LAUDERDALE</b>	
Maritime Education & Training	954-764-2733
<b>ASTLEY'S WHERE FRESH SANDWICHES COST LESS</b>	
Mobile Food/Drink Service	954-816-6029
<b>ATLANTIC DRAYAGE &amp; TRANSPORT, INC.</b>	
Trucking Services	516-697-2700
<b>ATLANTIC EXPRESS SHIPPING</b>	
Logistics & Intermodal Services	305-634-3560
<b>ATLANTIC FIREBRICK &amp; SUPPLY CO. INC.</b>	
Ship Chandelery/Ship Stores	904-355-8333
<b>ATLANTIC GOOD SERVICES, INC.</b>	
Trucking Services	305-634-9991
<b>AVIS RENT A CAR</b>	
Auto Rental	800-331-1212

## B

<b>BALERIA BAHAMA EXPRESS</b>	
Cruise Lines	866-699-6988
<b>BEACH VACATION RENTALS</b>	
Hotels	954-283-1111
<b>BECKER &amp; POLIAKOFF</b>	
Attorneys - Maritime & Trade	305-262-4433
Consultants - Port & Industry	305-262-4433
<b>BEST WESTERN FT. LAUDERDALE AIRPORT/CRUISE PORT</b>	
Hotels	954-462-7005
<b>BEST WESTERN PLUS OCEANSIDE INN</b>	
Hotels	954-525-8115
<b>BEVEL BROTHERS, INC.</b>	
Crane Services	321-632-2000

<b>BEYOND LOGISTICS OF SOUTH FLORIDA, INC.</b>	
Foreign-Trade Zone No. 25	954-779-2100
Logistics & Intermodal Services	954-779-2100
Warehousing, Distribution & Handling	954-779-2100
<b>BLUE WATER SHIPPING</b>	
Logistics & Intermodal Services	954-764-3190
<b>BLUEWATER BOOKS &amp; CHARTS</b>	
Charts, Books & Maps	954-763-6533
<b>BOAT CRADLES UNLIMITED PLUS</b>	
Miscellaneous Services	305-633-3371
<b>BP PRODUCTS NORTH AMERICA, INC.</b>	
Petroleum Products & Services	954-523-0571
<b>BRAZILIAN AMERICAN CHAMBER OF COMMERCE OF FLORIDA</b>	
Chambers of Commerce	305-579-9030
<b>BRIGGS EQUIPMENT</b>	
Heavy Lift Equipment & Services	305-624-1511
<b>BROWARD COUNTY EMERGENCY MANAGEMENT DIVISION</b>	
Government Agencies & Services	954-831-3900
<b>BROWARD COUNTY ENVIRONMENTAL PROTECTION AND GROWTH MANAGEMENT DEPARTMENT</b>	
Government Agencies & Services	954-519-1489
<b>BROWARD COUNTY OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT</b>	
Government Agencies & Services	954-357-6155
<b>BROWARD METROPOLITAN PLANNING ORGANIZATION (MPO)</b>	
Government Agencies & Services	954-876-0033
<b>BROWARD NAVY DAYS, INC.</b>	
Miscellaneous Services	954-649-4777
<b>BROWARD SHERIFF'S OFFICE, PORT EVERGLADES DISTRICT</b>	
Government Agencies & Services	954-765-4511
<b>BUCKEYE PARTNERS, LP (FORMERLY HESS LIQUID PETROLEUM TERMINALS)</b>	
Petroleum Products & Services	954-523-3656
<b>BUDGET RENT A CAR</b>	
Auto Rental	800-331-1212
Auto Rental	954-761-7231
Auto Rental	954-797-4324
<b>BUKKEHAVE INC.</b>	
Port Tenants	954-525-9788
<b>BUREAU VERITAS MARINE INC.</b>	
Marine Surveyors	954-525-4114
<b>B.V. OIL COMPANY</b>	
Bunkering/Marine Fuels	305-593-0705

## C

<b>C-AIR BROKERS &amp; FORWARDERS, INC.</b>	
Customs Brokers & Freight Forwarders	305-477-8112
Trucking Services	305-477-8112
<b>CANDLEWOOD SUITES-FT. LAUDERDALE AIRPORT/CRUISE PORT</b>	
Hotels	954-522-8822
<b>CAP SANTE INTERNATIONAL, INC.</b>	
Marine Safety Equipment	954-616-8870
<b>CAPITAL SALES &amp; MARKETING, INC.</b>	
Warehousing, Distribution & Handling	305-556-5535
<b>CARNIVAL CRUISE LINES</b>	
Cruise Lines	888-227-6402
<b>CARVALLO INTERNATIONAL TRADING SERVICES CORPORATION</b>	
Foreign-Trade Zone No. 25	954-761-8492
Warehousing, Distribution & Handling	954-761-8492
<b>CASSIDY &amp; BLACK, PA.</b>	
Attorneys - Maritime & Trade	305-271-8301
<b>CCNI (COMPANIA CHILENA DE NAVEGACION INTEROCEANICA, S.A.)</b>	
Shipping Lines	786-845-9212
<b>CELEBRITY CRUISES</b>	
Cruise Lines	305-539-6000
<b>CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC</b>	
Bulk Cargo, Shipping & Handling	954-523-9683
Port Tenants	954-523-9683
<b>CERES MARINE TERMINALS, INC.</b>	
Stevedoring & Cargo Handling Services	321-799-9035

<b>CERTIFIED SLINGS, INC.</b>	
Heavy Lift Equipment & Services	407-331-6677
Marine Equipment & Supplies	407-331-6677
<b>CHEMOIL</b>	
Bunkering/Marine Fuels	954-848-7049
<b>CHEVRON PRODUCTS CO.</b>	
Petroleum Products & Services	954-764-2230
<b>CHIUQUITA BRANDS, INC.</b>	
Warehousing, Distribution & Handling	954-582-7816
<b>CHIUQUITA FRESH NORTH AMERICA, LLC</b>	
Shipping Lines	Booking: 888-724-5493
Terminal Operators	954-453-1200
<b>CITGO PETROLEUM CORP.</b>	
Petroleum Products & Services	954-525-6742
<b>CITY OF DANIA BEACH</b>	
Government Agencies & Services	954-924-6800
<b>CITY OF FT. LAUDERDALE</b>	
Government Agencies & Services	954-828-5000
<b>CITY OF HOLLYWOOD</b>	
Government Agencies & Services	954-921-3201
<b>CLEANCOR ENERGY SOLUTIONS LLC</b>	
Environmental Services	954-523-2200
Miscellaneous Services	954-523-2200
<b>CLIFF BERRY, INC.</b>	
Environmental Services	800-899-7745
Hazardous Materials Handling	800-899-7745
Waste Disposal & Handling	800-899-7745
<b>CMA CGM AMERICA, LLC</b>	
Shipping Lines	877-556-6308
<b>COLEARY TRANSPORT INC.</b>	
Ship Agents & Brokers	954-527-0673
Stevedoring & Cargo Handling Services	954-527-0673
Terminal Operators	954-527-0673
<b>COMFORT SUITES AIRPORT &amp; CRUISE PORT</b>	
Hotels	954-767-8700
<b>COMMERCIAL DIVER SERVICES N.A. INC.</b>	
Diving & Underwater Services	954-990-4759
<b>COMPANIA SUDAMERICANA DE VAPORES (CSAV)</b>	
Shipping Lines	732-635-2600
<b>CONSOLIDATED RIGGING &amp; MARINE SUPPLY CO. INC.</b>	
Marine Equipment & Supplies	305-807-8572
<b>CONTINENTAL FLORIDA MATERIALS, INC.</b>	
Stevedoring & Cargo Handling Services	954-523-8442
<b>COSTA CRUISES</b>	
Cruise Lines	800-462-6782
<b>CROWLEY LINER SERVICES, INC.</b>	
Shipping Lines	954-760-7900
Stevedoring & Cargo Handling Services	954-760-7900
Terminal Operators	954-760-7900
<b>CROWNE PLAZA FT. LAUDERDALE AIRPORT/CRUISE PORT</b>	
Hotels	954-523-8080
<b>CRUISE LINES INTERNATIONAL ASSOCIATION</b>	
Associations & Trade Organizations	202-759-9370
<b>CUMMINS/CEDERBERG</b>	
Engineering Services	305-741-6155
<b>CUNARD LINE</b>	
Cruise Lines	800-728-6273

## D

<b>DATREX INC.</b>	
Marine Safety Equipment	305-638-8220
<b>DYT/DOCKWISE/UNITED YACHT TRANSPORT</b>	
Shipping Lines	954-525-8707
<b>DOLE FRESH FRUIT</b>	
Terminal Operators	954-522-3573
<b>DOLE OCEAN LINER EXPRESS</b>	
Shipping Lines	305-591-7500
<b>DOLLAR RENT A CAR</b>	
Auto Rental	954-463-2950
<b>DONALD J. MAHONEY &amp; CO. INC.</b>	
Marine Surveyors	305-553-7066

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Home > Vessel Types > Heavy Load Carriers > Super Servant 4

FILE 33/36



### Super Servant 4

NAME: SUPER SERVANT 4  
 IMO: 8025343  
 VESSEL TYPE: HEAVY LOAD CARRIER  
 FLAG: NETHERLANDS ANTILLES  
 PORT OF REGISTRY: WILLEMSTAD  
 STATUS: IN SERVICE  
 COMPANY: DOCKWISE (OWNED SINCE 1993)  
 BUILDER: OSHIMA SAIKAI - JAPAN  
 YEAR: 1982  
 GROSS TONNAGE (GT): 12642  
 LENGHT (m): 169,5  
 BREADTH (m): 32,13  
 DRAUGHT (m): 6,26  
 SPEED (kn): 13  
 POWER (kW): 6252  
 SISTER SHIPS: SUPER SERVANT 3



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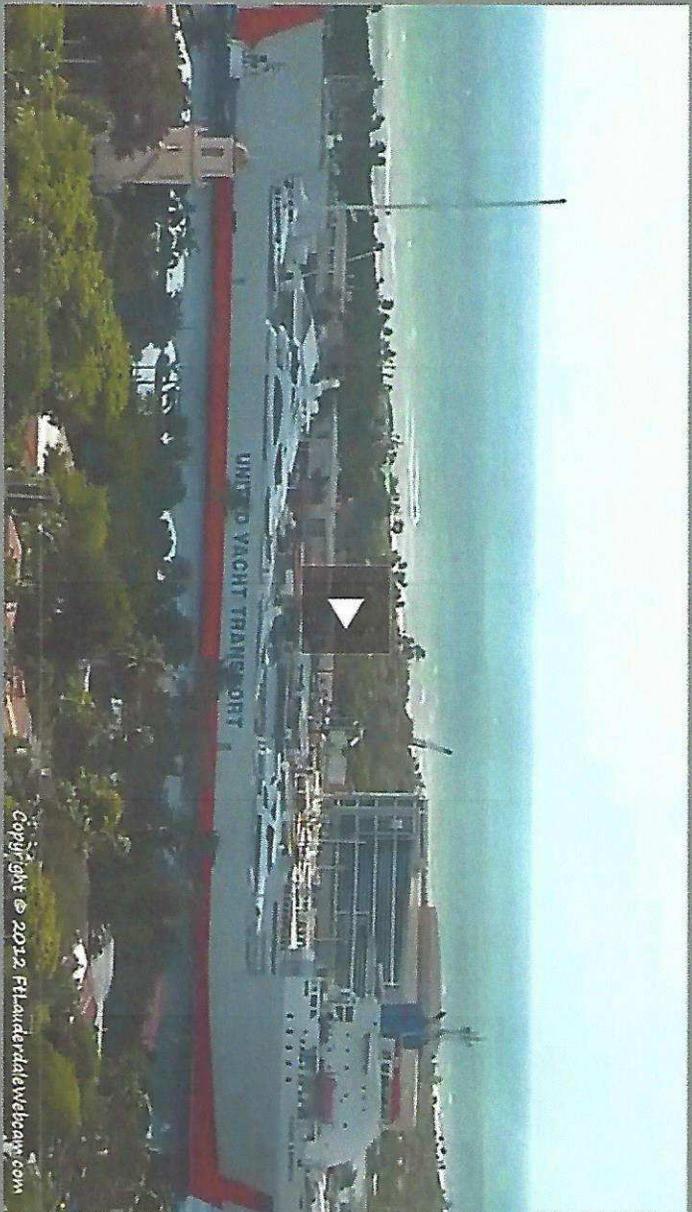
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**Strasburger**  
ATTORNEYS AT LAW

August 20, 2013

JOHN A. TANG  
713.951.5623  
Direct Fax: 832.397.3532  
john.tang@strasburger.com

**VIA FEDERAL EXPRESS DELIVERY**

Michael Uhr  
Manager  
United Yacht Transport, LLC  
2830 State Road 84, Suite 118  
Dania Beach, FL 33312

Corporation Service Company (Registered agent for United Yacht Transport, LLC)  
1201 Hays Street  
Tallahassee, FL 32301-2525

RE: Infringement of the mark UNITED YACHT TRANSPORT by United Yacht  
Transport, LLC (a Delaware limited liability company)  
Our file no.: 10418.0104

Dear Mr. Uhr and Registered Agent:

This Firm represents Dockwise Shipping, B.V. ("Dockwise") of the Netherlands with U.S. offices in Fort Lauderdale, FL, and Houston, TX, in connection with certain trademark and unfair competition matters. As you know, Dockwise provides, *inter alia*, yacht transport services.

Dockwise has used since 1992, and continues to use in commerce, the mark UNITED YACHT TRANSPORT (the "Mark") in connection with yacht transport services. Dockwise has extensively promoted and advertised its services under this Mark. Dockwise also uses the Mark on vessels that transport yachts from Port Everglades, FL (see Exhibit A), and other U.S. and worldwide ports. In fact, Dockwise's United Yacht Transport is listed in the Port Everglade's directory (see Exhibit B, highlighted area added). As a result of the continuous and extensive use in commerce of the Mark by Dockwise and the favorable response of the relevant public and trade to the Mark and services, the Mark has become a valuable asset of Dockwise.

It has recently come to our attention that United Yacht Transport, LLC is using the identical mark United Yacht Transport on the internet at [www.united-yacht.com](http://www.united-yacht.com) (the "Domain Name") for yacht transport services. (A copy of the home page of the Domain Name is attached as Exhibit C). Records from GoDaddy.com's Whois database indicate that the Domain Name was registered on July 25, 2013, wherein the owner of

**Strasburger & Price, LLP**

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1496019 1/SPH/10418/0104/082013

**UYT\_0000124**

# Strasburger

ATTORNEYS AT LAW

Michael Uhr  
Corporation Service Company  
August 20, 2013  
Page 2

the Domain Name—which we believe is connected to your company—has been masked by GoDaddy's proxy service (see Exhibit D).

In addition, a search of the U.S. Patent and Trademark Office records indicates that United Yacht Transport, LLC applied for U.S. registration of the mark UNITED YACHT TRANSPORT (U.S. Application serial number 86/031,633) on August 7, 2013 for transport by yachts by boat service (the "633 Application"). The '633 Application includes a first use date of the mark anywhere on July 16, 2013 and in commerce on August 5, 2013. Both of these dates are more than twenty (20) years from our client's first use date of its Mark.

As you know, the principals of your company tried to acquire our client's yacht transport business and United Yacht Transport mark through an intermediary. However, the transaction was never finalized. Our client has not given consent to United Yacht Transport, LLC to use or register the United Yacht Transport mark. Our client is thus concerned that United Yacht Transport's use and application for registration violate Dockwise's intellectual property rights. In view of its prior dealings with the principals of your company, our client considers your company's conduct as a willful infringement of our client's trademark.

We must request that United Yacht Transport, LLC refrain from further use or application for registration of the United Yacht Transport mark. We ask that you provide to us written confirmation within fourteen (14) days of the date of your receipt of this letter that your client will take steps to **immediately**:

- (1) Terminate use of the United Yacht Transport mark or any other confusingly similar mark;
- (2) Terminate, remove or destroy all advertising, including print or electronic publications, such as the website, with the United Yacht Transport mark or any other confusingly similar mark;
- (3) Change your corporate name to a name not confusingly similar to the United Yacht Transport name;
- (4) Abandon U.S. Application No. 86/031,633 and agree not to file further applications for registration of the United Yacht Transport mark or any other confusingly similar mark; and
- (5) Transfer the Domain Name to our client.

UYT\_0000125

**Strasburger**  
ATTORNEYS AT LAW

Michael Uhr  
Corporation Service Company  
August 20, 2013  
Page 3

Also, we request that United Yacht Transport, LLC's owners, employees and agents, commit not to use or register the United Yacht Transport mark or any other confusingly similar mark.

Dockwise would like to amicably settle this matter; thus we await your response.

This letter is made without prejudice to any action that may be taken in the event that further action is necessary to protect the valuable rights of our client's Mark.

Sincerely,

STRASBURGER & PRICE, LLP

  
John A. Tang  
Enclosures

cc: Dockwise Shipping B.V.  
Garney Griggs, Esq.

UYT\_0000126

At Port Everglades, FL



UYT\_0000127



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### Shipping Lines

CARGO LINE	BOOKING AGENT TEL	SERVES
AGRIEX	954-785-1078	Guatemala, Honduras, Nicaragua, El Salvador, Jamaica Frequency: Weekly Type: Container, General Cargo
CCNI Compania Chilena de Navegación Interoceánica, S A	788 945-9212	U.S. East Coast, South America, West Coast Frequency: Weekly Type: Container
Chiquita - Great White Fleet	888-724-5493	U.S. Central America, Europe Frequency: Weekly Type: Container
Chilean Line - CSAV	600-804-9391	Colombia, South America - West Coast Frequency: Weekly Type: Container
Crowley Liner Services	305-470-4000	Caribbean, Central America Frequency: Weekly Type: Container, Project Cargo, RORO, Trailers
Decalmar United Youth Transport	954-525-8707	Caribbean, Mediterranean, Mexico, Canada-West Coast, Australia, New Zealand Frequency: Weekly Type: LCL, FPO
Dole Ocean Liner Express	305-581-7500	Costa Rica, Honduras, El Salvador Frequency: Weekly Type: Container
Frontier Liner Services	305-471-7800	Colombia Frequency: Weekly Type: Container
Hamburg Sud	954-781-3134	Venezuela, South America - West Coast Frequency: Weekly Type: Container
Hapag-Lloyd (America) Inc.	888-851-4083	Mediterranean
Hybur LTD	305-913-4933	Belize, Cayman Islands, Mexico, Honduras Frequency: Weekly Type: Container
Interocean	305-375-8004	Ecuador, Peru Frequency: Every 14 Days Type: Container, General Cargo
King Ocean Service	305-581-7595	Venezuela, Aruba, Curaçao, Colombia, Costa Rica, Panama Frequency: 2X Weekly Type: Container, General Cargo
Mailboat Co. / St. John's Shipping	954-527-0034	Bahamas Frequency: 3X Weekly Type: General Cargo
Mediterranean Shipping Company	305-477-9277	Far East, South America, India Frequency: Weekly Type: Container
Montemar	800-804-9391	South America, Central America, U.S. East Coast Frequency: Weekly Type: Container
Naviera Master Line	305-589-9935	Colombia, Venezuela
SC Line	(US) 305-787-4610, 305-787-1900 (Panama) +507-830-5000 +507-282-5700	Colombia, Panama, Mexico, Venezuela, Dominican Republic Frequency: Bi-weekly Type: RORO
SeaFreight	305-592-8090	Aruba, Curaçao, Jamaica, Cayman Islands, Costa Rica, Panama, Bonaire, Suriname, Trinidad, Venezuela Frequency: Weekly Type: Container, LCL, Breakbulk
Sea Star Line	954-527-1423	Puerto Rico, Caribbean, U.S. East Coast Frequency: Weekly Type: Container, Autos, General Cargo
Trinity Shipping Line	305-888-2277	Colombia, Ecuador, Peru Frequency: Every 14 Days Type: Container, General Cargo, Project Cargo
YB Shionkua	954-574-4548	Bahamas

Containerized Cargo  
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ship schedule

tariff

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<b>Zim Container Line</b>	<b>308-423-7400</b>	Frequency: Bi-Weekly Type: Container Mediterranean Frequency: Weekly Type: Container
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### Professional Yacht Transport.

United Yacht Transport has built a reputation for providing flexible, professional, and reliable service to the transportation of yachts to and from water destinations. Through our highly skilled and experienced marine yard teams, both on shore and aboard our ships, we are dedicated to providing our customers with safe, efficient and reliable marine transportation solutions. We are one of the most experienced and innovative in the yacht transportation industry. We strive to exceed customer expectations of quality, safety and efficiency through continuous improvement and continual customer education.

### Global reach, local knowledge.

With a comprehensive network of global agents and partners, United Yacht Transport can assure each our clients that the details of shipping and receiving their yacht at its final destination will be handled in a smooth and efficient manner.

### Experience.

United Yacht Transport has assembled a team of the most experienced personnel from within the yachting industry. It is our experienced team of professionals that sets us apart from our competitors. We can guarantee our clients peace of mind knowing that their yacht will be handled with the utmost care and handled by the industry's most qualified people. It is our commitment to an ever-developed third and fourth decks designed to provide the best overall experience for our clients throughout the entire shipping process.

### Destinations.

United Yacht Transport's sailing destinations cover the globe including the Mediterranean, Caribbean, Mexico, the Northwest, South Pacific, and most any major world port destinations. Whether it is world class sailing or simply the superior beauty of all-around Alaska we have your transportation needs covered. With United Yacht Transport, you can enjoy all that has the ultimate comfort of your own yacht.



**United Yacht Transport** has built a reputation for providing flexible, professional, and reliable service to the transportation of yachts to and from water destinations. Through our highly skilled and experienced marine yard teams, both on shore and aboard our ships, we are dedicated to providing our customers with safe, efficient and reliable marine transportation solutions. We are one of the most experienced and innovative in the yacht transportation industry. We strive to exceed customer expectations of quality, safety and efficiency through continuous improvement and continual customer education.



**United Yacht Transport** has built a reputation for providing flexible, professional, and reliable service to the transportation of yachts to and from water destinations. Through our highly skilled and experienced marine yard teams, both on shore and aboard our ships, we are dedicated to providing our customers with safe, efficient and reliable marine transportation solutions. We are one of the most experienced and innovative in the yacht transportation industry. We strive to exceed customer expectations of quality, safety and efficiency through continuous improvement and continual customer education.



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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]  
**Sent:** Friday, September 06, 2013 12:12 PM  
**To:** Alexander Zimmer; Joseph A. Probasco; Randy Sterns  
**Cc:** Brockway, Michelle  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

Gentlemen, it was a pleasure speaking with you. First, below is a hyperlink to the article I mentioned during our call regarding Kevin and Dennis Cummings' involvement with your clients Michael Uhr and United Yacht Transport, LLC.

<http://www.superyachtnews.com/business/20032/yacht-path-directors-operating-under-new-transporter.html>

Next, we have conferred with our client regarding our conversation. At this time, our client will not provide additional evidence of use to show our client's superior trademark rights over your clients. Our client is adamant that your clients adhere to the demand letter (with the additional condition that your clients are given no more than 30 days to comply). Our client will give your clients 5 days from today to agree to the terms of the letter.

And pursuant to our call today, Randy/Joe, if necessary, you have indicated that you will accept service of process on behalf of your clients.

Kindly confirm receipt of this email.

Thank you.

---

**John A. Tang** • Strasburger & Price, LLP  
909 Fannin Street, Suite 2300, Houston, TX 77010  
Direct: 713.951.5623 • Main: 713.951.5600  
Fax: 832.397.3532 • Mobile: 832.567.8264  
Skype: JohnTangAttorney  
**Legal Administrative Assistant:** Kathy Reiff 713.750.5507 ([Kathy.Reiff@strasburger.com](mailto:Kathy.Reiff@strasburger.com))  
**IP Paralegal:** Teresa Wrye 713.750.5510 ([Teresa.Wrye@strasburger.com](mailto:Teresa.Wrye@strasburger.com))

Member of the State Bars of Texas and Florida  
Registered to practice before the U.S. Patent and Trademark Office

**From:** Alexander Zimmer [<mailto:alex@ajzimmerlaw.com>]  
**Sent:** Wednesday, September 04, 2013 3:58 PM

**To:** Tang, John  
**Cc:** Joseph A. Probasco; Randy Sterns; Brockway, Michelle  
**Subject:** Re: United Yacht Transport LLC/Dockwise Shipping BV

John, we suggest an 11 am EST/10 am CST call on Friday, 6 September. Please use the following call-in number:

Number: [1 877 274 7674](tel:18772747674) Pass: 02 19 521#

I trust that time will be convenient you.

Alex Zimmer

Alexander J. Zimmer  
Attorney at Law  
243 East 81st Street, Suite 4F  
New York, NY 10028  
Telephone: 917-553-3102  
Fax: 917-456-0056  
Email: [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com)

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On Wed, Sep 4, 2013 at 2:53 PM, Tang, John <[john.tang@strasburger.com](mailto:john.tang@strasburger.com)> wrote:

Your email is noted. I am available Friday morning from 9 am to 12 pm (CST). Please confirm time and provide telephone call in information. Michelle Brockway of our firm will also participate on the call.

John

----- Message from [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com) -----

Date: Wed, 4 Sep 2013 11:40:40 -0400

From: Alexander Zimmer <[alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com)>

Subject: United Yacht Transport LLC/Dockwise Shipping BV

To: John Tang <[John.Tang@strasburger.com](mailto:John.Tang@strasburger.com)>

Cc: "Joseph A. Probasco" <[jprobasco@bushross.com](mailto:jprobasco@bushross.com)>, Randy Sterns <[rsterns@bushross.com](mailto:rsterns@bushross.com)>

John,

Following up on our telephone call last Thursday, I would like to arrange a call with you on Friday morning to discuss our response to your client's position. My client also has retained the law firm of Bush Ross, P.A. of Tampa, Florida, to represent it in connection with this matter. Joseph Probasco and Randy Sterns of Bush Ross will be joining us on the call. Please provide times Friday morning when we can have the call, and we will circulate a call in number.

Thanks.

Alex Zimmer

Alexander J. Zimmer  
Attorney at Law  
243 East 81st Street, Suite 4F  
New York, NY 10028  
Telephone: 917-553-3102  
Fax: 917-456-0056  
Email: alex@ajzimmerlaw.com

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----- End message from [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com) -----

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**From:** Tang, John <John.Tang@strasburger.com>  
**Sent:** Tuesday, September 17, 2013 11:58 AM  
**To:** Joseph A. Probasco  
**Cc:** Brockway, Michelle; Randy Sterns  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

4 pm (EST) today is fine. Please call my direct number 713.951.5623.

---

**John A. Tang** • Strasburger & Price, LLP  
909 Fannin Street, Suite 2300, Houston, TX 77010  
Direct: 713.951.5623 • Main: 713.951.5600  
Fax: 832.397.3532 • Mobile: 832.567.8264  
Skype: JohnTangAttorney  
**Legal Administrative Assistant:** Kathy Reiff 713.750.5507 (Kathy.Reiff@strasburger.com)  
**IP Paralegal:** Teresa Wrye 713.750.5510 (Teresa.Wrye@strasburger.com)

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Registered to practice before the U.S. Patent and Trademark Office

**From:** Joseph A. Probasco [mailto:jprobasco@bushross.com]  
**Sent:** Tuesday, September 17, 2013 10:48 AM  
**To:** Tang, John  
**Cc:** Brockway, Michelle; Randy Sterns  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

John-

Can you chat today at 4 (EST) or anytime tomorrow after 2:30 (EST)? If so, let me know your preference and a good number to reach you and Randy and I will give you a call.

Joseph A. Probasco, Esq.  
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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]  
**Sent:** Monday, September 16, 2013 2:19 PM  
**To:** Joseph A. Probasco  
**Cc:** Brockway, Michelle  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

Received with thanks.

---

**John A. Tang** • Strasburger & Price, LLP  
909 Fannin Street, Suite 2300, Houston, TX 77010  
Direct: 713.951.5623 • Main: 713.951.5600  
Fax: 832.397.3532 • Mobile: 832.567.8264  
Skype: JohnTangAttorney  
**Legal Administrative Assistant:** Kathy Reiff 713.750.5507 ([Kathy.Reiff@strasburger.com](mailto:Kathy.Reiff@strasburger.com))  
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**From:** Joseph A. Probasco [<mailto:jprobasco@bushross.com>]  
**Sent:** Monday, September 16, 2013 1:12 PM  
**To:** Tang, John  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

John-

I just wanted to send you a quick note to let you know we rec'd below. I will discuss with my client and will get back to you tomorrow.

Regards,

Joseph A. Probasco, Esq.  
Bush Ross, P.A.  
1801 North Highland Avenue  
Tampa, Florida 33602-2656  
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(813) 223-9620 [Fax]  
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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]  
**Sent:** Friday, September 13, 2013 4:17 PM  
**To:** Joseph A. Probasco; Randy Sterns; Alexander Zimmer  
**Cc:** Brockway, Michelle  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

Joseph, I have discussed your email with our client. Our comments to your statements can be found below (embedded in your text in bracketed red bold lettering). In addition, attached are various snap shots of the Port Everglades online ship directory listing since 2009 (using the Wayback Machine). Last, since the photograph (attached to our notice letter) was unconvincing to your clients, a United Yacht Transport vessel will be making its scheduled voyage to the port in Fort Lauderdale (i.e., Port Everglades) on or near September 17. Since your client's listed place of business is in Fort Lauderdale, your client can see up close our client's trademark next week.

We look forward to your clients' immediate response.

---

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909 Fannin Street, Suite 2300, Houston, TX 77010  
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Fax: 832.397.3532 • Mobile: 832.567.8264  
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**From:** Joseph A. Probasco [<mailto:jprobasco@bushross.com>]  
**Sent:** Tuesday, September 10, 2013 3:48 PM  
**To:** Tang, John; Alexander Zimmer; Randy Sterns  
**Cc:** Brockway, Michelle  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

John-

Thank you for your email and we enjoyed speaking with you as well.

As noted on our call, prior to using the mark "United Yacht Transport," our client conducted a search to determine whether any other business, including Dockwise, was using a similar or identical mark in the yacht shipping industry. Based on this search, our client concluded that Dockwise had abandoned the mark sometime in 2007. **[We would be interested to**

**see how your client came to this conclusion. The mere cancellation of a registered stylized mark?**, as our client's investigation found no evidence of Dockwise's use of the mark in interstate commerce **[Our client's use of its mark is between the U.S. and other countries, so such use qualifies as use in "commerce regulated by U.S. Congress" and not Interstate commerce]**, nor any reference of the mark on any Dockwise website, nor any other reference of the mark in any other industry promotional medium, including tradeshows, trade journals, etc. Further, our client's search found that the USPTO cancelled your client's federally registered mark "United Yacht Transport" (Reg. No. 2405244) in August 2007. **[I believe your statement is in error. The mark registered was a stylized mark, including the acronym UYT. Thus, our client did not maintain this stylized mark. But our client has not abandoned its word mark.]** We further note that Dockwise did not take any affirmative action to file for registration of the mark until after our client filed its application on August 7, 2013. **[As you know, trademark rights in the U.S. are not based on a registration, but rather rights are obtained through use (i.e., common law rights). To protect our client's rights in a subsequent opposition proceeding against your client's application, our client filed its application. Our client has been continuously using the word mark United Yacht Transport mark since at least as early as 1992. Furthermore, please direct me to statutory or case law that trademark owners have an affirmative duty to register its mark in the U.S.]** Based on our client's search, our client adopted the mark in good faith **[We find it hard to believe that the adoption was in good faith in view of the Cummings interaction with your clients - after the Cummings' unsuccessful bid to acquire our client's yacht transport business]** believing Dockwise had abandoned the mark in 2007 **[Based on what? A cancelled registration for a stylized mark?]** and had no intention **[What proof is your client relying on that our client had "no intent" to use its mark? Our client has not abandoned its mark. This can be clearly shown by the Port Everglades' directory listings and nearly 700 foot United Yacht Transport vessels, that regularly loads and unload yachts from Port Everglades]** to resume its use of the mark.

You indicated that even if Dockwise was deemed to have abandoned the mark "United Yacht Transport" in 2007 **[Let's be absolutely clear, our client has not abandoned its trademark]**, Dockwise's recent use still predated our client's first use in 2013. However, to date, we have only been provided with an undated photograph of a ship with "United Yacht Transport" painted on the side **[As noted above, kindly go to the port next week for an up close view]**, and a print-out from the Port Everglades' directory dated August 20, 2013 **[See attached earlier listings from 2009 and on using the Wayback Machine. Such limited listings were the result of the retrieval tool, rather than lack of uses prior to 2009. Further trademark uses identifying our client can be found with a simple internet search.]** As you know, use of the mark must amount to more than just "token use" and must constitute a bona fide use of the mark in the ordinary course of trade and not merely to reserve a right in the mark **[We would find it hard for a jury to believe that uses of the mark on 700 foot (over 2 football fields long) transport vessels and listings would amount to token use of the mark]**. As such, we have requested additional information from your client to substantiate Dockwise's claim of its prior use. We are particularly interested in any information that would substantiate that Dockwise has "extensively promoted and advertised its services under the Mark" as set forth in your correspondence of August 20, 2013, as well as any information that supports Dockwise has booked sales under this mark **[This is irrelevant. As you know, sales bookings do not amount to trademark use]**. However, we understand from your correspondence below that Dockwise is not willing to provide any additional support for its claims at this time. We would appreciate your client's reconsideration of its position and respectfully request that it provide additional support to substantiate its priority rights in the mark.

If, after review of these materials, we conclude your client has superior rights to use this mark, we would be happy to discuss an amicable resolution to this dispute.

Finally, contrary to the statement contained in your August 20, 2013 letter, no principal of United Yacht Transport, LLC was involved in any attempted acquisition of the Dockwise's yacht transport business. **[We thank you for the clarification that the Cummings are not "principals" of your client UYT, LLC. We note that your clients made a "big deal" about their association with UHY, LLC by the publication we provided.]**

**Should your clients not cease use of the mark as specified in the notice letter, our client intends to take all necessary steps to protect its mark, including but not limited to, claims of willful infringement (including attorney fees under the Lanham Act).]**

We looking forward to hearing from you.

Regards,

Joseph A. Probasco, Esq.  
Bush Ross, P.A.

1801 North Highland Avenue  
Tampa, Florida 33602-2656  
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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]  
**Sent:** Friday, September 06, 2013 12:12 PM  
**To:** Alexander Zimmer; Joseph A. Probasco; Randy Sterns  
**Cc:** Brockway, Michelle  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

Gentlemen, it was a pleasure speaking with you. First, below is a hyperlink to the article I mentioned during our call regarding Kevin and Dennis Cummings' involvement with your clients Michael Uhr and United Yacht Transport, LLC.

<http://www.superyachtnews.com/business/20032/yacht-pitch-directors-operating-under-new-transporter.html>

Next, we have conferred with our client regarding our conversation. At this time, our client will not provide additional evidence of use to show our client's superior trademark rights over your clients. Our client is adamant that your clients adhere to the demand letter (with the additional condition that your clients are given no more than 30 days to comply). Our client will give your clients 5 days from today to agree to the terms of the letter.

And pursuant to our call today, Randy/Joe, if necessary, you have indicated that you will accept service of process on behalf of your clients.

Kindly confirm receipt of this email.

Thank you.

---

John A. Tang • Strasburger & Price, LLP  
909 Fannin Street, Suite 2300, Houston, TX 77010  
Direct: 713.951.5623 • Main: 713.951.5600  
Fax: 832.397.3532 • Mobile: 832.567.8264

Skype: JohnTangAttorney

Legal Administrative Assistant: Kathy Reiff 713.750.5507 ([Kathy.Reiff@strasburger.com](mailto:Kathy.Reiff@strasburger.com))

IP Paralegal: Teresa Wrye 713.750.5510 ([Teresa.Wrye@strasburger.com](mailto:Teresa.Wrye@strasburger.com))

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**From:** Alexander Zimmer [<mailto:alex@ajzimmerlaw.com>]

**Sent:** Wednesday, September 04, 2013 3:58 PM

**To:** Tang, John

**Cc:** Joseph A. Probasco; Randy Sterns; Brockway, Michelle

**Subject:** Re: United Yacht Transport LLC/Dockwise Shipping BV

John, we suggest an 11 am EST/10 am CST call on Friday, 6 September. Please use the following call-in number:

Number: [1 877 274 7674](tel:18772747674) Pass: 02 19 521#

I trust that time will be convenient you.

Alex Zimmer

Alexander J. Zimmer  
Attorney at Law  
243 East 81st Street, Suite 4F  
New York, NY 10028  
Telephone: 917-553-3102  
Fax: 917-456-0056  
Email: [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com)

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On Wed, Sep 4, 2013 at 2:53 PM, Tang, John <[john.tang@strasburger.com](mailto:john.tang@strasburger.com)> wrote:

Your email is noted. I am available Friday morning from 9 am to 12 pm (CST). Please confirm time and provide telephone call in information. Michelle Brockway of our firm will also participate on the call.

John

----- Message from [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com) -----

Date: Wed, 4 Sep 2013 11:40:40 -0400

From: Alexander Zimmer <[alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com)>

Subject: United Yacht Transport LLC/Dockwise Shipping BV

To: John Tang <[John.Tang@strasburger.com](mailto:John.Tang@strasburger.com)>

Cc: "Joseph A. Probasco" <[jprobasco@bushross.com](mailto:jprobasco@bushross.com)>, Randy Sterns <[rsterns@bushross.com](mailto:rsterns@bushross.com)>

John,

Following up on our telephone call last Thursday, I would like to arrange a call with you on Friday morning to discuss our response to your client's position. My client also has retained the law firm of Bush Ross, P.A. of Tampa, Florida, to represent it in connection with this matter. Joseph Probasco and Randy Sterns of Bush Ross will be joining us on the call. Please provide times Friday morning when we can have the call, and we will circulate a call in number.

Thanks.

Alex Zimmer

Alexander J. Zimmer  
Attorney at Law  
243 East 81st Street, Suite 4F  
New York, NY 10028  
Telephone: [917-553-3102](tel:917-553-3102)  
Fax: [917-456-0056](tel:917-456-0056)  
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---

**From:** Joseph A. Probasco  
**Sent:** Tuesday, September 17, 2013 12:05 PM  
**To:** 'Tang, John'  
**Cc:** Brockway, Michelle; Randy Sterns  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

Great. Thx. Will call you then.

Joseph A. Probasco, Esq.  
Bush Ross, P.A.  
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**From:** Tang, John [mailto:John.Tang@strasburger.com]  
**Sent:** Tuesday, September 17, 2013 11:58 AM  
**To:** Joseph A. Probasco  
**Cc:** Brockway, Michelle; Randy Sterns  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

4 pm (EST) today is fine. Please call my direct number 713.951.5623.

---

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**From:** Joseph A. Probasco [<mailto:jprobasco@bushross.com>]

**Sent:** Tuesday, September 17, 2013 10:48 AM

**To:** Tang, John

**Cc:** Brockway, Michelle; Randy Sterns

**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

John-

Can you chat today at 4 (EST) or anytime tomorrow after 2:30 (EST)? If so, let me know your preference and a good number to reach you and Randy and I will give you a call.

Joseph A. Probasco, Esq.  
Bush Ross, P.A.  
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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]

**Sent:** Monday, September 16, 2013 2:19 PM

**To:** Joseph A. Probasco

**Cc:** Brockway, Michelle

**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

Received with thanks.

**John A. Tang** • Strasburger & Price, LLP  
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**From:** Joseph A. Probasco [<mailto:jprobasco@bushross.com>]  
**Sent:** Monday, September 16, 2013 1:12 PM  
**To:** Tang, John  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

John-

I just wanted to send you a quick note to let you know we rec'd below. I will discuss with my client and will get back to you tomorrow.

Regards,

Joseph A. Probasco, Esq.  
Bush Ross, P.A.  
1801 North Highland Avenue  
Tampa, Florida 33602-2656  
(813) 224-9255 [Phone]  
(813) 223-9620 [Fax]  
(813) 204-6472 [Direct Line]  
[jprobasco@bushross.com](mailto:jprobasco@bushross.com)  
[www.bushross.com](http://www.bushross.com)  
Mailing Address:  
Post Office Box 3913  
Tampa, Florida 33601-3913

## BUSH ROSS

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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]  
**Sent:** Friday, September 13, 2013 4:17 PM  
**To:** Joseph A. Probasco; Randy Sterns; Alexander Zimmer

**Cc:** Brockway, Michelle  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

Joseph, I have discussed your email with our client. Our comments to your statements can be found below (embedded in your text in bracketed red bold lettering). In addition, attached are various snap shots of the Port Everglades online ship directory listing since 2009 (using the Wayback Machine). Last, since the photograph (attached to our notice letter) was unconvincing to your clients, a United Yacht Transport vessel will be making its scheduled voyage to the port in Fort Lauderdale (i.e., Port Everglades) on or near September 17. Since your client's listed place of business is in Fort Lauderdale, your client can see up close our client's trademark next week.

We look forward to your clients' immediate response.

---

**John A. Tang** • Strasburger & Price, LLP  
909 Fannin Street, Suite 2300, Houston, TX 77010  
Direct: 713.951.5623 • Main: 713.951.5600  
Fax: 832.397.3532 • Mobile: 832.567.8264  
Skype: JohnTangAttorney  
**Legal Administrative Assistant:** Kathy Reiff 713.750.5507 ([Kathy.Reiff@strasburger.com](mailto:Kathy.Reiff@strasburger.com))  
**IP Paralegal:** Teresa Wrye 713.750.5510 ([Teresa.Wrye@strasburger.com](mailto:Teresa.Wrye@strasburger.com))

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**From:** Joseph A. Probasco [<mailto:jprobasco@bushross.com>]  
**Sent:** Tuesday, September 10, 2013 3:48 PM  
**To:** Tang, John; Alexander Zimmer; Randy Sterns  
**Cc:** Brockway, Michelle  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

John-

Thank you for your email and we enjoyed speaking with you as well.

As noted on our call, prior to using the mark "United Yacht Transport," our client conducted a search to determine whether any other business, including Dockwise, was using a similar or identical mark in the yacht shipping industry. Based on this search, our client concluded that Dockwise had abandoned the mark sometime in 2007 **[We would be interested to see how your client came to this conclusion. The mere cancellation of a registered stylized mark?]**, as our client's investigation found no evidence of Dockwise's use of the mark in interstate commerce **[Our client's use of its mark is between the U.S. and other countries, so such use qualifies as use in "commerce regulated by U.S. Congress" and not interstate commerce]**, nor any reference of the mark on any Dockwise website, nor any other reference of the mark in any other industry promotional medium, including tradeshows, trade journals, etc. Further, our client's search found that the USPTO cancelled your client's federally registered mark "United Yacht Transport" (Reg. No. 2405244) in August 2007. **[I believe your statement is in error. The mark registered was a stylized mark, including the acronym UYT. Thus, our client did not maintain this stylized mark. But our client has not abandoned its word mark.]** We further note that Dockwise did not take any affirmative action to file for registration of the mark until after our client filed its application on August 7, 2013. **[As you know, trademark rights in the U.S. are not based on a registration, but rather rights are obtained through use (i.e., common law rights). To protect our client's rights in a subsequent opposition proceeding against your client's application, our client filed its application. Our client has been continuously using the word mark United Yacht Transport mark since at least as early as 1992. Furthermore, please direct me to statutory or case law that trademark owners have an affirmative duty to register its mark in the U.S.]** Based on our client's search, our client adopted the mark in good faith **[We find it hard to believe that the adoption was in good faith in view of the Cummings' interaction with your clients - after the Cummings' unsuccessful bid to acquire our client's yacht transport business]** believing Dockwise had abandoned the mark in 2007 **[Based on what? A cancelled registration for a stylized mark?]** and had no intention **[What proof is your client relying on that our client had "no intent" to use its mark? Our client has not abandoned its mark. This can be clearly shown by the Port Everglades' directory listings and nearly 700 foot United Yacht Transport vessels, that regularly loads and unload yachts from Port Everglades]** to resume its use of the mark.

You indicated that even if Dockwise was deemed to have abandoned the mark "United Yacht Transport" in 2007 **[Let's be absolutely clear, our client has not abandoned its trademark]**, Dockwise's recent use still predated our client's first use in 2013. However, to date, we have only been provided with an undated photograph of a ship with "United Yacht Transport" painted on the side **[As noted above, kindly go to the port next week for an up close view]**, and a print-out from the Port Everglade's directory dated August 20, 2013 **[See attached earlier listings from 2009 and on using the Wayback Machine. Such limited listings were the result of the retrieval tool, rather than lack of uses prior to 2009. Further trademark uses identifying our client can be found with a simple internet search.]**. As you know, use of the mark must amount to more than just "token use" and must constitute a bona fide use of the mark in the ordinary course of trade and not merely to reserve a right in the mark **[We would find it hard for a jury to believe that uses of the mark on 700 foot (over 2 football fields long) transport vessels and listings would amount to token use of the mark]**. As such, we have requested additional information from your client to substantiate Dockwise's claim of its prior use. We are particularly interested in any information that would substantiate that Dockwise has "extensively promoted and advertised its services under the Mark" as set forth in your correspondence of August 20, 2013, as well as any information that supports Dockwise has booked sales under this mark **[This is irrelevant. As you know, sales bookings do not amount to trademark use]**. However, we understand from your correspondence below that Dockwise is not willing to provide any additional support for its claims at this time. We would appreciate your client's reconsideration of its position and respectfully request that it provide additional support to substantiate its priority rights in the mark.

If, after review of these materials, we conclude your client has superior rights to use this mark, we would be happy to discuss an amicable resolution to this dispute.

Finally, contrary to the statement contained in your August 20, 2013 letter, no principal of United Yacht Transport, LLC was involved in any attempted acquisition of the Dockwise's yacht transport business. **[We thank you for the clarification that the Cummings are not "principals" of your client UYT, LLC. We note that your clients made a "big deal" about their association with UHY, LLC by the publication we provided.]**

**Should your clients not cease use of the mark as specified in the notice letter, our client intends to take all necessary steps to protect its mark, including but not limited to, claims of willful infringement (including attorney fees under the Lanham Act).]**

We looking forward to hearing from you.

Regards,

Joseph A. Probasco, Esq.  
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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]  
**Sent:** Friday, September 06, 2013 12:12 PM  
**To:** Alexander Zimmer; Joseph A. Probasco; Randy Sterns  
**Cc:** Brockway, Michelle  
**Subject:** RE: United Yacht Transport LLC/Dockwise Shipping BV

Gentlemen, it was a pleasure speaking with you. First, below is a hyperlink to the article I mentioned during our call regarding Kevin and Dennis Cummings' involvement with your clients Michael Uhr and United Yacht Transport, LLC.

<http://www.superyachtnews.com/business/20032/yacht-path-directors-operating-under-new-transporter.html>

Next, we have conferred with our client regarding our conversation. At this time, our client will not provide additional evidence of use to show our client's superior trademark rights over your clients. Our client is adamant that your clients adhere to the demand letter (with the additional condition that your clients are given no more than 30 days to comply). Our client will give your clients 5 days from today to agree to the terms of the letter.

And pursuant to our call today, Randy/Joe, if necessary, you have indicated that you will accept service of process on behalf of your clients.

Kindly confirm receipt of this email.

Thank you.

---

**John A. Tang** • Strasburger & Price, LLP  
909 Fannin Street, Suite 2300, Houston, TX 77010  
Direct: 713.951.5623 • Main: 713.951.5600  
Fax: 832.397.3532 • Mobile: 832.567.8264  
Skype: JohnTangAttorney  
**Legal Administrative Assistant:** Kathy Reiff 713.750.5507 ([Kathy.Reiff@strasburger.com](mailto:Kathy.Reiff@strasburger.com))  
**IP Paralegal:** Teresa Wrye 713.750.5510 ([Teresa.Wrye@strasburger.com](mailto:Teresa.Wrye@strasburger.com))

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**From:** Alexander Zimmer [<mailto:alex@ajzimmerlaw.com>]  
**Sent:** Wednesday, September 04, 2013 3:58 PM  
**To:** Tang, John  
**Cc:** Joseph A. Probasco; Randy Sterns; Brockway, Michelle  
**Subject:** Re: United Yacht Transport LLC/Dockwise Shipping BV

John, we suggest an 11 am EST/10 am CST call on Friday, 6 September. Please use the following call-in number:

Number: [1 877 274 7674](tel:18772747674) Pass: 02 19 521#.

I trust that time will be convenient you.

Alex Zimmer

Alexander J. Zimmer  
Attorney at Law  
243 East 81st Street, Suite 4F  
New York, NY 10028  
Telephone: 917-553-3102  
Fax: 917-456-0056  
Email: [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com)

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On Wed, Sep 4, 2013 at 2:53 PM, Tang, John <[john.tang@strasburger.com](mailto:john.tang@strasburger.com)> wrote:

Your email is noted. I am available Friday morning from 9 am to 12 pm (CST). Please confirm time and provide telephone call in information. Michelle Brockway of our firm will also participate on the call.

John

----- Message from [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com) -----

Date: Wed, 4 Sep 2013 11:40:40 -0400

From: Alexander Zimmer <[alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com)>

Subject: United Yacht Transport LLC/Dockwise Shipping BV

To: John Tang <[John.Tang@strasburger.com](mailto:John.Tang@strasburger.com)>

Cc: "Joseph A. Probasco" <[jprobasco@bushross.com](mailto:jprobasco@bushross.com)>, Randy Sterns <[rsterns@bushross.com](mailto:rsterns@bushross.com)>

John,

Following up on our telephone call last Thursday, I would like to arrange a call with you on Friday morning to discuss our response to your client's position. My client also has retained the law firm of Bush Ross, P.A. of Tampa, Florida, to represent it in connection with this matter. Joseph Probasco and Randy Sterns of Bush Ross will be joining us on the call. Please provide times Friday morning when we can have the call, and we will circulate a call in number.

Thanks.

Alex Zimmer

Alexander J. Zimmer  
Attorney at Law  
243 East 81st Street, Suite 4F  
New York, NY 10028  
Telephone: [917-553-3102](tel:917-553-3102)  
Fax: [917-456-0056](tel:917-456-0056)  
Email: [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com)

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----- End message from [alex@ajzimmerlaw.com](mailto:alex@ajzimmerlaw.com) -----

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**From:** Tang, John <John.Tang@strasburger.com>  
**Sent:** Thursday, September 19, 2013 2:37 PM  
**To:** Joseph A. Probasco; Randy Sterns  
**Cc:** Alexander Zimmer; Brockway, Michelle  
**Subject:** United Yacht Transport TM matter

Gentlemen, we thank you for the call on Tuesday regarding the resolution of the United Yacht Transport trademark matter. We discussed the contents of our call with our client and they are pleased to hear that your clients will cease use of the mark (and transfer the domain name) in a timely manner. During our call we discussed a timeframe for your clients to cease use, etc. Although we suggested to Alex in an earlier call that our client would be willing to give your clients 30 days to comply, our client will now provide your clients with 60 days to comply.

If more than 60 days are needed, we will need to understand why. And if more than 60 days are needed, we will need to set up milestone dates for each action (e.g., within 7 days, file express abandonment of trademark application; within 14 days, transfer domain name, etc.).

We look forward to your response.

Best regards.

---

**John A. Tang** • Strasburger & Price, LLP  
909 Fannin Street, Suite 2300, Houston, TX 77010  
Direct: 713.951.5623 • Main: 713.951.5600  
Fax: 832.397.3532 • Mobile: 832.567.8264  
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**Legal Administrative Assistant:** Kathy Reiff 713.750.5507 ([Kathy.Reiff@strasburger.com](mailto:Kathy.Reiff@strasburger.com))  
**IP Paralegal:** Teresa Wrye 713.750.5510 ([Teresa.Wrye@strasburger.com](mailto:Teresa.Wrye@strasburger.com))

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**From:** Joseph A. Probasco  
**Sent:** Thursday, September 19, 2013 5:08 PM  
**To:** 'Tang, John'; Randy Sterns  
**Cc:** Alexander Zimmer; Brockway, Michelle  
**Subject:** RE: United Yacht Transport TM matter

John-

Thanks for your note. We had a call with our client yesterday where we discussed the contents of our call on Tuesday. Our client is weighing its options, one of which is the transition proposal we discussed. I hope to have an answer to you shortly, but our client is currently out of pocket due to Sukkot—so it will likely be Monday or Tuesday of next week before I can get back to you—I will push for Monday as I understand we are all trying to keep this moving.

Joseph A. Probasco, Esq.  
Bush Ross, P.A.  
1801 North Highland Avenue  
Tampa, Florida 33602-2656  
(813) 224-9255 [Phone]  
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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]  
**Sent:** Thursday, September 19, 2013 2:37 PM  
**To:** Joseph A. Probasco; Randy Sterns  
**Cc:** Alexander Zimmer; Brockway, Michelle  
**Subject:** United Yacht Transport TM matter

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We look forward to your response.

Best regards.

---

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**From:** Joseph A. Probasco  
**Sent:** Wednesday, September 25, 2013 4:10 PM  
**To:** 'Tang, John'; Randy Sterns  
**Cc:** Alexander Zimmer; Brockway, Michelle  
**Subject:** RE: United Yacht Transport TM matter

John-

I appreciate your patience. We finally had the opportunity to discuss this matter with our client this morning.

Based on the information our client has reviewed to date and its understanding of the underlying facts of this matter, UYT is not presently interested in a transition proposal. Despite our requests to date, Dockwise has provided minimal evidence of its use of the mark to substantiate its priority claims in the mark (the photo of the boat and snapshots from the Port Everglades directory). UYT remains committed to reviewing any additional information Dockwise is willing to provide to substantiate its priority claims in the mark. As an example (and without limitation), if Dockwise can provide any evidence that it has advertised under the mark (through trade publications, marketing materials, etc.), attended tradeshows or similar industry events under this mark, entered into booking contracts with its clients under this mark, etc., and used the mark in a commercially reasonable manner, UYT is willing to reconsider its current position. My client does not intend to be obstinate, but simply would like satisfactory evidence of Dockwise's use of the mark in commerce to substantiate its priority claims in the mark.

Again, if, after review of these materials, we conclude your client has superior rights to use this mark, we would be happy to continue discussing an amicable resolution to this dispute.

Regards,

Joseph A. Probasco, Esq.  
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**From:** Joseph A. Probasco  
**Sent:** Thursday, September 19, 2013 5:08 PM  
**To:** Tang, John; Randy Sterns  
**Cc:** Alexander Zimmer; Brockway, Michelle  
**Subject:** RE: United Yacht Transport TM matter

John-

Thanks for your note. We had a call with our client yesterday where we discussed the contents of our call on Tuesday. Our client is weighing its options, one of which is the transition proposal we discussed. I hope to have an answer to you shortly, but our client is currently out of pocket due to Sukkot—so it will likely be Monday or Tuesday of next week before I can get back to you—I will push for Monday as I understand we are all trying to keep this moving.

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**From:** Tang, John [<mailto:John.Tang@strasburger.com>]  
**Sent:** Thursday, September 19, 2013 2:37 PM  
**To:** Joseph A. Probasco; Randy Sterns  
**Cc:** Alexander Zimmer; Brockway, Michelle  
**Subject:** United Yacht Transport TM matter

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We look forward to your response.

Best regards.

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IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CIVIL JURISDICTION DIVISION

CASE NO.: 15-012196 CACE

UNITED YACHT TRANSPORT LLC.,  
a Delaware Limited Liability Corporation,

Plaintiff,

vs.

SEVENSTAR YACHT TRANSPORT USA AGENCIES, LLC.  
a Florida Limited Liability Corporation,

Defendant.

DATE 8/6/15 TIME 11:41 am  
INITIAL HM BADGE# #324

CIVIL ACTIONS SUMMONS

THE STATE OF FLORIDA:  
To Each Sheriff of Said State:

**YOU ARE HEREBY COMMANDED** to serve this Summons and a copy of the Complaint or petition in this action on Defendant: SEVENSTAR YACHT TRANSPORT USA AGENCIES, LLC, a Florida Limited Liability Corporation,

**By serving:** Registered Agent, Michael Pennekamp, Esq.  
Espirito Santo Plaza, 14<sup>th</sup> Floor  
1395 Brickell Ave.  
Miami, FL 33131

The Defendant is required to serve written defense to the Complaint for damages on Plaintiff's counsel, Neil Bayer, Esquire, whose address is: GRAY-ROBINSON, P.A., 333 SE 2<sup>nd</sup> Ave., Suite 3200, Miami, FL 33131; Telephone: 305-416-6880; E-MAIL: [neil.bayer@gray-robinson.com](mailto:neil.bayer@gray-robinson.com) and [cindy.delgado@gray-robinson.com](mailto:cindy.delgado@gray-robinson.com), within twenty (20) days after service of the Summons on that Defendant, exclusive with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If the Defendant fails to do so, a Default will be entered against that Defendant for the relief demanded in the Complaint for damages.

DATED this \_\_\_\_ day of July, 2015.

JUL 30 2015

As Clerk

BY:



HOWARD C. FORMAN

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of the Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075.

I. CASE STYLE

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,  
IN AND FOR BROWARD COUNTY, FLORIDA

Case No.: 15-012196 CAE  
Judge: \_\_\_\_\_

United Yacht Transport, LLC

Plaintiff

vs.

Sevenstar Yacht Transport USA Agencies, LLC

Defendant

II. TYPE OF CASE

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
  - Business governance
  - Business torts
  - Environmental/Toxic tort
  - Third party indemnification
  - Construction defect
  - Mass tort
  - Negligent security
  - Nursing home negligence
  - Premises liability – commercial
  - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
  - Commercial foreclosure \$0 - \$50,000
  - Commercial foreclosure \$50,001 - \$249,999
  - Commercial foreclosure \$250,000 or more
  - Homestead residential foreclosure \$0 – 50,000
  - Homestead residential foreclosure \$50,001 - \$249,999
  - Homestead residential foreclosure \$250,000 or more
  - Non-homestead residential foreclosure \$0 - \$50,000
  - Non-homestead residential foreclosure \$50,001 - \$249,999
  - Non-homestead residential foreclosure \$250,000 or more
  - Other real property actions \$0 - \$50,000

- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
  - Malpractice – business
  - Malpractice – medical
  - Malpractice – other professional
- Other
  - Antitrust/Trade Regulation
  - Business Transaction
  - Circuit Civil - Not Applicable
  - Constitutional challenge-statute or ordinance
  - Constitutional challenge-proposed amendment
  - Corporate Trusts
  - Discrimination-employment or other
  - Insurance claims
  - Intellectual property
  - Libel/Slander
  - Shareholder derivative action
  - Securities litigation
  - Trade secrets
  - Trust litigation

**COMPLEX BUSINESS COURT**

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes  No

**III. REMEDIES SOUGHT** (check all that apply):

- Monetary;
- Non-monetary
- Non-monetary declaratory or injunctive relief;
- Punitive

**IV. NUMBER OF CAUSES OF ACTION:** ( )  
(Specify)

5

**V. IS THIS CASE A CLASS ACTION LAWSUIT?**

- Yes
- No

**VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- No
- Yes – If “yes” list all related cases by name, case number and court:

**VII. IS JURY TRIAL DEMANDED IN COMPLAINT?**

- Yes
- No

---

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature s/ Neil E. Bayer  
Attorney or party

FL Bar No.: 615684

(Bar number, if attorney)

Neil E. Bayer 07/09/2015  
(Type or print name)

Date

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CIVIL JURISDICTION DIVISION

CASE NO.: 15-012196 CACE

UNITED YACHT TRANSPORT LLC.,  
a Delaware Limited Liability Corporation,

Plaintiff,

vs.

SEVENSTAR YACHT TRANSPORT USA AGENCIES, LLC.  
a Florida Limited Liability Corporation,

Defendant.

---

**COMPLAINT FOR DAMAGES**

Plaintiff, UNITED YACHT TRANSPORT LLC., a Delaware Limited Liability Corporation, sues the Defendants, SEVENSTAR YACHT TRANSPORT USA AGENCIES, LLC., a Florida Limited Liability Corporation, and state:

**JURISDICTIONAL STATEMENT AND IDENTIFICATION OF THE PARTIES**

1. This is a cause of action which exceeds the minimum jurisdictional limits of this Honorable Court.

2. At all times material hereto, Plaintiff, UNITED YACHT TRANSPORT, LLC., (hereinafter referred to as "UYT"), was and is a Delaware Limited Liability Corporation organized and existing under the laws of the State of Delaware with its principal place of business in Dania Beach, Florida.

3. At all times material hereto, SEVENSTAR YACHT TRANSPORT USA AGENCIES, LLC (hereinafter referred to as "SEVENSTAR USA") was, and is, a Corporation organized and existing under the laws of the State of Florida.

5. The Defendant may be referred to as "SEVENSTAR".

6. SEVENSTAR routinely and regularly engages in business in the State of Florida and many of the actionable acts herein occurred in Florida, were targeted to a Florida corporate resident and/or affected Florida commerce.

7. All conditions precedent to the maintenance of this action have been waived, performed and/or have been excused.

### **HISTORY OF THE PARTIES**

8. UYT is a Delaware Limited Liability Corporation whose principal business is the worldwide transport of motor yachts and sailboats.

9. UYT, in turn, is an affiliate of a New Jersey based investment company. In July, 2013, that investment company purchased certain assets of Yacht Path International, Inc. from the United States Bankruptcy Court Bankruptcy Trustee in that matter known as: In The Bankruptcy Matter of Unity Shipping Lines, Inc.

10. Yacht Path International, Inc., in turn, was owned and operated by Dennis Cummings and his brother, Kevin Cummings who currently run a company identified as Strategic Maritime Services, Inc.

11. At all times material to the allegations of the Complaint, neither Yacht Path, Strategic Maritime Services nor Dennis Cummings, nor Kevin Cummings, had any affiliation whatsoever with UYT and/or its Principals, Michael Uhr and Paul Haber.

12. The claims herein emanate from continuing false statements made by SEVENSTAR regarding UYT by Jan Maarten Boissevan and by SEVENSTAR's sales team including Astrid Schulte, Lauren Hartman, Uta Scarlata, Jay Jones, Jeff Last and Catalina Bujor.

13. SEVENSTAR, through the aforementioned individuals, Jan Maarten Boissevan, Astrid Schulte, Lauren Hartman, Uta Scarlata, Jay Jones, Jeff Last and Catalina Bujor have embarked on a course of conduct intended to defame the Plaintiff and its Principals and unfairly capture Plaintiff's business through libelous and slanderous actions, intentional interference in Plaintiff's business relationships and/or through deceptive and unfair trade practices.

14. The Defendant and the aforementioned employees were and remain well aware that the Cummings brothers were not, in any way, affiliated with UYT which has additionally been advised to SEVENSTAR's legal representative.

15. Given the fact that Yacht Path and the Cummings brothers' reputation in the yacht transport industry is less than favorable UYT has continuously attempted to advise competitors and its target customers that it is in no way affiliated with Yacht Path and the Cummings brothers other than tangentially through the purchase of certain business assets in the Yacht Path/Unity Shipping United States.

16. As evidence thereof, as a result of litigation between UYT and the Cummings Brothers, in April of 2014 a Court Order was issued precluding the Cummings brothers from implying that they are in any way affiliated with UYT.

#### **DESIGNATED ACTS OF ACTIONABLE CONDUCT**

17. As stated in the proceeding paragraphs, Jan Maarten Boissevan and SEVENSTAR's sales team including Astrid Schulte, Lauren Hartman, Uta Scarlata, Jay Jones, Jeff Last and Catalina Bujor have embarked on a course of conduct specifically intended to unfairly and untruthfully diminish and/or damage UYT's reputation in the yacht transport industry.

**A. The Dawny Pack Communications**

18. Perhaps the most glaring example of SEVENSTAR's slander and intentional interference can be found in the e-mail statements of Jan Maarten Boissevain to Dawny Pack.

19. Ms. Pack, in turn, represented and continues to represent multiple charter interests and is a well-established participant in international yacht movement.

20. In attempting to persuade Ms. Pack to cease and desist from any representation and/or bookings with UYT, SEVENSTAR made multiple untruthful and defamatory statements to Ms. Pack about UYT which were calculated and designed to damage UYT's reputation in the industry.

21. For example, Mr. Boissevain, in an e-mail to Dawny Pack on February 20, 2014 stated: *"United rose from the ashes of these two ponzi scheme companies and you put them next to us on the same website and put your clients into their hands. I would really like to ask you to do some proper research on these people and the companies before you decide to cut us out and continue with United. It might very well harm you in your organization if people find out you are so close with them."* Mr. Boissevain attached several links to this e-mail including a link to the SuperYacht News Article which it had retracted due to half-truths and misstatements therein.

22. SEVENSTAR and various representatives named herein have, in fact, made multiple

Actionable statements to Dawny Pack regarding UYT.

**B. SEVENSTAR's Facebook Page**

23. One of the more glaring examples of SEVENSTAR's Deceptive and Unfair Trade Practices can be found on DYT Yacht Transport's Facebook page (a copy of which is appended hereto as Exhibit "A").

24. SEVENSTAR's website untruthfully provides: "*We like to keep our audience informed. Here is the latest on Yachtpath, resurrected as United Yacht Transport*":

25. Following this directive is a link to a website reprinting an article from SuperYacht News.

26. As SEVENSTAR well knows, however, SuperYacht News subsequently retracted this article predicated upon the fact that it contained false, untruthful and misleading information.

27. Although SEVENSTAR is well aware that the article was retracted, it nevertheless maintains, on its Facebook page, both an untruthful statement as well as a link to an article which SEVENSTAR knows to have been retracted by the publisher due to untruthful statements therein with the goal of unduly influencing its Facebook followers.

**C. Recent Misrepresentations During the 2014 Ft. Lauderdale Boat Show**

28. Yet another act of deception occurred as recently as October of 2014 when, SEVENSTAR's representatives knowingly deceived UYT customers during the Ft. Lauderdale Boat Show.

29. Specifically, without any valid factual basis, SEVENSTAR representatives told several UYT customers that UYT was unreliable and that their ships might not be loaded aboard the M/V "Pac Suhail" as scheduled. The statements were blatantly false since the "Pac Suhail" was actually loading when these statements were made.

30. Those same UYT customers subsequently contacted UYT in response voicing concerns about the information provided by SEVENSTAR.

31. Upon information and belief, the false and misleading information conveyed by SEVENSTAR to UYT customers was designed to persuade UYT customers to cancel their bookings and await SEVENSTAR's vessel which was calling Ft. Lauderdale two weeks later.

32. These statements were false, defamatory and clearly calculated not only to interfere with UYT's business relationships, but also to obtain an unfair competitive advantage through Deceptive and Unfair Trade Practices.

**D. M/Y Nancy II Yokohama Sailing**

33. In yet another act of interference with an existing business relationship, SEVENSTAR approached and persuaded a UYT booking from Yokohama to switch to SEVENSTAR, and, upon information and belief, forwarded one or more slanderous e-mails to the client linking UYT to Yacht Path.

34. The boat did, in fact, renounce its contract with UYT in favor of a subsequent voyage with SEVENSTAR.

35. That vessel owner, by no coincidence, was represented by the very same counsel as SEVENSTAR, subsequently requested a return of its deposit with UYT.

36. UYT offered a full deposit return in simple exchange of the e-mails between the stolen booking and SEVENSTAR which SEVENSTAR's counsel declined to permit.

**E. M/Y Allora and M/Y Not Enough**

37. Most recently, SEVENSTAR once again solicited two vessels under Contract for transport with UYT to Yokohama.

38. These two vessels, the M/Y Allora and the M/Y Not Enough, had a common owner who breached his Contract with UYT and is due to ship on or about April 4<sup>th</sup>.

39. Upon information and belief, SEVENSTAR solicited these two bookings knowing that the vessels were already under Contract with UYT.

**COUNT I - VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (FDUPTA)**

40. UYT adopts and re-alleges paragraphs 1 through 34 above as though fully set forth herein and further states:

41. This is a cause of action for Violation of the Florida Deceptive and Unfair Trade Practices Act (FDUPTA) s. 501.201-.213 *Florida Statutes*.

42. FDUPTA is intended to protect the consuming public and legitimate business enterprises from those who engage in unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

43. An unfair practice under FDUPTA is one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

44. At all times material hereto SEVENSTAR, through its Principals and sales team, have attempted to systematically defame, unfairly compete with, and falsely represent to the yacht transporting public that UYT is a front for the Cummings brothers and Yacht Path, a failed yacht transport entity.

45. The Deceptive and Unfair Trade Practices actions are fully detailed in paragraphs 1 through 34 above and individually and in tandem constitute deceptive and/or unfair trade practices. The statements and actions made and perpetrated by SEVENSTAR were made with

full, complete and actual knowledge that the representations were false and untrue constituting a deceptive or unfair trade practice.

46. The aforementioned statements and actions have caused economic harm to the Plaintiff by damaging Plaintiff's business reputation and by precluding multiple opportunities to fairly and ethically compete.

47. Each of the foregoing acts alleged in this Count was committed in an outrageous manner, and was intentionally committed with wantonness, malice, willfulness, and oppression.

WHEREFORE, UYT demands judgment against SEVENSTAR for actual and punitive damages resulting from SEVENSTAR's violation of the Florida Deceptive and Unfair Trade Practices Act together with prejudgment interest, attorney's fees, court costs and any and all further relief as this Court seems just and proper.

**COUNT II – INTENTIONAL INTERFERENCE WITH EXISTING BUSINESS  
RELATIONSHIPS**

48. UYT adopts and re-alleges paragraphs 1 through 34 above as though fully set forth herein and further states:

49. This is a cause of action for tortious/intentional interference with existing business/contractual relationships.

50. At all times material hereto, SEVENSTAR, within the boundaries of legitimate competition had a duty to UYT and other competitors to compete fairly and within the boundaries of applicable law in soliciting yacht transport clients.

51. Implicit in this duty, is the obligation to refrain from using known to be untruthful facts, communication of untruthful and slanderous statements about competitors and most

important, refraining from soliciting potential clients who were already under contract with UYT.

52. Most recently, SEVENSTAR solicited two vessels under Contract with UYT for transport from Ft. Lauderdale, Florida to Japan. The referenced vessels were an 80' Azimut Motor Yacht and a 50' Marquis Motor Yacht represented by Robert Marinkovic on behalf of the vessels' owner, Saitama Kankon Sousai Center Co., Ltd.

53. SEVENSTAR breached its duty not to interfere in the existing contracts between UYT and its clients in conjunction with the aforementioned Yokohama sailing and yet to be discovered other canceled bookings. As a direct and proximate result of SEVENSTAR's intentional interference with UYT existing business relationships, UYT has been damaged.

WHEREFORE, UYT demands judgment against SEVENSTAR for compensatory damages together with pre-judgment interest, costs and any and all further relief as this Court deems just and proper.

### **COUNT III – SLANDER PER SE**

54. UYT adopts and re-alleges paragraphs 1 through 33 above as though fully set forth herein and further states:

55. This is a cause of action for Slander Per Se.

56. As detailed in the Facts Common to All Counts, which are re-adopted and re-alleged herein, on multiple occasions, SEVENSTAR, through its Principals and sales team, made defamatory statements which suggest that Plaintiff is affiliated with the Cummings brothers and Yacht Path.

57. At the time that SEVENSTAR and its representatives made these statements, they knew that their statements were untruthful, false, misleading and dishonest.

58. As a direct and proximate result of the publication of these statements, UYT has been damaged.

WHEREFORE, UYT demands judgment against SEVENSTAR for compensatory damages together with interest, costs and any and all further relief as this Court deems just and proper.

#### **COUNT IV – SLANDER PER QUOD**

59. UYT adopts and re-alleges paragraphs 1 through 34 above as though fully set forth herein and further states:

60. This is a cause of action for Slander Per Se.

61. As detailed in the Facts Common to All Counts, which are re-adopted and re-alleged herein, on multiple occasions, SEVENSTAR, through its Principals and sales team, made defamatory statements which suggest that Plaintiff is affiliated with the Cummings brothers and Yacht Path.

62. At the time that SEVENSTAR made these statements, they knew that their statements were untruthful, false, misleading and dishonest.

63. SEVENSTAR's statements about UYT were defamatory on their face in that they were false statements published by the Defendant about the Plaintiff to third parties which resulted in damage to the Plaintiff.

64. Defendant's statements about the Plaintiff constitute Slander Per Quod because while simply uttering that the Plaintiff is affiliated with the Cummings brothers and Yacht Patch

International may not be facially slanderous to the Plaintiff , these statements, in the yacht transport industry, have a defamatory meaning due to the extremely negative reputation of the Cummings brothers and Yacht Patch International which left multiple creditors in its bankruptcy wake.

WHEREFORE, UYT demands judgment against SEVENSTAR for compensatory damages together with interest, costs and any and all further relief as this Court deems just and proper.

**COUNT V – LIBEL PER QUOD**

65. UYT adopts and re-alleges paragraphs 1 through 34 above as though fully set forth herein and further states:

66. This is a cause of action for Libel Per Quod.

67. As noted in the Facts Common to All Counts and specifically in paragraphs 1 through 34 above, the Defendant, has embarked on a course of conduct including specific writings specifically designed to damage the business reputation of the Plaintiff.

68. The libelous writings which appear on Defendant's social media and sales solicitation emails were intended to harm Plaintiff's reputation in the community and deter others from associating with the Plaintiff.

69. The false defamatory statements made by the Defendant, in writing (and verbally) were made to suggest that the Plaintiff has committed a dishonest or illegal act.

70. The statements published by the Defendant about the Plaintiff were made to third parties with the specific intent of stripping and/or precluding business relationships from being formed.

71. As a direct and proximate result of Defendant's actions, the Plaintiff has been damaged.

WHEREFORE, UYT demands judgment against SEVENSTAR for compensatory damages together with interest, costs and any and all further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

UNITED YACHT TRANSPORT LLC. demands trial by jury on all issues so triable.

DATED THIS 9<sup>th</sup> day of July, 2015.

GRAY-ROBINSON, P.A.  
333 S.E. 2<sup>nd</sup> Ave.  
Suite 3200  
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Telephone: (305) 416-6880  
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E-mail: [neil.bayer@gray-robinson.com](mailto:neil.bayer@gray-robinson.com)

BY: /s/ Neil Bayer  
Neil Bayer, Esq.  
FBN: 615684  
Peter Quinter, Esq.  
FBN: 821608

**EXHIBIT "A"**

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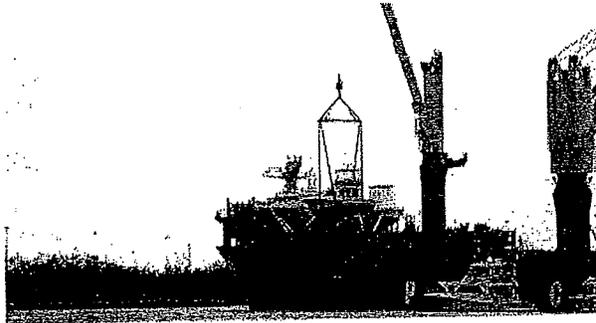
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**DYT** DYT Yacht Transport  
September 4, 2013

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We like to keep our audience informed. Here is the latest on Yacht Path, resurrected as Unlte Yacht Transport:

<http://www.superyachtnews.com/.../yacht-path-directors-operat...>



### Yacht Path | United Yacht Transport | yacht transport

Ex-employees of Yacht Path, including directors Kevin and Dennis Cummings, are understood to be involved with a new yacht transporter in Fort Lauderdale, United Yacht Transport. Yacht Path's assets were acquired under auction this summer, which have also been used to build up the new company.

[SUPERYACHTNEWS.COM](http://www.SUPERYACHTNEWS.COM)

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IN THE CIRCUIT COURT OF THE 17th  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. 15-012196 CACE

UNITED YACHT TRANSPORT LLC, a  
Delaware Limited Liability Corporation,

Plaintiff,

v.

SEVENSTAR YACHT TRANSPORT USA  
AGENCIES, LLC, a Florida Limited Liability  
Corporation,

Defendant.

**DEFENDANT SEVENSTAR YACHT TRANSPORT USA AGENCIES, LLC'S  
MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR DAMAGES AND  
SUPPORTING MEMORANDUM OF LAW**

**MOTION**

Defendant, SEVENSTAR YACHT TRANSPORT USA AGENCIES, LLC ("SEVENSTAR"), by and through its undersigned counsel, pursuant to Fla. R. Civ. P. 1.140(b)(6), hereby moves to dismiss Counts II, III, IV and V of Plaintiff's Complaint for failure to state a cause of action. SEVENSTAR also moves to dismiss Counts I and II of the Complaint under Florida's "single action rule" which prohibits the maintenance of duplicative torts based on single event(s) of defamation.

In support of the instant Motion, SEVENSTAR respectfully submits the following Memorandum of Law.

**MEMORANDUM OF LAW**

**I. INTRODUCTION**

In its Complaint for Damages, Plaintiff United Yacht Transport ("UYT"), asserts that its "principal business is the worldwide transport of motor yachts and sailboats," and contends that it has suffered economic damages arising from the alleged wrongful statements and actions of its alleged competitor, SEVENSTAR. The Complaint includes the following five counts.

- Count I        Violation of FDUTPA
- Count II       Intentional Interference with Existing Business Relationships
- Count III      Slander Per Se
- Count IV      Slander Per Quod
- Count V       Libel per Quod

UYT's Complaint fails to state even a single viable cause of action against SEVENSTAR. (*See* Sections A – E of Memorandum). First, Counts III, IV and V each should be dismissed as they are an attempt in error by a commercial entity to assert torts for defamation which are only cognizable under Florida law to redress alleged damage to the character or reputation of a person. Secondly, Count II should be dismissed because Plaintiff ignores the well-settled pleading elements of a cause of action for tortious interference with existing business relationship and instead inexplicably sets forth insufficient allegations of "duty" and "implied obligations." Thirdly, Counts I and II must be dismissed because they are prohibited by Florida's "single action" rule which bars a Plaintiff from maintaining a defamation claim for concurrent torts based on the same alleged defamatory publications. Fourthly, although SEVENSTAR believes that Count III is not viable in the commercial setting pleaded by UYT, Count III is also subject to dismissal because the alleged defamatory statements require context to be considered

"defamatory" and thus cannot support a cause of action for slander "per se." Lastly, Count V fails to state a cause of action against SEVENSTAR for Libel Per Quod based on the Facebook "posting" or the excerpt of an email because the Facebook page is not SEVENSTAR's page and Plaintiff failed to attach the complete email as an exhibit to the Complaint, which the Court should require pursuant to Fla. R. Civ. P. 1.130(a) in connection with UYT's libel claim.

## II. ARGUMENT

### A. Counts III, IV and V Allege "Personal" Defamation Causes of Action of Libel and Slander Which Are Not Recognized Under Florida Law To State A Cause of Action for Plaintiff UYT's Alleged Economic Losses

UYT's defamation claims for slander and libel contained in Counts III, IV and V do not state viable causes of action under Florida law for a commercial entity to recover economic losses. The tort of defamation, which encompasses written defamation (libel) and spoken defamation (slander), are recognized under Florida common law only for alleged injury to a person's character or reputation. *Old Plantation Corp. v. Maule Industries, Inc.*, 68 So.2d 180,181 (Fla. 1953)(The action [for slander of title resulting in special damages] is not for defamation of character of the person and is, therefore, distinguishable from ordinary libel or slander"); *Sailboat Key v. Gardner*, 378 So.2d 47, 48 (Fla. 3d DCA 1979)("Libel and slander involve defamation of personal reputation. 'Slander of title' involves defamation of property interests."); *Perry v. Naples HMA, LLC*, 2014 U.S. Dist. LEXIS 162330 at \* 22. ("The tort of 'trade libel' (also known as injurious falsehood, slander of title, or disparagement of property), is distinct from the tort of defamation, which encompasses written defamation (libel) and spoken defamation (slander). Trade libel is based on damages to one's property or economic relations and defamation is based on damage to one's reputation.")(citations omitted).

Based on the foregoing authorities, damages to a business entity, such as UYT's claims in Counts III, IV and V, cannot be redressed by causes of action for libel or slander. In addition,

none of these Counts allege sufficient facts to state a cause of action for any of the various torts for "injurious falsehood" which Florida common law recognizes to redress alleged intentional injury to property interests or "intentional interference with another's economic relations."<sup>1</sup> See *Signature Pharm., Inc. v. Soares*, 2010 U.S. Dist. LEXIS 64939 at 63 (M.D. Fla. June 30, 2010)(A cause of action for "injurious falsehood concerns the 'intentional interference with another's economic relations.'"), quoting, *Salit v. Ruden, McClosky, Smith, Schuster & Russell, P.A.*, 742 So.2d 381, 386 (Fla. 4<sup>th</sup> DCA 1999)(quoting *Procacci v. Zacco*, 402 So.2d 425, 426 (Fla. 4<sup>th</sup> DCA 1981) and citing W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 128 at 964 (5<sup>th</sup> ed. 1984).

The distinction between causes of action for disparagement (libel or slander) to redress damage to personal character and reputation and the "property damage" tort for injurious falsehood is not merely a matter of labeling. Unlike the elements of personal defamation claims<sup>2</sup>, commercial torts for injurious falsehood require the plaintiff entity to plead "special damages," which UYT has completely failed to do in Counts III, IV or V.

To state a cause of action for injurious falsehood under Florida law, a plaintiff must plead: (1) the publication or communication of (2) a falsehood (3) to a third party (4) when the publisher knew or reasonably should have known that the statement would likely influence others not to deal with [the plaintiff]; (5) the falsehoods played a material and substantial part in

---

<sup>1</sup> The torts of "injurious falsehood" include causes of action for injurious falsehood, trade libel and slander of title.

<sup>2</sup> To state a cause of action for defamation, a plaintiff must plead the following five elements: "(1) publication; (2) falsity; (3) the actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) the statement must be defamatory." *Jews For Jesus, Inc. v. Rapp*, 997 So.2d 1098, 1106 (Fla. 2008).

inducing others not to deal with [the plaintiff]; and (6) special damages proximately caused as a result of the publication. *Signature*, 2010 U.S. Dist. LEXIS 64939 at \*68 – 69, citing *Salit*, 742 So.2d at 388; and *Bothmann v. Harrington*, 458 So.2d 1163, 1168 (Fla. 3d DCA 1984)(Emphasis supplied).

Fla. R. Civ. P. 1.120(g) entitled "Special Damage" mandates that "[w]hen items of special damage are claimed, they shall be specifically stated." The Fourth District Court of Appeal and federal district courts have dismissed claims for injurious falsehood where the plaintiff fails to specifically plead special damages. *See Salit v. Ruden*, 742 So. 2d at 388 (The "special damage rule requires the plaintiff to establish pecuniary loss that has been realized or liquidated, as in the case of specific lost sales." ... The "pleading does not reveal any 'realized loss,' that characteristic of 'special damage' that is a crucial element of the cause of action."); *Nat'l Numismatic Certification LLC v. eBay, Inc.*, 2008 U.S. Dist. LEXIS 109793 (M.D. Fla. July 8, 2008)( Court dismissed claim for trade libel without prejudice on the grounds that "Plaintiffs fail to sufficiently plead special damages."); *See also, Perry*, 2014 U.S. Dist. LEXIS 162330 at \*26 (District court granted Defendant's Rule 50 motion for judgment as a matter of law on Plaintiff's claim for trade label, observing that Plaintiff "neither pleads special damages, nor even argued that she has sustained them" and further stating: "It is clear that 'Florida law requires a trade libel plaintiff to prove special damages as part of his or her claim and Rule 9(g) unequivocally states that '[i]f an item of special damage is claimed, it must be specifically stated.'").

As an example of what a plaintiff must plead to satisfy the "special damages" element of a cause of action for trade libel, even under the Federal liberal pleading rules, one federal district court explained as follows:

[I]t is necessary for the plaintiff [in a trade libel case] to allege *either* the loss of particular customers by name, *or* a general diminution in its business, and extrinsic facts showing that such

special damages were the natural and direct result of the false publication. If the plaintiff desires to predicate its right to recover damages upon general loss of custom, it should allege facts showing an established business, the amount of sales for a substantial period preceding the publication, and [the] amount of sales subsequent to the publication, facts showing that such loss in sales were the natural and probable result of such publication, and facts showing the plaintiff could not allege the names of particular customers who withdrew or withheld their custom.

*KBT Corp., Inc. v. Ceridian Corp.*, 966 F. Supp. 369, 375 (E.D. Pa. 1997)(quotations omitted)(Emphasis in original).

Counts III, IV and V do not set forth viable causes of action under Florida law for Plaintiff's alleged damages to its business: libel and slander are only recognized in Florida for damages to a person's character or person. Moreover, Counts III, IV and V do not plead "special damages" and therefore none of these counts could be deemed to state a cause of action for injurious falsehood. Therefore, Counts III, IV and V must be dismissed.

**B. Count II Fails to State A Cause of Action For Tortious Interference with Existing Business Relationships**

Count II is legally deficient as it fails to set forth the required pleading of a cause of action for tortious interference with existing business relationships. "The elements of tortious interference with a contract or business relationship are: (1) the existence of a business relationship, not necessarily evidenced by an enforceable contract, under which the plaintiff has legal rights; (2) the defendant's knowledge of the relationship; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result of the interference." *Salit v. Ruden*, 742 So. 2d at 385 – 386. *See Tamiami Trail Tours, Inc. v. Cotton*, 463 So. 2d 1126, 1127 (Fla. 1985); *Procacci v. Zacco*, 402 So. 2d 425, 426 (Fla. 4th DCA 1981); *Linafelt v. Bev, Inc.*, 662 So. 2d 986, 989 (Fla. 1st DCA 1995).

Rather than pleading these well-settled elements, Plaintiff alleges that SEVENSTAR breached a "duty" of the "boundaries of legitimate competition" which it contends SEVENSTAR owed to Plaintiff and other competitors to "compete fairly." (Complaint, ¶¶ 50, 51 and 53). Plaintiff also alleges that SEVENSTAR breached "obligations" which according to Plaintiff are or were "implicit in this duty." (Complaint, ¶ 51). These allegations of duty and implicit obligations are not an acceptable substitute for pleading the elements of a cause of action for tortious interference with existing business relationships.

In addition, Plaintiff is required to identify the specific business relationships which it is alleging that SEVENSTAR interfered with and satisfy the pleading elements as to each such relationship, which UYT has failed to do with regard to some alleged UYT customers. For example, in Section "C" at pages 5 and 6 of the Complaint, UYT alleges that SEVENSTAR employees made defamatory statements during the 2014 Fort Lauderdale Boat Show to "several UYT customers" but fails to identify said customers, disclose the basis for the purported legal rights of UYT with regard to these customers and whether UYT suffered any actual damages to its relationships with said customers from the alleged statements. With regard to the "Yokohama booking" in Section "D" at page 6 of the Complaint, Plaintiff fails to allege the identify of the UYT customer at issue or allege that SEVENSTAR had knowledge that UYT had an existing contract relating to this booking when SEVENSTAR purportedly approached this unidentified customer.

Count II must be dismissed pursuant to Fla. R. Civ. P. 1.140(b)(6).

**C. Florida's "Single Action" Rule Requires the Dismissal of Counts I and II To The Extent Based On The Alleged Defamation**

Counts I and II, alleging violations of FDUTPA and Interference With Existing Business Relationships, are each based in part on the same alleged defamatory statements purportedly

made by SEVENSTAR to third parties which underlie Counts III, IV and V, an "overlap" which violates Florida's "single action" rule relating to defamation claims. The facts alleged in Counts I and II, and these Counts incorporation of paragraphs 1 – 34 of the Complaint, show on the face of the pleading that both counts are impermissibly based upon the same defamatory "publication" that underlie Counts III, IV and V. Specifically, Count I alleges that SEVENSTAR "systematically attempted to defame [UYT]" and "falsely represent to the yacht transporting public that UYT is a front for the Cummings brothers and Yacht Path ...." (Complaint ¶ 44). Count II, UYT alleges that SEVENSTAR breached its duty of "obligation to refrain from using known to be untruthful facts .. and communication of untruthful and slanderous statements about competitors ..." (Complaint ¶ 51).

Under Florida's "single action" rule, a Plaintiff is barred from concurrently maintaining a libel or slander claim and other tort claims which are premised upon the same publication of false statements as the party's pending defamation claim. "In Florida, a single publication gives rise to a single cause of action: consequently, "[t]he various injuries arising from [such publication] are merely items of damage arising from the same wrong." *Callaway Land & Cattle Co. v. Banyon Lakes C. Corp.*, 831 So.2d 204, 208 (Fla. 4<sup>th</sup> DCA 2002)(citation omitted); *Klayman v. Judicial Watch, Inc.*, 22 F. Supp. 3d 1240, 1257 (S.D. Fla. 204).

As the Court in *Klayman* explained: "When claims are based on analogous underlying facts and the causes of action are intended to compensate for the same alleged harm, a plaintiff may not proceed on multiple counts for what is essentially the same defamatory publication or event." *Id.*, citing, *Kamau v. Slate*, 2012 U.S. Dist. LEXIS 158213 at \* 7 – 8 (N.D. Fla. Oct. 1, 2012)(Court allowed plaintiffs to amend their defamation claim, but dismissed counts for injurious falsehood and interference with business reputation because they relied on the same event as defamation claim).

Based on the "single action" rule, Counts I and II must be dismissed to the extent that these counts are based on the same alleged defamatory publications which are the foundation for Plaintiff's defamation claims.

**D. Count III Fails to State A Claim for Slander "Per Se"**

In addition to the argument in Section A above, Count III should be dismissed as it fails to allege facts which, as a matter of law, would constitute slander "per se." Only the following categories of defamatory statements, whether spoken or written, are actionable "per se" under Florida law: statements which impute to another (1) a criminal offense amounting to a felony, (2) a presently existing venereal or other loathsome and communicable disease, or (3) conduct, characteristics or a condition incompatible with the proper exercise of his business, trade, profession or office, or (d) for a woman, unchastity. *Campbell v. Jacksonville Kennel Club, Inc.*, 66 So.2d 495, 497 (Fla. 1953).

In Count III, the alleged defamatory statements are that SEVENSTAR "made defamatory statements which suggest that Plaintiff is affiliated with the Cummings brothers and Yacht Path." (Complaint, ¶ 56). Such statements, even if made, are not defamatory *per se* because extrinsic facts or innuendo concerning the Cummings Brothers or Yacht Path, must be known by the person to whom the defamatory verbal statement was made in order for the words to be defamatory *per se*. *Scobie v. Taylor*, 2013 U.S. Dist. LEXIS 99786 at \*4 (S.D. Fla. July 17, 2013)("When context is considered and 'extrinsic facts and innuendo are needed to prove the defamatory nature of the words' the statements are not defamatory *per se*.").

Count III fails to allege facts constituting slander *per se* and must be dismissed.

**E. Count V Fails to State A Cause of Action for Libel Per Quod Against Sevenstar Based Either On The Facebook Page Posting of DYT Yacht Transport Or On A Partial Quote Of An Email Which Rule 1.130(a) Requires Plaintiff to Attach to the Complaint**

In addition to the fact that Count V's "traditional libel" claim is not cognizable under Florida law to redress the alleged injury to the Plaintiff limited liability company's "business reputation" as alleged in Count V, this Count also fails to state a cause of action for "Libel Per Quod" as neither of the two writings upon which Plaintiff relies to support this claim are actionable against SEVENSTAR. The two writings alleged as grounds for Count V are the Facebook page attached as Exhibit "A" to the pleading and an email from Mr. Boissevain, alleged to be a SEVENSTAR, to Dawny Pack on February 20, 2014 which is partially quoted in paragraph 21 of the Complaint but not attached in its entirety to the pleading.

**Facebook Page:** Exhibit "A" reflects that the Facebook page in question is that of DYT Yacht Transport. Despite Plaintiff's allegations that Exhibit "A" is "SEVENSTAR's website" and "SEVENSTAR's Facebook Page" on September 4, 2013 – it was not. Plaintiff has failed to allege any connection between SEVENSTAR and DYT Yacht Transport on the September 4, 2013 date of the Facebook page posting which would make SEVENSTAR liable for a posting by DYT Yacht Transport about UYT. Therefore, the DYT Facebook page attached as Exhibit "A" cannot be used as a factual basis for Count V. It is well settled that exhibits to a complaint are considered a part of the pleading and control over inconsistent Complaint allegations.

**Partial Quote of Email:** Pursuant to Fla. R. Civ. P. 1.130(a), Plaintiff should be required to attach the complete email rather than providing only an excerpt from it because in an action for Libel Per Quod, the context of the published statement is critical. However, even the email excerpt on its face suggests the existence of three affirmative defenses to the cause of action: truth, pure opinion and conditional privilege.

First, UYT's own Complaint allegations show that the statements in the first sentence of the email excerpt are true and represent an expression of pure opinion. Plaintiff alleges in paragraphs 9 and 10 of the Complaint that UYT is an affiliate of an investment company that "purchased certain assets of Yacht Path International, Inc. from the United States Bankruptcy Court Bankruptcy Trustee in that matter known as: In The Bankruptcy Matter of Unity Shipping Lines, Inc." Therefore, the first sentence of the email portion stating that "United rose from the ashes of these two ponzi scheme companies" is both true and a statement of Mr. Boissevain's opinion. His colorful characterization of the two bankrupt entities from which Plaintiff's affiliate purchased assets as "ponzi scheme companies" is not actionable, but merely his opinion. Written statements of pure opinion are not actionable as libel and truth is a complete defense to a libel claim.

Secondly, the two remaining sentences in the email portion reflect that the alleged sender, Mr. Boissevain of SEVENSTAR, asks the email recipient, Ms. Pack, who Plaintiff alleges "represented and continues to represent multiple charter interests and is a well-established participant in international yacht movement," (¶ 19, Complaint), to "do some proper research on [UYT] before you decide to cut us [Sevenstar] out and continue with United," and further states an opinion that "it might very well harm you in your organization if people find out you are so close with them." (¶ 20, Complaint). These sentences reflect both a request and another opinion, rather than an actionable defamatory statement. Moreover, these sentences on their face show a communication made for a bona fide commercial purpose. As such, the email portion itself, when read in the context of the Complaint allegations, establishes that SEVENSTAR had a conditional privilege to share Mr. Boissevain's opinions and concern with Ms. Pack. *See Perry*, 2014 U.S. District LEXIS 162330 at \* 29 – 30)("[a] communication made in good faith on any subject matter by one having an interest therein, or in reference to which he had a duty, is

privileged if made to a person having a corresponding interest or duty, even though it contains matter which would otherwise be actionable, and thought the duty is not a legal one but only a moral or social obligation."), citing *American Airlines, Inc. v. Geddes*, 960 So.2d 830, 833 (Fla. 3<sup>rd</sup> DCA 2007); *See also Nodar v. Galbreath*, 462 So. 2d 803, 809 (Fla. 1984)(a conditional privilege in defense to a claim of libel exists for "communications for bona fide commercial purposes where the interest to be protected is the recipient's.").

In summary, Count V fails to state a cause of action for Libel Per Quod against SEVENSTAR based on the September 4, 2013 Facebook page of DYT Yacht Transport and, under Fla. R. Civ. P. 1.130(a), Plaintiff is required to attach the complete February 20, 2014 email to its Complaint to support its libel claim, rather than relying on excerpts.

### **III. CONCLUSION**

For the reasons and authorities set forth herein, Counts II, III, IV and V should be dismissed pursuant to *Fla. R. Civ. P.* 1.140(b)(6) for failure to state a cause of action against SEVENSTAR and Counts I and II also must be dismissed under Florida's "single action" rule to the extent that such Counts rely on the same alleged defamatory publications that underlie Plaintiff's defamation claims.

Respectfully submitted,

/s/Sandra I. Tart

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email this 8<sup>th</sup> day of September, 2015 to Neil Bayer, Esq., Gray-Robinson, P.A., [neil.bayer@gray-robinson.com](mailto:neil.bayer@gray-robinson.com) and [cindy.delgado@gray-robinson.com](mailto:cindy.delgado@gray-robinson.com).

/s/Sandra I. Tart

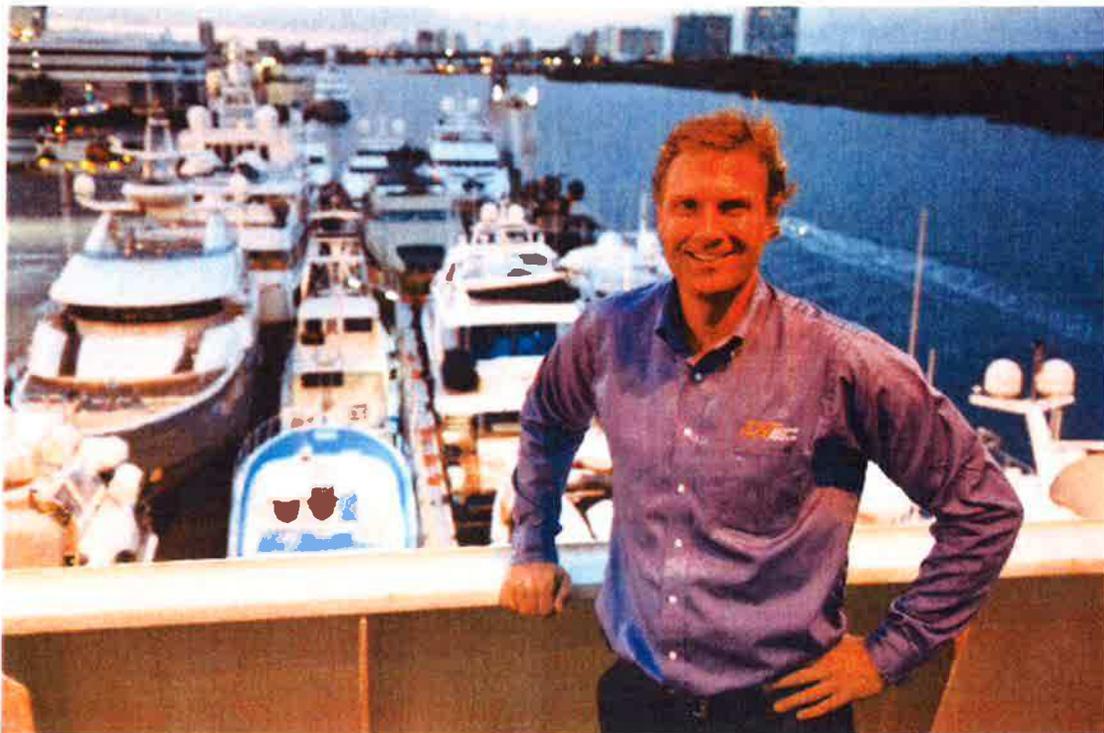
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## Clemens van der Werf resigns from Dockwise Yacht Transport

Thursday, 13 June 2013

**After tenure of eleven years with Dockwise Yacht Transport (DYT) in Fort Lauderdale, USA, Clemens van der Werf announced his resignation as of June 1st 2013, from his position as President of DYT to pursue other opportunities.**



Clemens played an important role in the development of the Yacht Transport business within the Dockwise group over the last decade, including the launch of the first specifically built yacht carrier, *m/v Yacht Express*, development of the lift-on/lift-off service, and maintained the company's sustainability despite a challenging economic environment. His experience, knowledge and leadership in the Yacht Transport sector will be missed and we wish him all the best with his future endeavors.

Clemens will transfer his tasks and responsibilities within the next few weeks and will be available to help while transiting out of the organization. Ben van der Hoeven will take over Clemens' responsibilities as of this week for an interim period until a permanent successor is chosen.

Ben van der Hoeven, Area Manager Australia, has been heading up the Dockwise Australia office in Perth, Western Australia for the past 5 years serving the oil & gas and resources industry. Ben holds a Naval Architect degree from Delft University and is a keen sailor with 4 Atlantic crossings under his belt.

**Dockwise Yacht Transport**

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