No.

IN THE

Supreme Court of the United States

MILOS PRODUCT TANKER CORPORATION
Petitioner,

v.

VALERO MARKETING AND SUPPLY COMPANY
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under maritime law, a receiver of cargo who has not paid freight, and who (before exercising dominion over the cargo) is given notice to pay freight to the carrier, and with such knowledge then exercises dominion thereof by taking delivery, accepts an implied obligation to pay freight to the carrier. Besides ensuring that a carrier is paid for its services—and that vessels are freed for subsequent shipments and that ports are not filled with vessels awaiting payment—that rule is consistent with the vast majority of other maritime jurisdictions worldwide, including English law, which serves as a global standard for the law of maritime commerce. The effect of this consistency allows for a well-functioning global trade and shipping system, unhindered by significant deviations in local practice.

Yet the Ninth Circuit disrupted a previously uniform practice (observed around the country) by creating a private-versus-common carrier distinction, and holding for the first time that the obligation to pay freight to the carrier in these circumstances does not exist in the private carriage context. That distinction does not exist in prior Ninth Circuit precedent and—as the Ninth Circuit admitted—directly conflicts with caselaw from other Circuits. Further, the Ninth Circuit engaged in improper fact-finding by reversing the District Court's finding that the receiver of cargo here exercised dominion over that cargo.

This case thus presents two related questions.

(1) Whether maritime law recognizes a private-versus-common carrier exception to the general rule that

a receiver of cargo who exercises dominion thereof accepts an implied obligation to pay freight; and

(2) Whether the maritime law of the United States should be nationally uniform and, as a matter of preference, similar to the maritime law rule in England, that a receiver of cargo who exercises dominion over that cargo is obliged to pay freight and charges thereon.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner hereby discloses that its ultimate parent company, International Seaways, Inc. (NYSE – ISNW), is publicly traded as ISNW on the New York Stock Exchange.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Milos Product Tanker Corporation v. Valero Marketing and Supply Company, No. 23-55655 (9th Cir. Sept. 18, 2024)

Milos Product Tanker Corporation v. Valero Marketing and Supply Company et. al, 2:22-cv-01545-CAS-E (C.D. Cal. June 28, 2023)

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The opinion below is reported at 117 F.4th 1153. App. 1a-22a. The district court's unreported opinion is available at 2023 WL 4296055. App. 23a-55a.

STATEMENT OF JURISDICTION

The Ninth Circuit entered judgment on September 18, 2024. On September 26, 2024, Milos timely moved for an extension of time to file a petition for rehearing *en banc*, which the Ninth Circuit granted on October 2, 2024. On October 16, 2024, Milos filed its petition for rehearing *en banc*; the Ninth Circuit denied that petition on November 21, 2024. Milos filed this Petition within 90 days. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This Petition involves the need for consistency in maritime and admiralty law under federal courts' admiralty and maritime jurisdiction, but does not concern specific constitutional or statutory provisions.

INTRODUCTION

For more than fifty years, Circuit and District courts in preeminent maritime jurisdictions around the country agreed that a receiver of cargo who exercises dominion by taking delivery as an owner accepts an implied obligation to pay freight to the carrier who delivered the cargo pursuant to the bill of lading. That proposition is simple and fair. It ensures that a carrier is paid for its efforts notwithstanding any dispute between traders, shippers, and receivers of cargo. And it

provides uniform guidance relied upon by shipowners trading to and from U.S. ports that mirrors the law in the vast majority of maritime jurisdictions around the globe, including under English law.

Petitioner Milos Product Tanker Corporation ("Milos") carried $15 million worth of fuel from Singapore to Los Angeles, and was not paid its freight costs for that shipment. Defendant-Appellant Valero Marketing and Supply Company ("Valero") controlled that shipment and received the fuel upon arrival in Los Angeles as the owner. Under the long-standing rules described above, Valero became responsible for paying freight.

The District Court, relying on clear precedent from the Ninth Circuit (and the Second Circuit) ruled that Valero was liable to Milos for its freight costs, notwithstanding the fact that Valero was not a signatory of the charter agreement, because Valero expressly and implicitly became bound to the terms of that agreement, and implicitly agreed to pay freight, by accepting and exercising dominion over the cargo. *Milos Prod. Tanker Corp. v. Valero Mktg. & Supply Co.*, No. 2:22-01545-CAS (Ex), 2023 WL 4296055 (C.D. Cal. June 28, 2023).

But a panel of the Ninth Circuit reversed. *Milos Prod. Tanker Corp. v. Valero Mktg. and Supply Co.*, No. 23-55655, 117 F.4th 1153 (9th Cir. Sept. 18, 2024). In so ruling, that panel, in its words, "narrowed" existing, on-point caselaw that compelled entry of summary judgment in Milos' favor, namely *Pacific Coast Fruit Distributors, Inc. v. Pennsylvania Railroad Co.*, 217 F.2d 273 (9th Cir. 1954), and *States Marine International, Inc. v. Seattle-First National Bank*, 524 F.2d

245 (9th Cir. 1975). Specifically, the panel concluded that these prior Ninth Circuit precedents (and the cases which have since relied on them) failed to appreciate a purported distinction between private and common carriage that required a different rule for private carriage. The panel declined to apply Ninth Circuit precedent to Milos, a private carrier.

That decision is an unnecessary, unforced error that reaches an unfair result by contradicting existing Ninth Circuit precedent and caselaw from sister circuits, including the Second Circuit. The implications of the Ninth Circuit's decision are unfortunate and wide-reaching, particularly in admiralty and maritime law, which depend on uniformity and consistency across the country. The panel's decision will needlessly introduce risk of nonpayment, erode faith in letters of indemnity as a tool to facilitate the flow of commerce, and prompt aggressive exercise of lien rights in order to prevent receivers of cargo from evading the payment of freight. It further places carriers at risk to claims for loss or damage to cargo from receivers with no obligation to pay freight. The resulting lack of predictability complicates chartering and could further erode industry confidence in the U.S. Court system. In sum, the panel's ruling negates existing certainty and uniformity and invites disharmony and uncertainty for carriers and cargo receivers, in service of an inequitable result. For all of these reasons, the Court should grant Milos' petition for a writ of certiorari to correct the Ninth Circuit's decision.

STATEMENT OF THE CASE

A. Milos Carries the Cargo But Is Not Paid Its Freight Charges

On July 14, 2020, Valero purchased a $15 million dollar cargo of jet fuel ("Cargo") from Koch Refining International PTE Ltd., Co. ("Koch"). 1-ER-006-007 (Civil Minutes pp. 3-4); 2-ER- 250 (Joint Stipulation of Facts ["JSF"] at Dkt.[1] No. 38, ¶ 8). Valero's contract with Koch was governed by English law. 2-ER- 67. Under English law, the "lawful holder of a bill of lading . . . (. . . or the person to whom delivery is to be made) [shall] have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract. . . . [and a person who] takes or demands delivery from the carrier of any goods to which the document relates . . . become[s] subject to the same liabilities under that contract as if he had been a party to that contract." United Kingdom's Carriage of Goods By Sea Act of 1992, §§ 2(1)(a) and 3(1). A "lawful holder" of a bill of lading is not required to have physical possession of it at the time of discharge. Id. § 5(2).

The vessel which carried the Cargo (the "Vessel") was owned by Milos and chartered by GP Global Ptd. Ltd. on behalf of Gulf Petrochem FCZ ("GP Global"). 1-ER-006 (Civil Minutes p.3); 2-ER- 250 (JSF ¶5). Before GP Global entered into the charter party agreement to charter the Vessel (the "Charter Party"),

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[1] References to "Dkt." refer to docket entries in Case No. 2:22-cv-01545-CAS-E in the United States District Court for the Central District of California.

Valero vetted the Vessel, and issued a "clean acceptance" of the Vessel for transport to, and discharge of, the Cargo in California. 2-ER-250 (JSF ¶ 4); 2-ER-105. On June 23, 2020, GP Global gave Valero a copy of the Charter Party. 1-ER-006 (Civil Minutes p.3); 2 ER-250 (JSF ¶ 6). On July 7, 2020, at Valero's request, Koch provided Valero the relevant portions of the Charter Party. (JSF ¶7). The Charter Party provided, among other things, that "[i]f original bills of lading are not available at discharging port in time, owners agree to release cargo in line with charterers' instructions against L.O.I. as per owners P&I Club wording without bank guarantee signed by charterers." SER-106-107 (Plaintiff's [Proposed] Separate Statement of Uncontroverted Facts and Conclusions of Law ("PSUF") at Dkt. No. 41¶ 15); 1-ER-006 (Civil Minutes p. 3). Further, "[o]wners shall have an absolute lien upon the cargo and all subfreights for all amounts due under this charter . . . ." SER-106-107 (PSUF ¶ 15); 1-ER-006 (Civil Minutes p. 3). Additionally, it stated that "[t]his charter shall be construed and the relations between the parties determined in accordance with the laws of England." SER-106-107 (PSUF ¶ 15); 1-ER-006 (Civil Minutes p. 3).

Two negotiable bills of lading were issued for the Cargo, one to the order of "BP Singapore LTE LTD or assigns" and the other to "Vitol Asia PTE LTD or assigns." 2-ER-250 (JSF ¶ 11(a) and 11(b)); 1-ER-007 (Civil Minutes p. 4). Both contained the following language: "FREIGHT PAYABLE AS PER CHARTER PARTY." 2-ER-250 (JSF ¶ 12). Valero was listed as the notify party on both bills of lading, while GP Global was listed as shipper. Ultimately the bills of lading

were endorsed to the order of Valero. *Id.* 2-ER-250 (JSF ¶ 13).

Valero received copies of the two bills of lading by or before July 21, 2020. June 28, 2023 Civil Minutes at ER-007 (citing PSUF ¶ 27). Thus, Valero was well aware of the terms of the Charter Party and the Bills of Lading while the vessel was in transit between July and August 2024.

On July 19-20, the Cargo was loaded onto the Vessel in Singapore. 1-ER-007 (Civil Minutes p. 4); 2-ER-250-251 (JSF ¶¶10, 12); SER-106-107 (PSUF ¶ 7). Valero held title to the Cargo throughout the course of the voyage from Singapore to California, and at the time of discharge in Los Angeles, California. 1-ER-015 (Civil Minutes p. 12); 2-ER-252 (JSF ¶21). There is no dispute that, at all times, Valero, in interactions with Milos, acted as owner of the Cargo, as set forth below. 1- ER-015 (Civil Minutes p. 12); 2-ER-252 (JSF ¶ 21).

On July 20, 2020, Valero contacted Koch to direct that the Vessel travel at maximum speed to make the delivery window. 2-ER-251 (JSF ¶ 14). On July 27, 2020, GP Global passed on those instructions to the Vessel. *Id.* On August 14, 2020, Valero arranged for delivery of the Cargo to itself, as owner, at the Vopak terminal in Los Angeles California. 1-ER-008 (Civil Minutes p. 5); SER-110-111 (PSUF ¶ 31). In fact, Valero manifested its apparent control over the Cargo in a variety of ways: Valero sent discharge orders for the Cargo, arranged the discharge time and place in the Vopak, California port, designated itself as the receiver of the Cargo, paid the load port inspector to ensure the quality and quantity of the Cargo upon discharge, demanded that the Vessel notify Valero of any

marine incident, advised of its right to appoint a Pollution and Safety Advisor to assist with petroleum discharge, advised of speed reduction rules, and referenced the demurrage rate. SER-110-111 (PSUF ¶ 31); 1-ER-008-1-009 (Civil Minutes pp. 5-6).

When the vessel arrived in California, the original bills of lading were not available at the discharge port. 1-ER-015 (Civil Minutes p. 12); 2-ER-251 (JSF ¶ 15). The Charter Party stated that if the original bills of lading were not available at discharging port in time, in order to avoid demurrage penalties arising for the Charterers—and ultimately Valero—Milos agreed to release the Cargo pursuant to GP Global's instructions, subject to a letter of indemnity. SER-106-107 (PSUF ¶ 15). On or before August 18, 2020, GP Global issued a letter of indemnity to Milos directing that Milos make delivery to Valero in the absence of the original bills of lading. 2-ER-251 (JSF ¶ 16); 1-ER-008 (Civil Minutes p. 5). Valero apparently did not receive the original bills of lading until September or October, 2020, 2-ER-252 (JSF ¶ 23), although it had copies of both the Bills of Lading and the Charter Party since July 21, 2020. (PSUF ¶ 27.)

On August 18, 2020, prior to discharge (and prior to Valero having made any payment for the Cargo to Koch or any other party) to Valero, Clean Products Tankers Alliance, on behalf of Milos, sent an email to Valero, Koch and others stating: "The relevant charterparty provides that freight shall be paid immediately on completion of discharge. Please note that we require the payment of freight (and demurrage) to be made to us directly as the vessel owner." 2-ER-251 (JSF ¶17); 1-ER-008 (Civil Minutes p. 5). On August

20 and 21, 2020, the Cargo was offloaded and delivered to Valero at the Vopak Terminal in the Port of Los Angeles, California, in accordance with the letter of indemnity. 2-ER-251 (JSF ¶ 18); 1-ER-008 (Civil Minutes p. 5). Valero held title to the Cargo throughout the course of the voyage and at the time of discharge. 2-ER-252 (JSF ¶ 21); 1-ER-008 (Civil Minutes p. 5). Valero is named as the notify party and as the consignee of the Cargo in the United States Department of Homeland Security Customs and Border Protection Inward Cargo declaration. 2- ER-252 (JSF ¶ 22).

By demanding delivery of the Cargo, Valero became bound by the contract of carriage, as evidenced by the Bills of Lading, which gave Valero rights of suit against Milos and liability to Milos for, in this case, freight. (2-ER-251 (JSF ¶ 18); 1-ER-16 (Civil Minutes p. 13).) Valero did not object to Milos' demand to pay freight directly prior to accepting delivery of the Cargo or otherwise dispute its obligation to pay Milos until September 3, 2020, some two weeks after delivery. 2-ER-238 (Dkt. 39-3). On August 28, 2020, Valero chose to pay Koch in full, including the freight due to Milos, with full knowledge that Milos had not been paid and was requesting direct payment. 2-ER-245. Milos remains unpaid. 2-ER-253 (JSF ¶ 29).

B. The District Court Correctly Found for Milos

Based on the foregoing undisputed record and Ninth Circuit precedent and long-established common law principles, Milos moved in the District Court for summary judgment on its claim for payment of freight against Valero. On June 28, 2023, the District Court,

following existing Ninth Circuit precedent, which was consistent with the law of other circuits, granted Milos' motion. The District Court first found that under *Pacific Coast*, Valero by its conduct had consented to be bound by the express terms of the Charter Party and was obligated to pay freight and related charges. 2023 WL 4296055, at *8-9. Specifically, the District Court found that Valero was on notice of the terms of the Charter Party, received copies of the bills of lading immediately after the Vessel departed Singapore, organized the discharge operations in California, requested delivery of the Cargo, provided discharge orders to the Vessel, which referenced the demurrage rate, and received and accepted the Cargo. 1-ER-014-017 (Civil Minutes pp. 11-14). Furthermore, the original bills of lading (when they finally arrived), were endorsed to Valero, confirming that it was the intended recipient of the Cargo. 1-ER-018 (Civil Minutes p. 15).

The District Court also found—in the alternative—that under *States Marine*, Valero by its conduct, had undertaken an implied obligation, as the owner of the Cargo, to pay freight and related charges to Milos. Specifically, the District Court found that Valero accepted and took ownership of the cargo, owned the cargo throughout the voyage and at the time of discharge, the cargo was discharged to Valero pursuant to the letter of indemnity, Valero arranged the discharge and identified itself as the recipient of the cargo. 2023 WL 4296055, at *13. As the recipient and owner of the cargo, Valero benefitted from its carriage, and, under *States Marine*, is subject to an implied obligation to pay the freight charges in question. 1-ER-024 (Civil Minutes p . 21).

C. The Ninth Circuit Panel Incorrectly Reversed and Denied *En Banc* Review

Valero appealed the District Court's grant of summary judgment to a panel of the Ninth Circuit. Notwithstanding the District Court's faithful application of existing circuit and extra-circuit precedent to the undisputed facts, the Ninth Circuit panel reversed. In so doing, the panel introduced new, narrow readings of binding Circuit precedent, finding that *Pacific Coast* and *States Marine* should apply only to cases involving common carriers, and not to private carriers. 117 F.4th at 1159-62. The panel did so even though this limitation appears in neither opinion. Indeed, numerous United States courts, including the United States Court of Appeals for the Second Circuit, had found these precedents applicable to private carriage. *See A/S Dampskibsselskabet Torm v. Beaumont Oil Ltd.*, 927 F.2d 713 (2d Cir. 1991).

The panel then dismissed the factual findings and analysis performed by the District Court, and summarily held that Valero could not be obligated to pay Milos' freight costs because Milos was a private carrier, and Valero did not expressly or impliedly consent to those charges. 117 F.4th at 1162-64. The panel ran roughshod over the language of *States Marine,* which held that although the Shipping Act (unlike the Interstate Commerce Act) does ***not*** contain a provision requiring a consignee to pay freight, "[t]he most obvious indication of a consignee's implied agreement to pay for freight charges occurs when he accepts the goods himself, indicating that they are his own and not the shipper's." 524 F.2d at 248.

The panel made no mention of the District Court's factual finding (based on "undisputed evidence") that Valero "consented to be bound by the bills of lading and its incorporation of the charter party", obligating it as a matter of contract to pay Milos, which could only have been reversed under a "clearly erroneous" standard and which, in any event, was not error at all. 2023 WL 4296055 *8; *see also* Appellee's Answering Brief at 14-15, Docket Entry 16 (citing, *inter alia, Transworld Airlines, Inc. v. Am. Coupon Exch., Inc.*, 913 F.2d 676, 684 (9th Cir. 1990)).

Milos timely moved for rehearing *en banc* before the entire Ninth Circuit. On November 21, 2024, the Ninth Circuit denied the motion for rehearing *en banc*.

REASONS FOR GRANTING THE PETITION

A. Maritime Law Should Be Uniform Throughout the Country

Article III, § 2 of the United States Constitution extends federal judicial power to "all Cases of admiralty and maritime Jurisdiction." U.S. Const., Art. III, §2, cl.1. The purpose of this grant of jurisdiction is to have a system of law "coextensive with, and operating uniformly in, the whole country." *Norfolk S. Ry. Co. v. Kirby,* 543 U.S. 14, 28 (2004). "A touchstone is a concern for the uniform meaning of maritime contracts." *Id.*

This Court has historically recognized the importance of national uniformity in maritime law. *See, e.g.*, *Flink v. Paladini,* 279 U.S. 59, 63 (1929) (rejecting reading of California statute which would interfere with "the uniformity that has been declared a domi-

nant requirement for admiralty law."); *Watts v. Camors,* 115 U.S. 353, 362 (1885); *The Dutra Gp. v. Batterton,* 588 U.S. 358, 360, 377 (2019) (recognizing "Congress's persistent pursuit of uniformity in the exercise of admiralty jurisdiction.") (citations and internal quotation marks omitted); *Norfolk S. Ry. Co.,* 543 US. at 28.

This Court has therefore granted certiorari, on numerous occasions, to ensure uniformity in the interpretation and enforcement of maritime contracts. *See, e.g., Great Lakes Ins. Se v. Raiders Retreat Realty Co., LLC,* 601 U.S. 65, 69 (2024) (certiorari granted to resolve circuit split with respect to enforceability of terms in maritime contracts); *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.,* 561 U.S. 89, 94 (2010) (same with respect to through bills of lading); *cf. also The Dutra Gp.,* 588 U.S. at 369 (certiorari granted to resolve circuit split as to issues governing maritime claims)

This Court has likewise explained the need for certainty and uniformity as a goal to advance international maritime commerce. *Kawasaki*, 561 U.S. at 109-110. Indeed, "[i]nternational uniformity of rules applicable on the high seas, is an objective which admiralty seeks to achieve." *De Sole v. U.S.*, 947 F.2d 1169, 1176 n.11 (4th Cir. 1991).

Unless this case is resolved by this Court, future disputes over freight charges in maritime contracts will be decided differently depending on whether they are brought in the Ninth Circuit, the Second Circuit, or in a foreign jurisdiction. This is damaging to international maritime commerce, and antithetical to the maritime jurisprudence of this Court. Certiorari should therefore be granted.

B. The Ninth Circuit Panel's Decision Conflicts With Other Federal Circuits (and Its Own Prior Decisions), Leading to Lack of Uniformity if Certiorari Is Not Granted

The Ninth Circuit incorrectly narrowed and misapplied two prior Ninth Circuit decisions dealing with the recovery of shipping and freight charges from a consignee: *Pacific Coast* and *States Marine*. The panel decision, therefore, in addition to reaching an incorrect result, conflicts with prior precedent, as well as with the law of other jurisdictions, and must be corrected.

The District Court correctly relied on *States Marine* for the principle that acceptance of cargo from a carrier gives rise to an implied obligation to pay freight. Neither the panel nor Valero contests that *States Marine* stands for that principle; however, at Valero's urging, the panel improperly narrowed the scope of *States Marine* to render it applicable only to cases of common carriage, not private carriage.

States Marine held that a consignee's liability under an implied contractual obligation to pay freight may arise when the consignee accepts the goods from the carrier. *States Marine*, 524 F.2d at 248. Although *States Marine* involved common carriage, the case arose under the Shipping Act (not the Interstate Commerce Act) where there was no statutory provision requiring the consignee to pay the filed tariff rate in common carriage situations. In 1975, in *States Marine*, the Ninth Circuit, held that even absent either a statutory provision or an express contractual obligation, an implied obligation to pay freight arises when a consignee accepts goods from the carrier, because

the obligation is based on the common law, as well as statutory provisions. *Id.* and at 248 n.3.

However, almost 50 years later, in this case, the Ninth Circuit effectively upended settled law, and "narrowed," *States Marine* to common-carrier cases on the ground that *States Marine* involved a common carrier rather than a private carrier. 117 F.4th at 1160-62. However, this distinction between common and private carriers finds no footing in contract law, in admiralty or maritime law, or in *States Marine* itself, which makes no mention of a private-common carrier distinction. The Ninth Circuit panel's decision therefore distorts *States Marine* and conflicts with its clear holding.

The Ninth Circuit's *Milos* decision created significant disharmony with federal courts in other circuits, including courts in the First, Second and Eleventh Circuits, by inventing and relying upon a distinction between private and public carriage. Those cases outside of the Ninth Circuit have correctly confirmed with the original—and correct—understanding of *States Marine*, and in fact ***rely*** on *States Marine* to find that a receiver of cargo undertakes an implied contractual obligation to pay freight, under a private carriage. These federal courts have accordingly rejected the Ninth Circuit's *post hoc* private-common carrier distinction.

The panel acknowledged that cases following *States Marine* had applied the holding of the case to private carriage:

> *A/S Dampskibsselskabet Torm v. Beaumont Oil Ltd.*, 927 F.2d 713, 717 (2d Cir.

> 1991) (applying States Marine's "presumptive owner" analysis to a private contract); *Ivaran Lines v. Sutex Paper & Cellulose Corp.*, No. 84-921-CIV-HOEVELER, 1986 WL 15754, at *2–3 (S.D. Fla. Feb. 12, 1986) (same); *Waterman S.S. Corp. v. 350 Bundles of Hardboard*, 603 F. Supp. 490, 492 (D. Mass. 1984) (same).

117 F.4th at 1161.

In *Beaumont Oil*, the Second Circuit evaluated in a private carriage context the "*conduct* of [the consignee] to determine whether a promise to pay the freight 'may be implied.'" 927 F.2d at 717 (alteration in original) (citation omitted) (quoting *States Marine*, 523 F.2d at 248). In so doing, the Second Circuit was "guided by longstanding principles" finding a consignee liable for the payment of freight when he accepts the goods from the carrier. *Id.* (citing *Pittsburg, C.C. & St. L. Ry. V. Fink*, 250 U.S. 577, 581 (1919); *Dare v. New York Cent. R.R.*, 20 F.2d 379, 380 (2d Cir. 1927); *States Marine*, 524 F.2d at 248). Similarly, in *Ivaran Lines* and *Waterman S.S. Corp.*, the Southern District of Florida and the District of Massachusetts quoted extensively to *States Marine* to similarly find, in the private carriage context, that the consignee accepted delivery of the shipment and subsequently exercised dominion and control over the cargo. No. 84-921-CIV-HOEVELER, 1986 WL 15754, at *3 (S.D. Fla. Feb. 12, 1986); 603 F. Supp 490, 492 (D. Mass. 1984).

None of the cases involved public carriage, nor did the courts adjudicating those cases base their holdings—or mention—a public versus private carriage

distinction. Rather, that distinction was wholly invented by the Ninth Circuit panel; as a result, the cases outside of the Ninth Circuit which relied upon a more natural reading of *States Marine* are rendered inconsistent, ambiguous and confusing. In so doing, the panel created an unnecessary and improper split from other federal courts, including the Second Circuit, in admiralty and maritime law, which demand uniformity. (*See supra* at pp. 11-12.)

Separately, the panel incorrectly misapplied a further Ninth Circuit precedent, *Pacific Coast*.

In *Pacific Coast*, a non-party to the bill of lading claimed that it was not bound by the bill of lading. 217 F.2d at 275. The Ninth Circuit disagreed, finding that by its conduct, the non-party had asserted dominion and control of the shipment, thus binding itself to the bill of lading: "[U]nder the circumstances of this case, the assertion by the appellant of unqualified and unequivocal dominion and control of the shipments, in successively diverting them, is equivalent to acceptance and actual receipt of the goods for the purpose of determining liability for freight charges." *Id.*

Here, the District Court found that Valero was bound under the same principles enumerated in *Pacific Coast*: liability for freight charges was established through "[o]ther attending circumstances or factors, such as receipt and acceptance of the shipment or exercise of control over future movements." *Id.* Under *Pacific Coast,* a consignee, such as Valero, can bind itself to the freight charges payable in the bill of lading, either by taking delivery of the goods, or by taking control of them, and consigning them to a third party. *Id.*

Undeniably, Valero accepted the Cargo and took control of the same.

The Ninth Circuit panel attempted to sidestep *Pacific Coast* by claiming it solely addressed whether the appellant there *acted* as a consignee (under a tariff), while here Valero is admittedly a consignee (under private carriage). 117 F.4th at 1163. But that distinction merely compels that conclusion that Valero, as consignee, bound itself to the bill of lading, and is thus liable for the freight charges where it accepted the Cargo from Milos and asserted dominion and control over the Cargo throughout the shipping process.

The panel subsequently engaged in a fact-finding exercise and determined that they were "not persuaded" that Valero exercised control over the Cargo or the Vessel, other than a request to "speed up." *Id.*. In addition to engaging in improper fact adjudication and weight at the appellate stage, the panel did not address the myriad ways that the District Court found that Valero had undertaken acts of dominion and control over the fuel, addressing only Valero's request that Milos "speed up" shipment of the fuel. *Id.*[2]

In sum, *Pacific Coast* does not stand for the restricted principle for which the Ninth Circuit attempted to limit it, and even were the Ninth Circuit correct as a legal matter, it improperly engaged in a fact-finding and weight-of-the-evidence analysis improper at a summary judgment stage.

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[2] Even if the Panel disagreed with the factual findings of the District Court, the proper result the panel should have reached was a remand for a factual determination at trial, not entering summary judgment for Valero.

C. The Ninth Circuit's Decision Will Lead to Negative Effects on the Shipping Industry and Inconsistent Shipping Practices in the Various Jurisdictions

If allowed to stand, the Ninth Circuit's decision will have significant negative ramifications in the shipping industry, and will lead to different shipping and discharge practices in different jurisdictions.

For example, in this case, had Milos predicted that the Ninth Circuit would change existing law, Milos could have asserted its lien on the cargo (*see, e.g.*, Defendant's Response to Plaintiff's Request for Admission No. 3, at 2-ER-098. ("Defendant agrees that as a general precept of law, an ocean carrier possesses a lien on cargo it has transported so long as that cargo remains in the carrier's physical possession.")) () and immediately and aggressively sought to attach the Cargo until freight was paid, and future contracts may require payment before delivery, slowing the process of discharge and clogging ports. Certainly, future international shipping carriers will do so, especially when they are discharging on the West Coast. Indeed, in the future, carriers may refuse to discharge before payment even in instances where it appears that the law is clear, for fear that the law might change. While payment before delivery may seem like a safe practice for carriers, it would lead to backups in port, delays in carrier offloading, and backup in port storage facilities. Furthermore, it could disadvantage West Coast ports, in international commerce, if carriers view ports within the Second Circuit as more desirable destinations for cargo.

In this same vein, Milos signed a contract, governed by English law, requiring that "[i]f original bills of lading are not available at discharging port in time, owners agree to release cargo in line with charterers' instructions against [letter of indemnity] . . ." (SER-106-107 (PSUF ¶15).) At the time Milos did so, both English and United States law protected its right to be paid for transport if it discharged under a letter of indemnity.

Where (as here) the receiver of cargo, with knowledge of the terms of the charter party and indeed invoking the charter party provision requiring discharge under a letter of indemnity, takes delivery pursuant to a letter of indemnity instead of presenting a bill of lading, that is functionally the same as a discharge pursuant to original bills of lading. Generally, where negotiable bills of lading are used, a vessel may not discharge absent presentation of the original bills of lading. 1 International Business Transactions § 3:17 (3d ed. 2024). However, original bills often take time to work their way through the trading and banking systems, and take time to get to the receiving port. *See, e.g.*, E. Smith and O. Anderson, *Oil and Gas Marketing in Latin America*, *in* INTERNATIONAL OIL, GAS, AND MINING DEVELOPMENT IN LATIN AMERICA, 36A RMMLF-INST 16 (1994). Original bills are often not yet available at the receiving port when the vessel arrives; a Letter of Indemnity allows the carrier to discharge under those circumstances, rather than delaying discharge until the original bills of lading make their way to the discharge port. *See* K. Takahashi, *Judicial Decree to Terminate the Validity of Lost Bills of Lading—Usefulness and Jurisdiction, in* 39 J. OF MARITIME L. AND COMMERCE 551, 556-57 (2008). Indeed,

the Charter Party specifically required Milos to deliver against a Letter of Indemnity in lieu of a bill of lading. (SER-106-107 (PSUF ¶15).)

However, contrary to the Ninth Circuit's decision in Milos, 117 F.4th at 1163, consignees accepting delivery based on Letters of Indemnity generally have copies of the relevant Charter Party and Bills of Lading, and therefore are aware of their terms, and not what they are binding themselves to. Indeed, in this case, it was undisputed that Valero had copies of the Charter Party and the Bills of Lading before the ship even set sail, and that it had actually asked for specific terms to be added to the Bills of Lading, and that those requests were accommodated. (PSUF. ¶ 27)

The Ninth Circuit's holding will also harm receivers who are not parties to the bill of lading or charter party; absent a contractual provision providing them with third-party beneficiary rights, those receivers will no longer have a contractual basis upon which to recover against a carrier for any damage or loss sustained to cargo during carriage.

If carriers can no longer discharge based on Letters of Indemnity, then they will not do so, they will not agree to do so, and ships will have to stay longer in port, accruing demurrage and delay costs while original bills of lading make their way to the discharge port. If international shippers (especially when unloading on the West Coast) refuse to discharge in reliance on a letter of indemnity, it will lead to further delays and inconvenience, and disadvantages between ports in the Ninth Circuit and ports in the Second Circuit.

D. The Ninth Circuit Decision Conflicts with English Law, Which Is the Global Standard for Maritime Law

Under English law, the "lawful holder of a bill of lading . . . (. . . or the person to whom delivery is to be made) shall have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract. …[and a person who] takes or demands delivery from the carrier of any goods to which the document relates . . . become[s] subject to the same liabilities under that contract as if he had been a party to that contract." United Kingdom's Carriage of Goods By Sea Act of 1992, Sec. 2(1)(a) and Sec. 3(1). A "lawful holder" of a bill of lading is not required to have physical possession of it at the time of discharge. *Id.* § 5(2).

Here, Valero's contract with Koch was governed by English law. (2-ER-67). The Charter Party, fixed on the industry standard SHELLVOY06 form, plainly mandates application of English Law: "This Charter shall be construed and the relations between the parties determined in accordance with the laws of England." 1-ER-006 (Civil Minutes p. 3); 2-ER-149; Charter Party ¶ 54(a); SER-105-106 (JSUF ¶15)). Likewise, Valero consented to English law, in its contract with Koch. 2-ER-067.

The English courts confirmed Milos' position: that a carrier can demand payment of unpaid freight from a receiver of the cargo under a bill of lading. *Wehner v. Dene Shipping Co.* [1905] 2 K.B. 92, 99. *Wehner*'s holding remains the position under English law to date, and is directly on point in this case with Milos' position and the judgment of the District Court.

English law is routinely chosen by parties around the world to apply to charter parties, because of its longstanding precedents and resulting predictability when disputes invariably arise. *See, e.g.*, *De Sole*, 947 F.2d at 1176 n.11 (noting "the decisive British role in formulating the law of the sea" as "crucial to American admiralty law" in the area of negligence in collisions); *Lenfest v. Coldwell*, 525 F.2d 717, 724 n.15 (2d Cir. 1975) ("It is the general rule in this country . . . that American courts will look to British law for meaning and definition" in the field of marine insurance.). While the United States as sovereign can of course chart its own legal course, it should do so with recognition of the benefits of harmony with well-established rules of maritime law, since international shippers, consignees, owners, and carriers all benefit from consistency and certainty as to the meaning and enforceability of payment terms. The Uniformity Principle is a centerpiece of the Comité Maritime International (CMI) and national maritime law associations, such as the Maritime Law Association of the United States, not for its own sake but rather the pragmatic desire to avoid radically different outcomes from nation to nation on the same basic forms of contract and similar facts. Having the Ninth Circuit chart a different course not only from the Second Circuit and other federal courts, but also from foreign maritime jurisdictions will have a negative effect on international commerce in this country (at least as to ports within the Ninth Circuit).

CONCLUSION

The Ninth Circuit's reversal of summary judgment was an unforced error. That decision conflicts with

previous Ninth Circuit precedent, holdings from other Circuits, and injects needless uncertainty and disharmony into maritime law. This Court should grant certiorari to correct this error.

Respectfully submitted,

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February 18, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED SEPTEMBER 18, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-55655
D.C. No. 2:22-cv-01545-CAS-E

MILOS PRODUCT TANKER CORPORATION,

Plaintiff-Appellee,

v.

VALERO MARKETING AND SUPPLY COMPANY,

Defendant-Appellant,

and

DOES, 1 to 10,

Defendant.

Filed September 18, 2024

OPINION

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Appendix A

Argued and Submitted May 16, 2024
Pasadena, California

Before: N. Randy Smith and Salvador Mendoza, Jr., Circuit Judges, and John Charles Hinderaker,* District Judge.

HINDERAKER, District Judge:

Defendant-Appellant Valero Marketing and Supply Company ("Valero") appeals the district court's grant of summary judgment for Plaintiff-Appellee Milos Product Tanker Corporation ("Milos"). In 2020, Milos transported by sea roughly 40,000 tons of jet fuel belonging to Valero. This transport cost a little over $1,000,000. But after Milos delivered, Valero refused to pay. Valero had already paid freight costs when it bought the fuel from a third company, Koch Refining International PTE Ltd., Co. ("Koch"), and had no intention of paying twice. Koch was also unwilling to pay Milos. Milos's contract was with a fourth company, GP Global PTE Ltd. on behalf of Gulf Petrochem FCZ ("GP Global"), which arranged the voyage. But GP Global had "experienced financial difficulties" and could not pay. So Milos sued Valero for, relevant here, breach of contract.

The district court found for Milos, determining that Valero breached an express or implied contract to pay Milos for transportation. The court reasoned that Valero's conduct showed its consent to be bound by the contract

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* The Honorable John Charles Hinderaker, United States District Judge for the District of Arizona, sitting by designation.

between Milos and GP Global. That contract, according to the district court, gave Milos the authority to look to a nonparty for payment. The district court also concluded that Valero was alternatively liable under *States Marine International, Inc. v. Seattle-First National Bank*, 524 F.2d 245, 248 (9th Cir. 1975), finding an implied obligation to pay transportation costs based on Valero's receipt of the fuel.

Reviewing de novo, we agree with Valero. Valero was not party to the contract between Milos and GP Global. That contract specifically stated that GP Global would pay freight. Why Valero's payment for freight to Koch never made it to Milos through GP Global is beyond the scope of this case. And *States Marine* does not support an implied obligation for Valero to pay. *States Marine* modestly extended freight rules established in railroad cases to ocean carriers "operating under tariffs"—that is, from railroad common carriers to ocean common carriers. In both railroad and ocean contexts, common carriers must publish their rates and are subject to default terms of a universal bill of lading. These distinctions permit a presumption that whoever accepts delivery of a shipment from a common carrier understands what they are liable to pay. But in a private-carriage case like this one, notice of shipping costs and default terms cannot be presumed. It was therefore error to find that Valero had an implied obligation to pay under *States Marine*, and we must reverse.

Appendix A

I.

The following facts are stipulated or undisputed.

The Charter Party Contract (GP Global and Milos)

In June 2020, GP Global entered into a standard maritime transportation contract (the "Charter Party") with Milos to transport jet fuel aboard Milos's vessel, the SEAWAY MILOS. The Charter Party lists GP Global as the "Charterer" and Milos as the "Registered Owner" of the SEAWAY MILOS. The Charter Party does not refer to either Valero or Koch.

Under the Charter Party, GP Global agreed to pay Milos (through the "Clean Product Tankers Alliance") for transporting the fuel ("freight") and for any damages that might result from failing to unload the jet fuel by a certain time ("demurrage"). The Charter Party also specified that "[GP Global] shall have the option to instruct the vessel to increase speed with [GP Global] reimbursing [Milos] for the additional bunkers consumed, at replacement cost."

The Charter Party authorized the ship captain to sign bills of lading for the cargo. A bill of lading is a document "issued by the shipowner when goods are loaded on its ship, and may, depending on the circumstances, serve as a receipt, a document of title, a contract for the carriage of goods, or all of the above." *Asoma Corp. v. SK Shipping Co.*, 467 F.3d 817, 823 (2d Cir. 2006) (citation omitted). Ordinarily, a carrier like Milos is responsible for releasing cargo only to the party who presents an original bill of

lading. *See C-ART, Ltd. v. Hong Kong Islands Line Am., S.A.*, 940 F.2d 530, 532 (9th Cir. 1991) (citation omitted). The Charter Party also contained a letter of indemnity provision, authorizing Milos to release the jet fuel at delivery even if the bills of lading were unavailable:

> If original bills of lading are not available at discharging port in time, [Milos] agree[s] to release cargo in line with [GP Global]'s instructions against [a letter of indemnity] . . . without bank guarantee signed by [GP Global].

The Fuel Purchase Agreement (Valero and Koch)

On July 14, Valero agreed to purchase the jet fuel from Koch on "cost and freight" ("CFR") terms. Under CFR terms, the seller arranges and pays for transportation to the port of delivery, while the buyer assumes title and risk of loss as soon as the cargo is loaded onto the carrier at the port of origin. *See, e.g., BP Oil Int'l, Ltd. v. Empresa Estatal Petroleos de Ecuador*, 332 F.3d 333, 338 (5th Cir. 2003). Valero's agreement with Koch also required Valero to pay any demurrage costs directly to Koch. Neither Milos nor GP Global were a party to the fuel purchase agreement between Valero and Koch.

The Bills of Lading

On July 19-20, the jet fuel was loaded onto the SEAWAY MILOS in Singapore in two batches. The captain of the SEAWAY MILOS issued original bills of lading for each batch. The bills list "Valero Marketing

and Supply Company" as the party to notify when the shipment arrives. Each bill of lading also states "Freight Payable as Per Charter Party."

The Voyage

On July 20, the SEAWAY MILOS left Singapore, expecting to arrive in Los Angeles on August 14. Because the negotiated delivery window had initially been August 3-7, Valero suggested to Koch that extra speed could be warranted. A week later GP Global instructed Milos to sail at maximum speed.

As the vessel neared Los Angeles, a Milos representative emailed Valero, Koch, and others, providing Milos's banking information and notifying them that freight should be paid upon discharge. On August 20-21, the jet fuel was unloaded from the SEAWAY MILOS and released to Valero without any payment to Milos. As the original bills of lading were unavailable at the discharge port, Milos released the jet fuel to Valero under a letter of indemnity from GP Global. On August 28, Valero paid Koch $15,791,634.77 in a lump sum for the jet fuel and freight charges. Koch eventually sent the original bills of lading to Valero about a month later.

The Dispute

In September, the Milos representative advised Valero, Koch, and others that payment for freight was overdue. Valero denied responsibility because it was "not the charterer [GP Global]." When Milos insisted payment was due under the bills of lading, Valero lawyered up.

Less than a month later, Milos learned GP Global was in bad financial shape and had begun voluntary debt restructuring. Milos submitted a claim as part of that restructuring, then abandoned it.

In March 2022, Milos filed a complaint before the district court against Valero alleging claims for breach of contract and money had and received. The parties filed a joint stipulation of facts and cross-motions for summary judgment. Milos did not oppose Valero's motion on the money-had-and-received claim, so the district court granted Valero's motion for summary judgment on Milos's sole equitable claim. But the district court also granted Milos's motion for summary judgment on the breach of contract claim. The district court found that Valero consented by its conduct to be bound by the bills of lading and, by incorporation, the Charter Party. The court noted that the Charter Party "does not expressly identify a party who must pay freight" and "appears to grant [Milos] authority to look to another party for payment of the freight charges." The court also concluded that Valero was alternatively liable under an implied promise to pay. Relying on *States Marine*, the court found that Valero's acceptance of the goods bestowed a benefit of carriage, which in turn subjected Valero to an implied obligation to pay the freight charges.

Valero timely appealed. To date, Milos has not been paid any of the $1,054,456.74 total cost to transport the jet fuel—$853,125.00 for freight, $186,282.72 for demurrage, and $15,049.02 for speed up charges.[1]

1. For convenience, we will use "freight" in this case to include also demurrage and speed-up costs because they are allocated and

II.

We have jurisdiction under 28 U.S.C. §§ 1291 & 1333(1). We review de novo a district court's summary judgment ruling. *Universal Health Servs. Inc. v. Thompson*, 363 F.3d 1013, 1019 (9th Cir. 2004). We also review de novo a district court's analysis of contractual language and application of principles of contract interpretation. *Miller v. Safeco Title Ins. Co.*, 758 F.2d 364, 367 (9th Cir. 1985).

III.

Valero argues the district court erred in finding an express or implied contract because Valero was not a party to the Charter Party—which specifies that GP Global will pay freight—and because Valero did not directly or indirectly consent to be bound by the bills of lading. Valero also argues the district court erred by conflating the difference between private carriers and common carriers. In Valero's view, the district court relied on cases that were developed in a context unique to common carriers, involving, for example, publicly filed shipping rates. Applying these cases to private carriage, Valero says, threatens to upend long-held expectations in domestic and international shipping.

Milos responds that the district court correctly found an express or implied contract because Valero was subject to the Charter Party through its consent to be bound by

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analyzed identically here. In general, though, "freight" refers only to the base cost of transporting goods.

the bills of lading. Milos further contends that Valero must pay in any event simply because it owned and received the goods and thereby benefitted from Milos's carriage. Milos asserts that any distinction between private and common carriage is irrelevant because common law principles animate both contexts. These principles, Milos says, make consignees jointly and severally liable for freight even when a contract specifies otherwise. In the alternative, Milos argues that this Court could find Valero liable under English law.

A.

We begin with the law governing maritime freight liability. It is "well settled" that the party who sends the goods—the "shipper" or "consignor"—is "primarily liable to the carrier for freight charges." *States Marine*, 524 F.2d at 247 (citing *Louisville & Nashville R.R. Co. v. Cent. Iron & Coal Co.*, 265 U.S. 59, 67, 44 S.Ct. 441, 68 L.Ed. 900 (1924)). That is true even when a bill of lading purports to impose liability on the receiver of the goods (the "consignee"). *Louisville & Nashville R.R. Co.*, 265 U.S. at 67, 44 S.Ct. 441. After all, "the shipper is presumably the consignor; the transportation ordered by him is presumably on his own behalf; and a promise by him to pay therefor is inferred." *Id.*

However, a contract or statute may form binding obligations that modify the general rule. *See States Marine*, 524 F.2d at 247-48. Of the two, a contract may be more significant because statutory default terms only come into play in the absence of a contract. *See Louisville*

& Nashville R.R. Co., 265 U.S. at 65-67, 44 S.Ct. 441. That is natural because parties are generally free to negotiate and assign freight liability however they like. *Id.* (the shipper's obligation to pay freight is not "absolute"—a "carrier and shipper [a]re free to contract" as to "when or by whom the payment should be made"). If a contract allocates freight liability to a party, that ends the court's inquiry. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 150-51, 129 S.Ct. 2195, 174 L.Ed.2d 99 (2009) (citing 11 WILLISTON ON CONTRACTS § 30:4 (4th ed. 1999)); *see also C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 479 (9th Cir. 2000) (citing *Fikse & Co. v. United States*, 23 Cl. Ct. 200, 204 (1991)); *In re Roll Form Prods., Inc.*, 662 F.2d 150, 154 (2d Cir. 1981) (citing *Consol. Freightways Corp. v. Admiral Corp.*, 442 F.2d 56, 62 (7th Cir. 1971)).

If a contract allocates freight liability to a nonparty, then the court must determine whether the nonparty consented to be bound under the contract. *In re M/V Rickmers Genoa Litig.*, 622 F. Supp. 2d 56, 71-72 (S.D.N.Y. 2009), *aff'd sub nom. Chem One, Ltd. v. M/V Rickmers Genoa*, 502 Fed. App'x 66 (2d Cir. 2012). For example, a bill of lading might allocate freight liability to a consignee. But the consignee would not be obligated to pay freight without evidence the consignee consented to be bound under the bill of lading. That evidence can be supplied by context. *See, e.g., Ingram Barge Co. v. Zen-Noh Grain Corp.*, 3 F.4th 275, 279 (6th Cir. 2021). Typically, consignees demonstrate consent to be bound by presenting the bill of lading and accepting the goods under it. *See id.* at 282 (White, J., dissenting) (citing

Neilsen v. Jesup, 30 F. 138, 139 (S.D.N.Y. 1887); *Pacific Coast Fruit Distribs. v. Pa. R.R. Co.*, 217 F.2d 273, 275 (9th Cir. 1954)). Similarly, consignees may show their consent to be bound under a bill of lading by suing on the bill of lading, or by silence in context of longstanding dealings, or by the consignee's agent negotiating the bill of lading. *See Ingram Barge*, 3 F.4th at 279. Notice that all these contexts show the consignee is aware of the terms to which they are agreeing.

If no contract allocates freight liability, courts may still find an implied promise to pay in some circumstances. For example, common carriers must charge publicly posted rates and are subject to default terms of a uniform bill of lading. *See* Interstate Commerce Act ("ICA"), 49 U.S.C. §§ 101 *et seq.*; *see also* 49 C.F.R. § 1035.1. In that context, "where the parties fail to agree or where discriminatory practices are present[,] . . . the ICA's default terms bind the parties." *C.A.R. Transp. Brokerage Co.*, 213 F.3d at 479 (citing *In re Roll Form Prods., Inc.*, 662 F.2d at 154).

Default terms formed the basis for liability in *Pacific Coast*. 217 F.2d at 274-75. The appellee railroad and all other common carriers at the time used a Uniform Bill of Lading. *Id.* at 274. The Uniform Bill of Lading was prescribed by the ICA and approved by the Interstate Commerce Commission and had the force of law. *Ill. Steel Co. v. Balt. & Ohio R.R. Co.*, 320 U.S. 508, 508-09, 64 S.Ct. 322, 88 L.Ed. 259 (1944). Section 7 of the Uniform Bill of Lading provided that the owner or consignor or consignee are alternately liable for freight. *Id.* at 512, 64 S.Ct. 322; *Pacific Coast*, 217 F.2d at 274. Thus, in

Pacific Coast, "there [was] only to be considered whether appellant was, in fact, owner, consignor or consignee." *Id.* at 275. Similarly, *Illinois Steel* "raise[d] only a single question[,]" which was whether the parties' stipulation was sufficient to relieve the consignor of liability after an initial prepayment of freight. *See* 320 U.S. at 513-15, 64 S.Ct. 322. Because the Section 7 default terms permitted precisely that stipulation, the *Illinois Steel* Court determined that any tension in the contract terms did not "revive the obligation which, in the absence of that clause, rests on the consignor to pay all lawful charges on his shipments." *Id.* at 513, 64 S.Ct. 322.

Discriminatory practices prohibited by statute may also form a basis for an implied obligation. In *Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co. v. Fink*, 250 U.S. 577, 40 S.Ct. 27, 63 L.Ed. 1151 (1919), the Supreme Court held a consignee liable for the full freight cost even though the carrier initially demanded and the consignee paid only half that cost. *Id.* at 581-83, 40 S.Ct. 27. The Court reasoned that it would be unlawful to charge the consignee any less because the ICA's animating purpose was to prevent price discrimination higher or lower than the tariff rate. *Id.* at 581, 40 S.Ct. 27. Before turning its examination to liability under the ICA, *Fink* noted a conflict in the common law's allocation of liability "under the circumstances." *Id.* at 580-81, 40 S.Ct. 27. The Court remarked that "the weight of authority seems to be that the consignee is prima facie liable for the payment of the freight charges when he accepts the goods from the carrier." *Id.* at 581, 40 S.Ct. 27 (citing HUTCHINSON ON

CARRIERS (3d Ed.) § 807[2]). We will return to this remark in a moment.

Where statute or default rules imply a consignee's promise to pay freight upon acceptance, courts may also have to consider whether a party *acted* as the consignee, *see, e.g., Pacific Coast*, 217 F.2d at 275, or whether the consignee *accepted* the goods, *see, e.g., States Marine*, 524 F.2d at 248. *States Marine* analyzed whether a named consignee impliedly accepted goods by exercising dominion and control over them. *Id.* at 248-49. In so doing, *States Marine* relied on common law developed in railroad cases and extended it to ocean carriers:

> Virtually all of the cases on a consignee's liability for freight charges involve railroads operating under the [Interstate] Commerce Act and tariffs filed thereunder. Since the rules established in those cases depend on both the common law and statutory authority derived from common law, the rules established in the railroad cases may properly be applied to ocean shippers *operating under tariffs* filed pursuant to the Shipping Act.

524 F.2d at 248 n.3 (emphasis added).

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2. *Fink* actually cites to § 1559, but that section does not exist. However, *page* 1559 refers in turn to sections 807 and 809, which discuss consignee liability. Of the two, section 807 is more clearly the section *Fink* relied on.

States Marine is susceptible to different readings. It could extend railroad cases *only* to ocean carriers operating under tariffs and subject to default terms, or it could extend railroad cases to all ocean carriers *including* those operating under tariffs and subject to default terms. The difference is not insignificant and appears to have caused some confusion among the lower courts—including the district court here—and in our sister circuits. *See, e.g., A/S Dampskibsselskabet Torm v. Beaumont Oil Ltd.*, 927 F.2d 713, 717 (2d Cir. 1991) (applying *States Marine*'s "presumptive owner" analysis to a private contract); *Ivaran Lines v. Sutex Paper & Cellulose Corp.*, No. 84-921-CIV-HOEVELER, 1986 WL 15754, at *2-3 (S.D. Fla. Feb. 12, 1986) (same); *Waterman S.S. Corp. v. 350 Bundles of Hardboard*, 603 F. Supp. 490, 492 (D. Mass. 1984) (same). Accordingly, we must clarify *States Marine.* We do so by adopting a narrow reading of it—*States Marine* applied rules established in railroad cases to ocean carriers only to the extent that both are common carriers.

A narrow reading of *States Marine* is in harmony with basic principles of contract formation. "The law of private carriage, now primarily charter parties, . . . is still governed by the principle of freedom of contract." *Common Carriage and Private Carriage*, 1 ADMIRALTY & MAR. LAW § 10:3 (6th ed.). Parties to a freight contract, like any other contract, are free to assign liability as they wish, provided their allocation does not run afoul of the law. *See Oak Harbor Freight Lines, Inc. v. Sears Roebuck, & Co.*, 513 F.3d 949, 956 (9th Cir. 2008) (citing *Louisville & Nashville R.R. Co.*, 265 U.S. at 66-67, 44 S.Ct. 441); *C.A.R. Transp. Brokerage Co*, 213 F.3d at 479. Beyond

that, an offer generally must precede acceptance. *See* 1 WILLISTON ON CONTRACTS § 4:16; RESTATEMENT (SECOND) OF CONTRACTS § 23 (AM. L. INST. 1981); *see also Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 121 (2d Cir. 2012). For common carriage contracts, the published rate forms an "offer," which is "accepted" by receipt of the goods under a bill of lading, charter party, or default rules obligating a consignee. Without a published rate, it would be quite possible for a private consignee's "acceptance" to precede the "offer" of the private carrier's rates. And the consignee's "acceptance" could only demonstrate a meeting of the minds if consignee liability was one of the terms of the transaction.

Our reading of *States Marine* also fits with the common law underpinning the railroad cases. As *Fink* observed, "under the circumstances. . . . [t]he weight of authority seems to be that the consignee is prima facie liable for the payment of the freight charges when he accepts the goods from the carrier." *Id.* at 581, 40 S.Ct. 27 (citing HUTCHINSON ON CARRIERS (3d Ed.) § 807). That observation is prone to misstatement. In context, "under the circumstances" means where a consignee has accepted liability for some of the freight cost but refuses to pay all of it. The cases underlying *Fink*'s remark make that clear—they were decided under similar circumstances, where the consignee was expressly liable under the charter party or bill of lading, or had already paid part of the transport costs.[3] That is the context for *States Marine*'s use of "the

3. *See* HUTCHINSON ON CARRIERS (3d Ed.) § 807 (citing *Taylor v. Ironworks*, 124 F. 826 (S.D.N.Y. 1903) (consignee liable for freight where charter party said it was); *North-German Lloyd v. Heule*,

rules established in . . . *both* the common law and statutory authority derived from the common law." 524 F.2d at 248 n.3 (emphasis added). These rules are consistent with each other because they comport with the fundamental notion that a contract requires notice of its terms.

Finally, a narrow reading of *States Marine* is common sense. Consider if a shipper contracted with a private carrier for freight way over the usual rate for a given route, then listed the consignee as the party liable to pay freight. Without some guarantee the consignee understood the terms in advance—like, say, a published tariff—implying an obligation to pay freight based only on acceptance might sanction underhanded dealing. We decline to expose consignees to such unknown liabilities.

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44 F. 100 (S.D.N.Y. 1890) (same); *Gates v. Ryan*, 37 F. 154 (S.D.N.Y. 1888) (consignee liable where it agreed to pay freight); *Neilsen v. Jesup*, 30 F. 138 (S.D.N.Y. 1887) (consignee liable for demurrage where bill of lading made it liable for freight); *Irzo v. Perkins*, 10 F. 779 (S.D.N.Y. 1881) (consignee liable for demurrage where it orally agreed to pay); *Davison v. City Bank of Oswego*, 57 N.Y. 81 (1874) (consignee liable where bill of lading said it was); *Phila., etc., R. R. v. Barnard*, 3 Ben. 39 (E.D.N.Y. 1868) (consignee liable for freight where it understood that it would be liable); *Wegener v. Smith*, 15 Com. B. 285 (1854) (consignee liable for demurrage where charter party said it was); *Kemp v. Clark*, 12 Q. B. 647 (1848) (consignee liable where it promised to pay freight, then tried to back out); *Sanders v. Vanzeller*, 4 Q. B. 260 (1843) (consignee liable for freight where charter party said it was) ("The principle, therefore, is that the taking, under these circumstances, is a virtual assent to the terms of the bill [of lading]."); *Cock v. Taylor*, 13 East 399 (1811) (consignee liable for freight where bill of lading said it was); *Jesson v. Solly*, 4 Taunt. 52 (1811) (consignee liable for demurrage where bill of lading said it was)).

Any implied obligation for private-carrier consignees to pay freight must fit with foundational contract principles. Unlike common-carrier consignees, private-carrier consignees are not presumed to know key terms simply because they receive and accept goods. And they are certainly not expected to know they are liable for freight when an express contract says they are not. Therefore, private-carrier consignees cannot be under the same presumptive obligation to pay freight upon acceptance. A narrow reading of *States Marine* makes that clear.

B.

Applying these principles, we look first to whether an express contract exists between Milos and Valero that might rebut the presumption that the shipper, GP Global, pays freight. *See Dynamic Worldwide Logistics, Inc. v. Exclusive Expressions, LLC*, 77 F. Supp. 3d 364, 375 (S.D.N.Y. 2015). We find none. To the contrary: the Charter Party between Milos and GP Global specifically states that GP Global will pay freight. It says "[f]reight shall be earned concurrently with delivery of cargo . . . and shall be paid by Charterers [GP Global] to Owners [Milos]," "[GP Global] shall pay . . . demurrage without delay," and "[GP Global] shall pay [Milos] for additional bunkers [of oil] consumed" from revised orders like speed-up instructions.[4] Not only that, but Valero's contract with

4. The district court appears to have overlooked these contract terms. It also misapprehended another aspect of the Charter Party, which says payment must be made "upon completion of discharge as per owner[']s telexed/e-mailed invoice." That statement did not

Koch includes freight in the purchase price. Perhaps Valero's payment of freight to Koch was expected to pass through GP Global to Milos. We need not wonder. The Charter Party provides that GP Global and GP Global alone will pay freight. That is the end of it.

i.

Milos nonetheless contends that Valero's conduct shows it consented to be bound by the bills of lading. In Milos's view, Valero's acceptance of the fuel, on its own or together with certain acts of "dominion and control," is sufficient to imply its agreement to pay freight under *Pacific Coast*. We are not persuaded that Valero exercised any control over the good ship SEAWAY MILOS or its freight. True, Valero suggested Koch might ask GP Global to tell Milos to speed up, but there is no reply or confirmation in the record. That hardly amounts to "dominion and control." And besides, the bills of lading say, "freight payable as per Charter Party." And the Charter Party makes freight payable by GP Global alone. So it doesn't really matter if Valero was bound by the bills of lading or not.

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permit Milos to bind a nonparty merely by sending them an invoice. How could it? "An agreement is a manifestation of *mutual* assent on the part of two or more persons." Restatement (Second) of Contracts § 3 (1981) (emphasis added); *see also U.S. v. Waterman S.S. Corp.*, 471 F.2d 186, 189 n.4 (5th Cir. 1973) ("A party cannot unilaterally employ definitions to bind another by provisions to which the other has not consented to be bound."). Rather, this provision in the Charter Party simply dictates when GP Global's payment obligation becomes due.

But Milos is wrong in even more fundamental ways. First, *Pacific Coast* does not mean that acceptance is enough to show consent to be bound. *Pacific Coast* involved a common carrier with a different bill of lading that expressly allocated freight liability to the consignee. 217 F.2d at 274. The main question was whether appellant *acted* as a consignee by accepting and directing goods. *Id.* at 274-75. That was why the *Pacific Coast* court looked at appellant's conduct. By contrast, here the parties agree Valero was the consignee. Any analysis of Valero's conduct focuses on whether Valero agreed to be bound, not whether it acted as consignee by accepting the goods. Those inquiries are distinct, and do not combine to form a general "consent-to-be-bound" conduct framework.

Second—and applying the correct framework—Valero's conduct does not show that it agreed to be bound by the bills of lading. Valero did not sue on the bills of lading, Valero has no longstanding dealings with Milos, and Milos does not argue Valero negotiated the bills of lading through GP Global. *See Ingram Barge*, 3 F.4th at 279-80.

As for presenting the bills of lading and accepting goods under them, the parties agree that the bills of lading were not available when Valero received the fuel. Instead, under the terms of the Charter Party, Milos released the fuel under a letter of indemnity from GP Global (the "LOI"). The LOI served only to indemnify Milos from "liability, loss, damage or expense" for releasing the cargo without presentation of the original bills of lading. The LOI did not modify the Charter Party, including its

payment terms. Milos also characterizes presenting bills of lading before accepting goods as a "formality." That is an odd way of putting it. Presenting a bill of lading before accepting goods is customary because that ensures notice of the bill's terms. If a party does not agree to the terms, they can choose not to exchange the bill for goods. Requiring presentation to precede acceptance is thus a formality for good reason.

ii.

Milos also contends that an obligation to pay may be implied to Valero. Milos finds this obligation primarily under *Beaumont Oil* and *States Marine. Beaumont Oil* is not binding on this court, is distinguishable, and its use of *States Marine*'s presumptive ownership analysis as a freestanding inquiry appears not to have gained much traction. *See, e.g., APL Co. Pte. v. Kemira Water Sols., Inc.*, 890 F. Supp. 2d 360, 367 (S.D.N.Y. 2012) ("[C]ritically, in *Beaumont Oil*, the bill of lading at issue was silent as to which party was obligated to pay freight charges."). And as discussed above, Milos's argument is based on a misunderstanding of *States Marine.* That case extended railroad case law only to ocean carriers operating under tariffs. The many common-carrier cases cited by Milos are therefore inapplicable. *See, e.g., Fink*, 250 U.S. at 581, 40 S.Ct. 27 (liability implied by statute); *Dare v. N.Y. Cent. R.R. Co.*, 20 F.2d 379, 380 (2nd Cir. 1927) (liability implied by bill of lading specifying consignee liability); *Arizona Feeds v. S. Pac. Transp. Co.*, 21 Ariz. App. 346, 353, 519 P.2d 199 (1974) (same). That is particularly true where, as here, an express agreement allocates freight liability exclusively to the charterer, GP Global.

Notwithstanding its express and exclusive contract with GP Global, Milos argues Valero should be jointly and severally liable for freight alongside GP Global. The two cases Milos cites for that proposition do not hold water. One involved default rules under a universal bill of lading, *Ill. Steel Co.*, 320 U.S. 508, 64 S.Ct. 322, and the other involved bills of lading that explicitly obligated the consignee together with the shipper to pay freight, *Exel Transp. Servs., Inc. v. CSX Lines LLC*, 280 F. Supp. 2d 617 (S.D. Tex. 2003). Not only is there no general rule imputing joint and several liability to consignees for freight costs, but such a rule would invade the right to freedom of contract. *C.f. Louisville & Nashville R.R. Co.*, 265 U.S. at 66-67, 44 S.Ct. 441 (1924) (cataloguing various ways parties are free to allocate freight liability).

Milos insists that letting Valero off the hook would be inequitable. This argument apparently persuaded the district court, which effectively fashioned an equitable remedy by combining the common-carrier consignee's implied obligation to pay freight with the finding that Valero "benefitted" from the carriage of its jet fuel. But Milos abandoned its equitable claim (money had and received) below and proceeded only on a breach of contract claim. In any event, Milos is not entitled to equitable relief. True, Valero benefitted from Milos's carriage. But it did not benefit unjustly. *See In re De Laurentiis Ent. Grp., Inc.*, 963 F.2d 1269, 1272 (9th Cir. 1992) ("Quantum meruit (or quasi-contract) is an equitable remedy implied by the law under which a plaintiff who has rendered services benefiting the defendant may recover the reasonable value of those services *when necessary to prevent unjust*

enrichment of the defendant.") (emphasis added). Valero paid cost and freight charges to Koch when it purchased the jet fuel under CFR terms. Because Valero was not unjustly enriched, Milos cannot recover from Valero under a quasi-contract.

iii.

In the alternative, Milos argues we should find that Valero is obligated to pay freight under the Charter Party's English choice-of-law provision. The district court did not reach this issue, and we decline to decide it in the first instance. *See Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998) ("Generally, we do not consider an issue not passed upon below." (internal quotation marks omitted)).

IV.

In sum, we conclude Valero has no express or implied obligation to pay freight, demurrage, or speed-up costs to Milos, and Milos cannot recover in equity. Accordingly, we **REVERSE** the district court's order granting summary judgment for Milos and **REMAND** for further proceedings consistent with this opinion.

APPENDIX B — MINUTE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DATED JUNE 28, 2023

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:22-CV-01545-CAS (Ex) Date June 28, 2023
Title MILOS PRODUCT TANKER CORP. V. VALERO MARKETING & SUPPLY CO.

Proceedings: (IN CHAMBERS) – DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Dkts. 39, 40, filed on APRIL 14, 2023)

I. INTRODUCTION

On March 8, 2022, plaintiff Milos Product Tanker Corporation, ("Milos"), filed this action against defendant Valero Marketing and Supply Company, ("Valero"), alleging claims for breach of contract and money had and received. Dkt. 1. Plaintiff's claims arise out of an ocean voyage charter party and therefore comprise admiralty and maritime claims pursuant to Federal Rule of Civil Procedure 9(h) and 28 U.S.C. § 1333(1). *Id.* ¶ 1. On April 20, 2022, defendant filed an answer. Dkt. 10.

On August 4, 2020, defendant filed a motion to dismiss. Dkt. 21. On November 29, 2022, following a hearing on the matter, the Court denied defendant's motion to dismiss

plaintiff's breach of contract claim and granted with leave to amend defendant's motion to dismiss plaintiff's claim for money had and received. Dkt. 33. On December 8, 2022, plaintiff filed its First Amended Complaint alleging claims for breach of contract and money had and received. Dkt. 35.

On April 14, 2023, the parties filed cross motions for summary judgment. Dkts. 39, 40. On May 1, 2023, plaintiff filed an opposition to defendant's motion for summary judgment, dkt. 45, and defendant filed an opposition to plaintiff's motion for summary judgment, dkt. 46.[1]

On May 22, 2023, the Court held a hearing on the parties' cross motions for summary judgment. Prior to the hearing, the Court distributed a tentative order to the parties that found in favor of plaintiff. At the hearing, counsel for defendant contended that, contrary to the Court's tentative order, defendant does not have an obligation to pay freight because it is a private carrier, not a common carrier. In response to this contention, the Court permitted the parties to each file a supplemental brief addressing the relevance of the distinction between private and common carriers in this context. On May 30,

1. While defendant moved for summary judgment on both the breach of contract claim and the claim for money had and received, plaintiff only moved for summary judgment on the breach of contract claim and did not oppose defendant's motion for summary judgment on plaintiffs claim for money had and received. In light of plaintiff's nonopposition, the Court **GRANTS** defendant's motion for summary judgment on plaintiffs claim for money had and received.

2023, defendant filed a supplemental brief on this issue. Dkt. 49. On June 6, 2023, plaintiff filed a response to defendant's supplemental brief. Dkt. 50.

The cross motions for summary judgment are presently before the Court. Having carefully considered the parties' arguments and submissions, the Court finds and concludes as follows.

II. BACKGROUND

Unless otherwise noted, the Court references only facts that are uncontroverted and to which evidentiary objections, if any, have been overruled.

Milos is a foreign corporation with its principal place of business in Santiago, Chile. Joint Stipulation of Facts, dkt. 38 ("JSF") ¶ 1. Milos is the owner of the M/T SEAWAYS MILOS vessel (the "vessel"). *Id.* ¶ 3. Valero is a Delaware corporation with its principal place of business in San Antonio, Texas. *Id.* ¶ 2. The present action arises out of the transport of certain cargo owned by Valero on the vessel from Singapore to California in the summer of 2020.

A. Arrangement of Voyage and Departure from Singapore

On or about June 19, 2020, Valero vetted the vessel and cleared it for discharge operations in Los Angeles, California. *Id.* ¶ 4. On June 23, 2020, Milos entered into a voyage charter party with charterer GP Global Ptd. Ltd.

("GP Global") on behalf of Gulf Petrochem FCZ. *Id.* ¶ 5 Defendant Valero's Statement of Uncontroverted Facts, dkt. 39-5 ("DSUF") ¶ 3. Pursuant to the charter party which used a SHELLVOY 6 charter form, Milos chartered the vessel to GP Global for the transportation of 39,585.296 tons of aviation jet fuel (the "cargo") from Singapore to California over the summer of 2020. DSUF ¶ 3; JSF ¶ 5.

Under the terms of the charter party, freight and related charges were to be paid "immediately upon completion of discharge as per owner['s] telexed/ emailed invoice." Plaintiff Milos' Separate Statement of Uncontroverted Facts, dkt. 41 ("PSUF") ¶ 15. The charter party additionally included the statement that "If original bills of lading are not available at discharging port in time, owners agree to release cargo in line with charterers' instructions against LO.I. as per owners P&I Club wording without bank guarantee signed by charterers." *Id.* The charter party further stated that "[o]wners shall have an absolute lien upon the cargo and all subfreights for all amounts due under this charter and the cost of recovery thereof including any expenses whatsoever arising from the exercise of such lien." *Id.* The charter party additionally contained a choice of law provision stating that it "shall be construed and the relations between the parties determined in accordance with the laws of England." *Id.*

On or about June 23, 2020, Valero engaged in negotiations with GP Global to transport the cargo and requested and received several documents related to the vessel, including the charter party. JSF ¶ 6. Valero

provided GP Global documentation instructions, which instructed GP Global to include certain terms on the bills of lading, to require quality/quantity assurance documentation, and to send all documents, including the bills of lading, to Valero immediately upon loading. PSUF ¶ 18. On or about July 7, 2020, per Valero's request, Koch Refining International PTE Ltd., Co. ("Koch"), the seller of the cargo, provided specific portions of the charter party to Valero, including the provisions on discharge options and freight charges. JSF ¶ 7. These provisions included "Freight and Payment Details," which set forth Milos' wiring instructions for payment. PSUF ¶ 21. On or about July 14, 2020, Valero purchased the cargo from Koch on CIF/CFR terms.[2] JSF ¶ 8. Milos was not a party to the purchase/sale contract between Milos and Koch or any other contract for the purchase and sale of the cargo at any time. *Id.* ¶ 9. Milos does not have an extensive history of delivering shipments of fuel to Valero. *Id.* ¶ 33.

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2. "'C.I.F.' or ('Cost, Insurance and Freight') is a commonly used international commercial term meaning <that the seller delivers when the goods pass the ship's rail in the port of shipment. The seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer." *In re M/V Rickmers Genoa Litig.,* 662 F. Supp. 2d 56, 62 n.5 (S.D.N.Y. 2009). "Shipments designated 'CFR' require the seller to pay the costs and freight to transport the goods to the delivery port, but pass title and risk of loss to the buyer once the goods 'pass the ship's rail' at the port of shipment." *BP Oil Int'l, Ltd. v. Empresa Estatal Petroleos de Ecuador*, 332 F.3d 333, 338 (5th Cir. 2003).

On or about July 19 and July 20, 2020, the cargo was loaded on the vessel from the Vopak Banyan Terminal in Singapore. *Id.* ¶ 10. Two negotiable bills of lading were issued for the cargo. *Id.* ¶ 11. Bill of lading number 106859/1 was issued to the order of "BP Singapore LTE LTD or assigns." *Id.* ¶ 11.a. Bill of lading number 109456/1 was issued to the order of "Vitol Asia PTE LTD or assigns." *Id.* ¶ 11.b. Both bills of lading contained the following language: "Freight and all other conditions and expectations as per Chartered stated dated in FREIGHT PAYABLE AS PER CHARTER PARTY." *Id.* ¶ 12. Valero was listed as the notify party on both bills of lading. *Id.* ¶ 13. GP Global is listed as the shipper. PSUF ¶ 24.

On July 20, 2020, Valero requested that Koch ask the master of the vessel to advise on the estimated arrival times assuming the vessel traveled at various speeds. JSF ¶ 14. To the extent the vessel would not otherwise make the delivery window, Valero suggested that the vessel proceed at max speed on Koch's account. *Id.* On July 27, 2020, charterer GP Global instructed the master to start sailing at max speed. *Id.*

As early as July 21, 2020, Valero received non-negotiable copies of the bills of lading, which were sent to Valero by the appointed load port surveyor. PSUF ¶ 27. The copies were labeled "Non-Negotiable Copy," but were otherwise identical to the original bills of lading. *Id.*

B. Preparation for Discharge and Discharge of Cargo in California

On August 14, 2020, Valero sent discharge orders for the cargo, in which Valero arranged the discharge, designated itself as the receiver of the cargo, paid the load port inspector to ensure the quality and quantity of the cargo upon discharge, demanded the vessel notify Valero of any marine incident, advised of its right to appoint a Pollution and Safety Advisor to assist with petroleum discharge, advised of speed reduction rules, and referenced the demurrage rate. *Id.* ¶ 31.

When the vessel arrived in California, the original bills of lading were not available at the discharge port. JSF ¶ 15. Accordingly, neither Valero nor anyone associated with or acting on behalf of Valero presented the original bills of lading at the time the cargo was discharged. *Id.* Charterer GP Global issued a letter of indemnity to Milos directing that delivery was to be made to Valero in the absence of the original bills of lading. *Id.* ¶ 16. On August 18, 2020, Clean Products Tankers Alliance ("CPTA"), on behalf of Milos, sent an email to Valero, Koch, and others stating that "[t]he relevant charterparty provides that freight shall be paid immediately on completion of discharge. Please note that we require the payment of freight (and demurrage) to be made to us directly as the vessel owner." *Id.* ¶ 17.

On or about August 20 and August 21, 2020, the cargo was delivered to Valero at the Vopak Terminal in Wilmington, California. *Id.* ¶ 18. Milos released the

cargo at Vopak Terminal in accordance with charterer GP Global's letter of indemnity, which directed that delivery was to be made to Valero. *Id.* ¶ 19. Discharge operations commenced on August 20, 2020, and completed on August 21, 2020. *Id.* ¶ 20. Valero owned the cargo throughout the voyage and at the time of discharge. *Id.* ¶ 21. Valero is named as the consignee of the cargo and the notify party in the United States Department of Homeland Security Customs and Border Protection Inward Cargo declaration. *Id.* ¶ 22.

On August 24, 2020, Koch issued its invoice for the sale of the jet fuel, and Valero paid Koch in full for a total of $15,791,634.77 on or about August 27, 2020. DSUF ¶ 11. On August 26, 2020, in lieu of providing the original bills of lading at the time of discharge, Koch issued a letter of indemnity certifying that it had transferred title of the cargo to Valero, as required by the purchase/sale contract between Koch and Valero. JSF ¶ 24.

C. Events Following Discharge

Approximately one month after the cargo was delivered, Valero received the original bills of lading. *Id.* ¶ 23. Koch sent the originals from its offices in Singapore to Valero in San Antonio, Texas, on September 29, 2020, via FedEx, but Valero did not receive them until sometime in October 2020. *Id.* Valero did not sign or endorse either of the original bills of lading following receipt. *Id.* The reverse side of bill of lading number 106859/1 includes three handwritten and stamped statements with signatures of unknown persons. *Id.* ¶ 25. The first statement says

"Deliver to the Order of CA Indosuez (Switzerland) S.A." above the words "BP Singapore PTE Ltd." *Id.* The second says "deliver to the Order of Koch Refining International PTE LTD" above the words "Credit Agricole Corporate and Investment Bank Singapore Branch for and on behalf of CA Indosuez (Switzerland) S.A." *Id.* The third says "Endorse/Deliver to the Order of Valero Marketing and Supply Company" above the words "For Koch Refining International PTE LTD." *Id.* The reverse side of bill of lading number 109456/1 includes these three handwritten and stamped statements as well as a fourth statement, reading "Endorsed to the Order of BP Singapore PTE LTD" above an unknown signature and the words "Vitol Asia PTE Ltd." *Id.* ¶ 26.

Milos has not been paid freight and related charges incurred in connection with the voyage, totaling $1,054,456.74. *Id.* ¶ 29. This comprises freight charges in the amount Of $853,125.00, demurrage in the amount of $186,282.72, and speed up charges in the amount of $15,049.02. *Id.* At no point did Valero commit to Milos orally or in writing that freight charges would be for Valero's account.[3] *Id.* ¶ 30. Valero accepted delivery of the cargo without confirming that freight and related charges had been paid to Milos. *Id.* ¶ 31. Following the delivery of the cargo, Valero has refused to comply with Milos' demands for payment under the bills of lading. *Id.* ¶ 32.

In the time since the delivery of the cargo, charterer GP Global has experienced financial difficulties and

3. The parties note that this stipulation is not intended to resolve the issue of whether Valero "accepted" the freight charges by virtue of accepting the delivery of the cargo. *Id.* ¶ 30.

decided to commence a voluntary debt restructuring process. *Id.* ¶ 34. On or around September 17, 2020, Milos was provided with notice of this process. *Id.* Milos submitted a proof of claim relating to the charter party for this voyage as part of the voluntary restructuring but has not continued to assert its claim in that process. *Id.*

III. LEGAL STANDARD

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each claim upon which the moving party seeks judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

If the moving party meets its initial burden, the opposing party must then set out specific facts showing a genuine issue for trial in order to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *see* Fed. R. Civ. P. 56(c), (e). The nonmoving party must not simply rely on the pleadings and must do more than make "conclusory allegations [in] an affidavit." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990); *see Celotex*, 477 U.S. at 324. Summary judgment must be granted for the moving party if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S.

at 322; *see Abramson v. Am. Pac. Corp.,* 114 F.3d 898, 902 (9th Cir. 1997).

In light of the evidence presented by the nonmoving party, along with any undisputed facts, the Court must decide whether the moving party is entitled to judgment as a matter of law. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626,631 & n.3 (9th Cir. 1987). When deciding a motion for summary judgment, "the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986) (citation omitted); *Valley Nat'l Bank of Ariz. v. A.E. Rouse & Co.*, 121 F.3d 1332, 1335 (9th Cir. 1997). Summary judgment for the moving party is proper when a rational trier of fact would not be able to find for the nonmoving party on the claims at issue. *See Matsushita,* 475 U.S. at 587.

IV. DISCUSSION

Plaintiff sets forth three grounds on which it contends defendant is liable for freight and related charges incurred by plaintiff. First, plaintiff contends that defendant consented to be bound by the bills of lading, which incorporate the charter party, and therefore is subject to the charter party's terms. The parties appear to agree that if defendant is subject to the charter party's terms, it is liable for freight and related charges. Second, plaintiff argues that defendant is bound by the English choice of law clause in the charter party, and, under applicable English law, defendant is liable under the charter party.

Finally, plaintiff argues that defendant assumed an implied obligation to pay freight when it accepted the cargo. The Court addresses each of these arguments in turn.

A. Express Contractual Obligation to Pay Freight and Related Charges

Plaintiff argues that defendant has an express contractual obligation to pay freight because it is bound by the bills of lading and the incorporated charter party. Dkt. 40 at 19. Defendant counters that plaintiff's claim fails because defendant was not a party to the charter party, the contract on which plaintiff sues, and did not otherwise consent to be bound by the terms of the bills of lading or the charter party. Dkt. 39 at 8-9. Accordingly, defendant submits that it cannot be held liable for any charges due to plaintiff under the charter party between plaintiff and its counterparty, GP Global. *Id.* Defendant further contends that it's being listed as the notify party on the bills of lading establishes, at most, that it is a third-party beneficiary of the bills of lading and does not impose obligations on defendant. *Id.* The parties appear to agree that, if the terms of the charter party bind defendant, defendant is liable for freight and related charges.

"[A] party is not bound to the terms of a bill of lading unless the party consents to be bound." *In re M/V Rickmers Genoa Litig.*, 622 F. Supp. 2d 56, 71 (S.D.N.Y. 2009) *aff'd sub nom. Chem One, Ltd. v. M/V Rickmers Genoa*, 502 Fed. App'x 66 (2d. Cir. 2012). "Although intended third-party beneficiaries may enforce contract

terms in their favor, the mere fact that a party is a beneficiary does not create contractual obligations for the beneficiary." *Dynamic Worldwide Logistics*, 77 F. Supp. 3d 364, 374 (S.D.N.Y. 2015). "Contractual obligations cannot be imposed on an intended beneficiary absent a showing that the third party manifested acceptance to be bound or the existence of an agency relationship with one of the contracting parties." *Id.* Courts have found consent to be bound where a non-party files suit under the bill of lading and where there is a course of conduct demonstrating intent to be bound. *Ingram Barge Co. v. Zen-Noh Grain Corp.*, 3 F.4th 275, 279 (6th Cir. 2021). Courts have also found consent to be bound where the non-party presents the bill of lading and accepts the cargo under it. *See Zim Am. Integrated Shipping Servs. Co. v. Sportswear Group*, 2021 WL 5450117, at *5 (S.D.N.Y. Nov. 18, 2021) ("A consignee can also become a party to a negotiable bill of lading and thereby assume obligations under it by presenting the negotiable bill of lading to the carrier and accepting the goods under it.").

It is undisputed that defendant has not sued under the bills of lading and that the parties do not have a longstanding course of conduct establishing defendant's consent to be bound by the bills of lading. The parties' dispute centers on whether defendant's conduct in accepting the cargo and directing the voyage is sufficient to establish its consent to be bound.

Plaintiff contends that defendant consented to be bound to the bills of lading through its acceptance of the cargo. *Id.* at 20. In support of this contention, plaintiff

cites *Pacific Coast Fruit Dist v. Pennsylvania R.R. Co.*, in which the Ninth Circuit found that a consignee "brought itself into the contract of affreightment and accepted and acquiesced in the status of[] consignee" when it "took over control and direction of the shipment." 217 F.2d 273, 275 (9th Cir. 1954). Plaintiff additionally points out that defendant requested and received the terms of the charter party before the cargo departed Singapore and requested and received copies of the bills of lading immediately after the vessel's departure. *Id.* at 21-22. Furthermore, plaintiff argues, defendant's discharge orders specifically reference the agreed demurrage rate. *Id.* at 22. All of this information, according to plaintiff, demonstrates that defendant knew and contemplated its freight obligations, as well as the existence of plaintiff's lien on the cargo for any unpaid freight. *Id.*

In further support of its contention that defendant's course of conduct demonstrated consent to be bound by the bills of lading and charter party, plaintiff points to the numerous steps defendant took to facilitate the transport and discharge of the cargo. *Id.* at 21-23. These include vetting and approving the vessel, retaining title of the cargo, arranging for the vessel to increase its speed, organizing discharge operations, and receiving the cargo. *Id.* Plaintiff additionally points out that the original bills of lading ultimately indicated that defendant was the final endorsee. *Id.* at 23.

Defendant responds that plaintiff is misconstruing *Pacific Coast* and that exercise of control over the cargo is insufficient to establish consent to be bound by the

bills of lading. Dkt. 46 at 12-15. Specifically, defendant points out that, in *Pacific Coast,* consignee Pacific Coast, "continued to direct the further shipment of the [goods] by rail" and contends that "it was Pacific Coast's active involvement in directing . . . further carriage of the cargo . . . that justified Pacific Coast's liability for the railroad's freight charges." *Id.* at 14. This case is distinct, defendant argues, because, here, defendant did not continue to direct further shipment of the cargo. *Id.* at 15.

Defendant further asserts that its conduct in its dealing with plaintiff regarding the voyage at issue consistently demonstrated its belief that it was not liable for freight. Dkt. 39 at 13. Specifically, defendant points to communications from defendant to plaintiff's counsel stating that "Valero is not responsible [because it was] not charterer of th[e] vessel." *Id.* Additionally, defendant points out that the purchase/sale contract between it and Valero included CFR/CIF terms, which expressly required Koch to deal with issues related to the shipment of the fuel from Singapore. *Id.*

Finally, defendant contends that a consignee may become a party to a negotiable bill of lading and assume obligations under it by accepting the goods only if it presents the negotiable bill of lading to the carrier upon discharge. Dkt. 39 at 14. Because it is undisputed that defendant did not present the bills of lading at the time the cargo was discharged, defendant asserts that it cannot be bound. *Id.* at 14. Thus, defendant argues, the bills of lading "were totally immaterial to Valero' s receipt of its purchased fuel." *Id.*

Appendix B

Having carefully considered the parties' arguments, the Court concludes that, when viewed in the light most favorable to defendant, the evidence supports a reasonable finding that defendant is bound by the bills of lading.

As an initial matter, defendant's interpretation of *Pacific Coast* is overly narrow. In finding the consignee liable for freight, the *Pacific Coast* court stated as follows:

> There is no doubt that the mere designation of a party as consignee in a billof-lading, without more, is insufficient to entail liability for the payment of freight charges. Other attending circumstances or factors, such as receipt and acceptance of the shipment *or* exercise or control over future movements, are necessary to create liability for the payment of the charges. In this case, appellant not only was designated as consignee by the shipper, but, additionally and concurrently, acting in its status of consignee, it took over control and direction of the shipment and made successive reconsignments thereof. Thus it brought itself into the contract of affreightment and accepted and acquiesced in the status of both consignee and consignor. *In either or both capacities, it became liable for the charges.*

217 F.2d at 275 (emphasis added).

Contrary to defendant's interpretation, this language indicates that receipt and acceptance of the shipment need

not be coupled with reconsignment to bind a consignee to the bills of lading. Rather, receipt and acceptance on the one hand and control of further movements on the other are separate factors that may be considered when determining whether the consignee is bound. Indeed, the *Pacific Coast* court clarified that Pacific Coast could be held liable *either* through its conduct as consignee (i.e., receiving and accepting the cargo) or through its conduct as consignor (i.e., directing further shipments). *Id.* The court went on to explain that "the assertion by [Pacific Coast] of unqualified and unequivocal dominion and control of the shipments, in successively diverting them, is equivalent to acceptance and actual receipt of the goods for the purpose of determining liability for freight charges." *Id.* In other words, the court viewed diversion of the cargo under the circumstances as equally indicative of liability for freight as actual receipt and acceptance of the cargo. Nowhere does *Pacific Coast* state that one must both receive cargo and direct further shipment in order to bring itself into the contract.

As *Pacific Coast* explains, courts must consider the "attending circumstances or factors" to determine whether a non-party, through its conduct has bound itself to a bill of lading. *Id.* It appears to the Court that presentation of the original bill of lading is only one such factor to be considered and that defendant overstates the import of formal presentation. It is true that courts, in determining that a consignee's conduct amounts to consent to be bound, tend to reference acceptance of the cargo and presentation of the bill of lading together. *See, e.g., Zim Am. Integrated Shipping,* 2021 WL 5450117,

at *5 (explaining that a consignee becomes a party to a negotiable bill of lading "by presenting the negotiable bill of lading to the carrier and accepting the goods under it") *Ingram Barge,* 3 F.4th at 281 (White, J. dissenting) ("[I]f [bill of lading] purports to bind the consignee to its terms upon acceptance of the goods under it, those who opt to become a party to the transaction by accepting the goods and presenting the bill are bound by its terms."). But, typically, acceptance of the cargo and presentation of the bills go hand-in hand because a consignee normally must present the negotiable bill of lading in order to take ownership of the cargo. *See Allied Chem. Int'l Corp. v. Companhia de Navegacao Lloyd Brasileiro,* 775 F.2d 476,481 (2d Cir. 1985) ("Absent a valid agreement to the contrary, the carrier . . . is responsible for releasing the cargo only to the party who presents the original bill of lading.").

The Court does not read these cases to suggest that formal presentation of the bills of lading is always required to demonstrate consent to be bound. Rather, it is one of numerous factors that may be considered. *See Ingram Barge*, 3 F.4th at 282 (White, J. dissenting) (finding that "presentation of the bills and acceptance of the goods is not the only evidence of consent to be bound that can be found in the record" and looking to consignee's partial payment of demurrage and failure to resell or reject the cargo if it did not agree to the terms, as further evidence of consent); *OOCL (USA) Inc. v. Transco Shipping Corp.*, 2015 WL 9460565, at *4-5 (S.D.N.Y. Dec. 23, 2015) (considering whether defendant's conduct established that it was on notice of the bill of lading terms when determining

consent to be bound); *Pac. Coast*, 217 F.2d at 275 (looking to defendant's "unqualified and unequivocal dominion and control of the shipments").

Here, defendant vetted the vessel and requested and received from GP Global numerous documents related to the vessel, including the charter party, which contained provisions on freight charges. Defendant negotiated with GP Global regarding the terms of the voyage and instructed GP Global to include certain terms in the bills of lading, to require quality/quantity assurance documentation, and to send all documents, including the bills of lading, to defendant immediately upon loading. Defendant received copies of the bills of lading immediately after the vessel departed Singapore. Once the vessel was in transit, defendant organized discharge operations in Los Angeles and provided discharge orders to the vessel, which referenced the demurrage rate. Upon arrival, defendant received and accepted the cargo, which it had owned throughout the voyage and upon discharge. It did so pursuant to a letter of indemnity because the charter party instructed that delivery be made pursuant to a letter of indemnity in the event that the original bills of lading were not available upon discharge. And the original bills of lading were endorsed to defendant, confirming once again that it was the intended recipient of the cargo.

Thus, the evidence unequivocally establishes defendant's "acceptance and actual receipt of the goods." *Pac. Coast.*, 217 F.2d at 275. Delivery of the cargo was made pursuant to defendant's own instructions and pursuant to a letter of indemnity issued per the terms of the charter

party. 'The evidence further establishes that defendant was on notice of the relevant terms in the charter party and bills of lading and was closely involved in the entire shipping transaction, including determination of what terms were to be included in the bills of lading. The record does not indicate that defendant objected to the terms in the charter party or bills of lading or that defendant would not have presented the bills of lading had they been available upon discharge. As plaintiff persuasively argues, this is not a case of misdelivery where, because the bills of lading were not available upon discharge, the cargo was delivered to an unsuspecting stranger who is now saddled with freight charges. Rather, the cargo was indisputably delivered to the rightful owner and ultimate endorsee on the bills of lading. It strikes the Court as inequitable and unreasonable under the circumstances to find defendant not bound simply because the original bills of lading did not arrive in time for discharge.

Defendant points to its communications with plaintiff's counsel denying liability for freight well after its acceptance of the cargo as evidence that it did not consent to be bound. But if denying liability for freight after the fact were sufficient to demonstrate that a party is not bound, then defendants in actions for freight would never be held liable. Defendant additionally argues that its purchase/sale contract with Koch states that Koch will bear shipping expenses and that this is evidence that defendant did not consent to be bound by the bills of lading. The Court disagrees. The purchase/sale contract may serve as a ground on which defendant can hold Koch liable for freight, but it is not evidence that defendant rejected the terms of the bills of lading.

Accordingly, it appears to the Court that the undisputed evidence supports a reasonable finding that defendant consented to be bound by the bills of lading and its incorporation of the charter party.

At oral argument and in its supplemental brief, defendant argued for the first time that *Pacific Coast* is distinguishable because the bill of lading in that case stated that the consignee and consignor would be liable for freight while, in this case, neither the bill of lading nor the charter party expressly provide that the consignee or the owner must pay freight charges. Dkt. 49 at 3 n.4. The Court's conclusion that defendant, through its conduct, consented to be bound by the bills of lading, depends on defendant's conduct and not on the express terms of the bill of lading.

Defendant also asserts it is not liable pursuant to the terms of the bills of lading. When asked at the hearing on the motions if there were any circumstances under which defendant would have been liable for freight charges, counsel for defendant stated that it would have been liable if defendant had presented the bills of lading upon discharge or if it had sued under the bills of lading. Regardless, the Court is not persuaded by defendant's argument that it is not liable for freight charges pursuant to the terms of the bills of lading.

The bills of lading state that freight is payable as per charter party. The charter party in turn states that freight must be paid "immediately upon completion of discharge as per owner['s] telexed/emailed invoice." PSUF

¶ 15. On August 18, 2020, CPTA, on behalf of Milos, sent an email to Valero, Koch, and others stating that "[t]he relevant charterparty provides that freight shall be paid immediately on completion of discharge. Please note that we require the payment of freight (and demurrage) to be made to us directly as the vessel owner." *Id.* ¶ 17. Thus, the charter party appears to grant the owner authority to look to another party for payment of the freight charges as set forth in the owner's telexed or emailed invoice. As provided for in the charter party, Milos looked to defendant, among others, to pay for freight in its August 18, 2020 email. The fact that the charter party here does not expressly identify a party who must pay freight does not mean that defendant cannot be held liable for freight under its terms. Because defendant, through its conduct, demonstrated consent to be bound by the bills of lading, it is subject to these terms and is liable to pay the freight charges in question.[4]

B. Obligation Under English Law

Plaintiff next argues that, because defendant consented to the terms of the charter party, it is subject to the choice of law clause providing that English law shall govern all disputes. Dkt. 40 at 23. According to plaintiff, under English law, if a charter party is incorporated into

4. In its supplemental brief, defendant briefly contends that *Pacific Coast* is inapplicable because it involved a common carrier and not a private carrier. As set forth in detail below with respect to the implied obligation to pay freight, defendant has failed to explain why this distinction is relevant, and the Court is not persuaded that *Pacific Coast* should be limited in this way.

the bill of lading, the charter party terms are binding on the ultimate consignee who becomes the lawful holder of the bill of lading. *Id.* at 24. To be a "lawful holder" of a bill of lading, one need not have physical possession of it at the time of discharge. *Id.* at 24. Rather, one becomes a lawful holder of a bill of lading by "becom[ing] the holder of the bill in good faith." *Id.* (quoting UK COGSA 1992, Sec. 5(2)). Here, plaintiff argues, defendant owned the cargo throughout the voyage and took delivery of the cargo. Accordingly, the bills of lading were endorsed to defendant. Thus, plaintiff contends, defendant is the lawful holder of the bills of lading and is therefore bound by the charter party. *Id.* at 25.

Having already determined that defendant consented to be bound by the bills of lading and is otherwise liable for freight pursuant to an implied obligation, the Court need not determine whether defendant is also bound to the bills of lading under English law.

C. Implied Obligation to Pay Freight and Related Charges

Finally, plaintiff's motion for summary judgment asserts that, in the event the bills of lading do not expressly obligate defendant to pay freight, defendant's acceptance of the cargo gave rise to an implied obligation to pay freight. Dkt. 40 at 15. According to plaintiff, "[t]he consignee's obligation to pay freight . . . is implied by accepting the goods." *Id.* at 16. The fact that defendant is not listed as a consignee on the bills of lading is of no import, plaintiff argues, because one becomes the consignee by accepting the shipment. *Id.* at 16.

Plaintiff primarily relies on *States Marine v. Seattle-First National Bank*, in which the carrier, States Marine, brought suit against the shipper and Seattle-First National Bank ("Seattle-First") to recover shipping charges incurred from two shipments of salmon from Alaska to Washington. 524 F.2d 245, 246 (9th Cir. 1975). Seattle-First held a security interest in the salmon and was listed as consignee on the bill of lading. *Id.* The district court denied recovery for shipping charges against Seattle-First, and States Marine appealed this portion of the judgment. *Id.* On appeal, States Marine argued that as the consignee on the bill of lading, Seattle-First was liable to pay freight charges because it accepted delivery of the goods when they arrived in Washington and exercised such exclusive control over the delivery that it established itself as the presumptive owner of the goods. *Id.* at 247. The Ninth Circuit rejected States Marine's argument that Seattle-First's conduct rendered it liable to pay freight but recognized that the consignee's liability for freight may arise pursuant to an implied contractual obligation when the consignee accepts the goods from the carrier. *Id.* at 248.

In so doing, the *States Marine* court explained that, while "it is well settled that the shipper rather than the consignee is liable to the carrier for freight charges," *id.* (citing *Louisville & N.R. Co. v. Central Iron & Coal Co.*, 265 U.S. 59, 67 (1924), "when there is some binding obligation on the part of the consignee to pay freight charges[,] the courts will look beyond the shipper's primary responsibility." *States Marine,* 524 F.2d at 248. Such a binding obligation may take the form of an express

contractual obligation or, where the bills of lading impose no liability on the consignee, an implied contractual obligation. *Id.* The court went on to explain that "[t]he most obvious indication of a consignee's implied agreement to pay for freight charges occurs when he accepts the goods himself, indicating that they are his own and not the shipper's." *Id.* (citing *Pittsburgh C.C. & St. Louis R.R. v. Fink*, 250 U.S. 577, 581 (1919) ('The weight of authority seems to be that the consignee is prima facie liable for the payment of the freight charges when he accepts the goods from the carrier.")). This liability may arise from actual acceptance or "presumptive ownership" based on the consignee's "exercise of dominion and control over the shipment." *States Marine,* 524 F.2d at 248. The *States Marine* court concluded that the record demonstrated that Seattle-First "was treated and acted at all times as a secured creditor, following standard commercial practices, and not as an owner of the goods," therefore, it was not subject to an implied obligation to pay freight. *Id.* at 249.

Plaintiff relies on *States Marine* to argue that, because defendant accepted the cargo upon discharge as the cargo's owner, it assumed an implied obligation to pay freight. Dkt. 40 at 17-18. According to plaintiff "Valero received the benefit of the carriage by taking the [c]argo in good order and condition," and "[i]t is simply inequitable that . . . [p]laintiff cannot recover its freight from the party who received the benefits of the carriage." *Id.* at 18.

In response, defendant argues that mere acceptance of cargo is insufficient to give rise to an obligation to

pay freight. Dkt. 46 at 5. Defendant contends that the case law cited by plaintiff is distinguishable because it involved straight, as opposed to negotiable, bills of lading. *Id.* Here, defendant points out, "the fuel was transported under negotiable bills, and freight rates were not assessed pursuant to legally posted and universally binding tariffs." *Id.*

It is undisputed that the relevant bills of lading were "negotiable." "A negotiable bill of lading is a document of title, while a non-negotiable [or 'straight'] bill functions more like a receipt." 22 Williston on Contracts § 59:10 (4th ed. 2020). A bill of lading is negotiable if it "runs to the order of a named consignee." *Id.* By contrast, a non-negotiable bill of lading states that the goods are to be delivered to a consignee. *Id.* Because a negotiable bill of lading is a document of title, one may transfer ownership of the cargo at issue to another by endorsing the negotiable bill of lading and delivering it to the new buyer. *Allied Chem.*, 775 F.2d at 481. Accordingly, the carrier may deliver the goods to the party in possession of the bill of lading – even if they are not the named consignee – without facing liability for misdelivery. *Id.* A non-negotiable bill of lading, on the other hand, is nontransferable, and delivery must be made to the named consignee. *Ingram Barge*, 3 F.4th at 281 (White, J., dissenting).

Defendant asserts that *States Marine* and numerous other cases that plaintiff cites carry no weight here because they involved non-negotiable bills of lading. Dkt. 46 at 9. The Court is not persuaded by this argument for several reasons. First, plaintiff does cite precedent applying

States Marine where negotiable bills of lading were at issue. *See A/S Dampskibsselkabet Torm v. Beaumont Oil Ltd.*, 927 F.2d 713 (2d Cir. 1991) (hereinafter, "*Beaumont*"). In *Beaumont,* a bank, Banque Paribas ("Paribas"), was granted a security interest in cargo purchased by Beaumont. *Id.* at 715. Beaumont contracted with the carrier to ship the cargo from Venezuela to New York pursuant to negotiable bills of lading. *Id.* ("The ship's master signed three bills of lading . . . issued to the 'order of . . . Paribas . . . notify Beaumont.'"). Due to the ship rerouting, the bills of lading were not available upon discharge, thus, the cargo was delivered pursuant to a letter of indemnity. *Id.* The carrier filed suit against both Beaumont and Paribas for freight charges, and the district court found that Paribas had an implied obligation to pay freight under *States Marine. Id.* at 716. On appeal, the Second Circuit reversed, applying *States Marine* and concluding that the evidence did not sufficiently establish dominion and control to support a finding of presumptive ownership and a resulting obligation to pay freight. *Id.* at 721. In reaching this conclusion, the *Beaumont* court plainly stated that they "must look to the *conduct* of Paribas to see whether a promise to pay the freight 'may be implied.'" *Id.* at 717 (citing *States Marine*, 524 F.2d at 248). The *Beaumont* court's recognition of an owner's implied obligation to pay freight and its application of *States Marine* clearly undermine defendant's argument that this obligation exclusively arises in cases involving non-negotiable bills of lading.

Additionally, defendant has not set forth any cogent rationale for distinguishing between negotiable and

non-negotiable bills of lading in this context. The fact that the obligation recognized in *States Marine* is an implied obligation, rather than an express obligation set forth in the bills of lading, suggests that the content of the bills of lading bears little importance in determining whether there is such an implied obligation. Indeed, the conduct of the cargo owner is the focal point of *States Marine* and its progeny. *See Beaumont*, 927 F.2d at 717, 719-20 (rejecting the argument that Paribas' being named on the bills of lading weighs in favor of its liability where its conduct did not evidence dominion and control).

Importantly, underlying the *States Marine* rule is the equitable principle that, by accepting the cargo, the owner benefits from its carriage and should thus be obliged to pay freight. *See States Marine*, 524 F.2d at 248 ("[T]he consignee becomes liable therefor when an obligation arises on his part from presumptive ownership, acceptance of goods and services rendered, *and the benefits conferred by the carrier for such charges*.") (emphasis added) (quoting *Arizona Feeds v. Southern Pacific Transp. Co.*, 21 Ariz. App. 346, 353 (1974)). It appears to the Court that this rationale is equally applicable to voyages governed by negotiable bills of lading as to those governed by non-negotiable bills of lading.

To the extent that defendant is arguing that it cannot be subject to any obligations because it was not a party to the bills of lading and did not present the bills of lading upon discharge so as to be bound by them, this argument is unavailing for several reasons. First, as explained above, the Court has concluded that defendant's conduct

was sufficient to bind itself to the bills of lading, despite defendant's failure to present the original bills of lading upon discharge. Second, the question of whether a party has consented to be bound by the bills of lading appears to the Court to be beside the point. As *States Marine* makes clear, the implied obligation is one that exists as a result of the parties' conduct, not under express terms in a contract to which the parties have agreed. *See* 524 F.2d at 245 ("Where . . . the bills of lading impose no liability [for freight] the courts must look beyond the express contract to the conduct of the consignee to ascertain whether a promise by him to pay the freight charges may be implied."). Accordingly, it is defendant's conduct, not the express contract, that must form the basis of the Court's inquiry.

Defendant additionally argues that plaintiff "fails to account for the historical context" of a railroad case on which *States Marine* relies, *Pittsburgh C.C. & St. Louis R.R. v. Fink*, 250 U.S. 577 (1919), and several other cases preceding *States Marine*, in which the consignee was found liable for payment of tariffs after it only paid the carrier a portion of the tariff rate. Dkt. 46 10. These cases, defendant argues, "w[ere] primarily concerned with ensuring that tariffs (i.e., standardized shipping rates for common carriers) publicly filed in accordance with the Interstate Commerce Act were evenly enforced, so as to avoid the potential for rate discrimination." *Id.* at 11. According to defendant, because this case does not involve partial payment of a standardized shipping rate or rate discrimination, there is no reason to disturb the presumption that primary liability for freight charges lies with the shipper/consignor. *Id.* at 12.

Appendix B

At oral argument and in its supplemental brief, defendant further argued that *States Marine* exclusively applies to common carriers subject to standardized tariffs and therefore is inapposite to this case, which involved a private carrier. *See generally* dkt. 49.

The Court is not persuaded by these arguments. While *States Marine* may have derived its holding from cases dealing with claims involving tariffs and issues of rate discrimination, the Court is not persuaded that this means that *States Marine* has no bearing in cases not involving tariffs. *States Marine*, as described above, is based on the principle that owners who benefit from the carriage of their cargo should be obligated to pay freight for such carriage. 524 F.2d at 248. Furthermore, defendant has failed to show that the distinction between common and private carriage is relevant to the determination of an implied obligation to pay freight charges. In its supplemental brief, defendant does not set forth any authority stating that the *States Marine* holding does not apply to private carriers or articulating a rationale for distinguishing between private and common carriers in this context. Defendant bases its argument almost entirely on a footnote in *States Marine*, which states as follows:

> Virtually all of the cases on a consignee's liability for freight charges involve railroads operating under the Commerce Act and tariffs filed thereunder. Since the rules established in those cases depend on both the common law and statutory authority derived from common law, the rules established in the railroad cases may

> properly be applied to ocean shippers operating under tariffs filed pursuant to the Shipping Act.

States Marine, 524 F.2d at 248 n.3. According to defendant, this footnote precludes application of *States Marine* to cases not involving common carriers shipping goods subject to publicly filed tariffs. Dkt. 49 at 2.

The Court does not read the *States Marine* footnote to stand for such a sweeping rule. In the footnote, the Ninth Circuit considered whether the freight obligation rules established in railroad cases *may* be applied to ocean shippers operating under tariffs filed pursuant to the Shipping Act, notwithstanding the fact that the railroad cases involved railroads operating under the Interstate Commerce Act. The *States Marine* court reasoned that it could apply the freight obligation rules to ocean shippers because those rules are based on common law principles. *See id.* (explaining that the freight obligation rules "depend on both the common law and statutory authority derived from common law"). Thus, those rules may be applied to ocean shippers operating under Shipping Act tariffs. And the fact that the freight obligation rules are derived from common law principles, rather than rules exclusively established by the Interstate Commerce Act, actually supports the conclusion that these rules may be applied to carriers not operating under tariffs set by statute. In short, the *States Marine* footnote plainly does not have the restrictive effect urged by defendant.

Furthermore, the discussion in *States Marine* of a consignee's implied obligation to pay freight does not

attach any significance to the fact that the shipper in that case was a common carrier and not a private carrier. As explained above, the *States Marine* analysis focused on the parties' conduct and concluded that a party's acceptance of the goods or asserting dominion or control over the goods may give rise to an implied obligation to pay for shipping costs. *See* 524 F.2d at 248 ("The most obvious indication of a consignee's implied agreement to pay for freight charges occurs when he accepts the goods himself, indicating that they are his own and not the shipper's."); *id.* at 248-249 (analyzing whether Seattle-First accepted the goods or "otherwise exercised dominion or control necessary to imply a contractual obligation to pay the freight charges"). States Marine's status as a common carrier does not factor into this analysis, and defendant has failed to set forth any reason why *States Marine* cannot support the same result in a case of private carriage. Further, none of the cases applying *States Marine* indicate that it only applies to cases involving common carriers, and, in fact, courts have applied *States Marine* to determine whether a consignee's conduct gave rise to an implied obligation to pay freight charges in cases involving private carriers. *See, e.g., Beaumont*, 927 F.2d 713.

Accordingly, the question before the Court is whether, when viewing the facts in the light most favorable to defendant, the evidence reasonably demonstrates that defendant accepted the goods, "indicating that they are [its] own and not the shipper's," so as to create an implied obligation to pay freight. *States Marine*, 524 F.2d at 248. Here, the undisputed facts in the record clearly demonstrate that defendant accepted and took ownership

of the cargo. It is undisputed that defendant owned the cargo throughout the voyage and at the time of discharge. The cargo was discharged to defendant pursuant to the letter of indemnity, and defendant arranged the discharge and identified itself as the recipient of the cargo. As the recipient and owner of the cargo, defendant benefitted from its carriage, and, under *States Marine*, is subject to an implied obligation to pay the freight charges in question.

The Court thus concludes that defendant is liable for payment of the freight and related charges, even if it is not liable under the express terms of the bills of lading.

V. CONCLUSION

In accordance with the foregoing, the Court **GRANTS** plaintiff's motion for summary judgment and **DENIES** defendant's motion for summary judgment.

IT IS SO ORDERED.

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Initials of Preparer	CMJ

APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, FILED JUNE 28, 2023

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:22-cv-01545-CAS (Ex)

MILOS PRODUCT TANKER CORPORATION,

Plaintiff,

vs.

VALERO MARKETING AND SUPPLY COMPANY AND DOES 1 TO 10,

Defendants.

JUDGMENT

Hearing
Date: May 22, 2023
Time: 10:00 a.m.
Place: First Street U.S. Courthouse, 8D
Judge: Hon. Christina A. Snyder

Plaintiff Milos Product Tanker Corporation and Defendant Valero Marketing and Supply Company filed cross motions for summary judgment, which came on for hearing on May 22, 2023. The Court grants summary judgment in favor of Plaintiff and against Defendant. Accordingly, judgment is hereby entered in

favor of Plaintiff and against Defendant in the amount of $1,054,456.74.

IT IS SO ORDERED

Dated: June 28, 2023 /s/ Christina A. Snyder
The Honorable Christina A. Snyder
United States District Judge

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED NOVEMBER 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-55655
D.C. No. 2:22-cv-01545-CAS-E
Central District of California, Los Angeles

MILOS PRODUCT TANKER CORPORATION,

Plaintiff-Appellee,

v.

VALERO MARKETING AND SUPPLY COMPANY,

Defendant-Appellant,

and

DOES, 1 to 10,

Defendant.

ORDER

Before: N.R. SMITH and MENDOZA, Circuit Judges, and HINDERAKER,* District Judge.

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* The Honorable John Charles Hinderaker, United States District Judge for the District of Arizona, sitting by designation.

Appendix D

Judge Mendoza votes to deny the petition for rehearing en banc. Judge N.R. Smith and Judge Hinderaker recommend denial of the petition for rehearing en banc.

The full court was advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is DENIED.