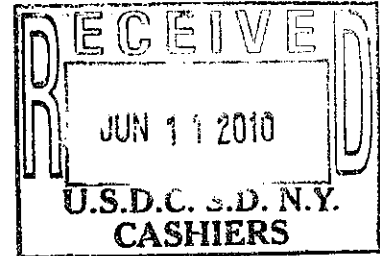


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Attorneys for Plaintiff
MENORA MIVTACHIM INSURANCE LTD.
a/s/o TEVA PHARMACEUTICALS, USA



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

MENORA MIVTACHIM INSURANCE LTD.
a/s/o TEVA PHARMACEUTICALS, USA,

10 Civ. ____ ()

Plaintiff,

-against-

COMPLAINT

LUFTHANSA GERMAN AIRLINES AG and
EVERGREEN AVIATION SERVICE,

Defendants.
-----X

Plaintiff, MENORA MIVTACHIM INSURANCE LTD. a/s/o TEVA
PHARMACEUTICALS, USA ("hereinafter MENORA") by its attorneys, DeOrchis &
Partners, LLP, complaining of the defendants, alleges upon information and belief as follows:

JURISDICTION

FIRST: Plaintiff's claim herein for loss and damage to cargo, arises under a
treaty of the United States, to wit, *The Convention for the Unification of Certain Rules for
International Carriage by Air done at Montreal on 28 May 1999*, and this Court has
jurisdiction pursuant to 28 U.S.C. 1331.

PARTIES

SECOND: At all times mentioned herein, plaintiff Menora was and still is a corporation organized and existing under and by virtue of the laws of a foreign country with an office and place of business located at 115 Allenby Road, Tel Aviv, Israel 61008.

THIRD: Upon information and belief, at all times hereinafter mentioned, defendant LUFTHANSA GERMAN AIRLINE AG (hereinafter "LUFTHANSA") was and now is a corporation organized and existing under and by virtue of the laws of, and with an office and principal place of business in certain of the fifty states or foreign sovereigns, and was and now is engaged in business as a common carrier of merchandise by air for hire.

FOURTH: Upon information and belief, at all times hereinafter mentioned, defendant EVERGREEN AVIATION SERVICE (hereinafter "EVERGREEN"), was and now is a corporation organized and existing under and by virtue of the laws of, and with an office and principal place of business in certain of the fifty states or foreign sovereigns, and was and now is engaged in business as a common carrier of merchandise by air for hire.

FIRST CAUSE OF ACTION

FIFTH: On or about April 8, 2009, there were shipped by or on behalf of IVAX PHARMACEUTICAL UK, LTD., then in actual good order and condition, a cargo consisting of 51,630 cartons of pharmaceuticals (Steri-Neb Bodesande) (hereinafter "the cargo") consigned to TEVA PHARMACEUTICALS for which the defendants acknowledged receipt under the following seven air waybills:

- | | | |
|--------------------|-------------------|-------------------|
| (1) 020-675858739; | (2) 020-67585906; | (3) 020-67585862; |
| (4) 020-67585910; | (5) 020-67585851; | (6) 020-67585884; |
| (7) 020-67585895 | | |

and the defendants agreed to transport the said goods from Manchester Airport to Philadelphia, there to be delivered to the plaintiff.

SIXTH: Thereafter the defendants delivered the cargo, but not in the same good order and condition as when shipped but rather in bad order with physical damage, all in violation of the said defendants' duties as a common carrier of merchandise by air.

SEVENTH: The plaintiff is the subrogated cargo underwriter of the shipper, consignee or owner of the shipment described above and brings this action on its own behalf and as agent or trustee on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and the plaintiff is entitled to maintain this action.

EIGHTH: By virtue of the premises, plaintiff has sustained damage in the sum of \$39,218.61, as nearly as same can now be determined, no part of which has been paid although duly demanded.

NINTH: The damage to the cargo was not the result of any act or omission of the plaintiff but, to the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage, and bailment on the part of the defendants, their employees, contractors, agents and servants. In accordance with the provisions of the Warsaw Convention, written notice of damage was made to UPS in regard to this shipment within the time frame set forth in the Convention.

TENTH: Plaintiff and its predecessors in title have performed all of the conditions precedent on their part to be performed under the terms of the said contract.

ELEVENTH: By reason of the foregoing, plaintiff has been sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be no less than \$39,218.61.

SECOND CAUSE OF ACTION

TWELFTH: Plaintiff repeats and re-alleges the allegations of paragraphs FIRST through ELEVENTH as if fully set forth herein.

THIRTEENTH: On or about April 9, 2009, during unloading of the cargo from the aircraft, Defendants ignored safety instructions and operated the forklift in a reckless manner which resulted in the palletized cargo falling onto the ground.

FOURTEENTH: Specifically, Defendants operated the forklift by loading the cargo in such a way that allowed the pallet skids to shift, despite specific instruction to the contrary by Plaintiff's trucker (JRS Trucking Services) to operate the forklift so as to avoid the pallet skids shifting.

FIFTEENTH: Defendants operated the forklift by improperly laying netting over the cargo, despite instructions from the client to the contrary.

SIXTEENTH: The damage to the cargo was not the result of any act or omission of the plaintiff but, to the contrary, was due solely as the result of the reckless conduct with knowledge that damage would probably result, on the part of the defendants, their employees, contractors, agents and servants while acting within the scope of their employment.

WHEREFORE, plaintiff demands judgment against defendants in the sum of \$39,218.61 with interest from April 9, 2009, together with costs and disbursements of this action.

Dated: New York, New York

June 10, 2010

DEORCHIS & PARTNERS, LLP
Attorneys for Plaintiff
MENORA MIVTACHIM INSURANCE LTD.
a/s/o **TEVA PHARMACEUTICALS, USA**

By:



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Our File: 2496-2

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