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Hellmann Sues To End \$5.6M Pact With Struggling Airline

By **Nathan Hale**

Law360, Miami (November 18, 2013, 6:13 PM ET) -- Hellmann Worldwide Logistics Inc. filed suit in a Florida court on Thursday against Evergreen International Airlines Inc., seeking damages and cancellation of a \$5.6 million air cargo contract on the belief that Evergreen can't complete its obligations.

The third-party logistics provider claims that, under the contract, the Oregon-based airline owes the company refunds for four flights Evergreen canceled, according to the complaint. Hellmann seeks to void the agreement because of Evergreen's alleged breaches and Hellmann's belief that Evergreen is not financially sound or able to satisfy the terms of the deal, the complaint said.

Evergreen also is accused of fraud for making false assertions to get Hellmann to enter into the contract, even though the airline was experiencing financial difficulties at the time of the negotiations.

"It is clear ... that during the negotiations of the agreement, Evergreen was not, in fact, financially sound or able to provide the services it promised it was capable of providing under the agreement, despite its assertions to the contrary," Hellmann says.

China-based Hellmann Worldwide Logistics (China) Ltd., which is listed as a co-plaintiff, entered into the agreement with Evergreen in September to fly cargo to the U.S., where Miami-based Hellman Worldwide Logistics Inc. would receive it,

according to the complaint.

Under the terms of the contract, Hellmann paid Evergreen \$2.1 million on Sept. 10 as prepayment for 14 flights between Sept. 12 and Dec. 19, and is scheduled to make additional payments of \$1.65 million on Dec. 19 and \$1.8 million on March 19, 2014, for future scheduled flights.

Evergreen told Hellmann that the only way it could secure the agreed-upon prices was if Hellmann prepaid the airline for them, the plaintiff says.

"Due to this requirement, [Hellmann] required that the agreement include a provision that a 100 percent refund would be remitted in the event a flight was canceled for any reason, including the financial condition of Evergreen," Hellmann says.

Evergreen did not provide an airplane for a scheduled Oct. 17 flight, giving Hellmann less than a day's advance notice and putting the company in a desperate situation because its cargo had already been cleared by customs, the company says.

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The airline subsequently canceled flights scheduled for Oct. 24, Oct. 31 and Nov. 7, and has not refunded Hellmann for any of them, according to the complaint.

Hellmann says that it believes Evergreen has significant debt and is in danger of cutting back if not completely shutting down its services.

The complaint cites a statement posted Nov. 8 on Evergreen's website in which CEO Delford M. Smith acknowledged that the company had been negatively affected by a decrease in military spending and other economic setbacks, but dismissed published rumors that it had decided to cease operations.

"Evergreen remains committed to continuing to address the

current business environment with its customers," Smith says in the statement.

Evergreen did not respond to a request for further comment Monday.

Hellmann is seeking refund of its payments for the flights that were canceled as well as damages and interest for additional costs it incurred as a result of Evergreen's alleged breaches. It is also asking the court to grant its exit from the remainder of the contract, including Hellmann's scheduled, upcoming payments to Evergreen.

Hellman is represented by Andrew R. Spector and Robert M. Borak of Spector Rubin PA. Counsel information for Evergreen was not immediately available.

The case is Hellman Worldwide Logistics Inc. et al. v. Evergreen International Airlines Inc., case number 2013-35675-CA-01, in the Circuit Court for the Eleventh Judicial Circuit of Florida.