

**BEFORE THE
FEDERAL MARITIME COMMISSION**

OJ COMMERCE, LLC,)	
)	
<i>Complainant,</i>)	
)	
v.)	
)	
HAMBURG SÜDAMERIKANISCHE)	
DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S)	
& CO. KG)	
)	DOCKET NO. 21-11
and)	
)	
HAMBURG SUD NORTH AMERICA, INC.)	
)	
<i>Respondents.</i>)	
)	

**PARTIAL ANSWER OF RESPONDENT HAMBURG SÜDAMERIKANISCHE
DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S & CO. KG**

Respondent Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & CO. KG (“HSDG”), through Maersk A/S¹, hereby submits its partial answer to the complaint in this proceeding.²

1. Complainant OJC is a limited liability company organized and existing under the law of the State of Delaware, with a principal place of business at 3076 N. Commerce Parkway, Miramar, Florida 33025.

¹ HSDG no longer exists. HSDG was merged into its former parent company Maersk A/S on November 1, 2021. On that same date, respondent Hamburg Sud North America (“Hamburg NA”) became a wholly-owned indirect subsidiary of Maersk A/S. In December 2021, Hamburg NA’s immediate parent company (Columbus Line Reederei GmbH) transferred the shares of Hamburg NA to Maersk Agency USA Inc. On January 1, 2022, Hamburg NA merged into Maersk Agency USA. Maersk Agency USA is a wholly-owned subsidiary of Maersk A/S and acts as the U.S. general agent of Maersk A/S.

² Hamburg NA has filed a motion to dismiss the complaint in its entirety, and hence has not answered the complaint. Hamburg NA will file an answer to the complaint if and to the extent its motion to dismiss is denied. HSDG has filed a motion to dismiss certain portions of the complaint. Accordingly, it has not answered the portions of the complaint which are the subject of that motion. HSDG will file an answer to those portions of the complaint it has sought to dismiss if and to the extent its motion to dismiss is denied.

HSDG lacks sufficient information to admit or deny.

2. HAMBURG SUDAMERIKANISCHE DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S & CO KG ("Hamburg Germany") is a corporation organized and existing under the laws of Germany, with a principal place of business at Willy-Brandt-Str. 59-65, 20457 Hamburg, Germany. Hamburg Germany is and was at all times relevant to this Complaint a common carrier within the meaning of the Shipping Act, 46 U.S.C. § 40102(7), subject to regulation by the Federal Maritime Commission ("FMC").

The first sentence is denied; see footnote #1 above. HSDG admits that it was a common carrier within the meaning of 46 U.S.C. §40102(7) through October 31, 2021, but denies the remainder of the second sentence.

3. HAMBURG SUD NORTH AMERICA, INC. ("Hamburg NA") is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 465 South Street F 3 STE 300, Morristown, New Jersey 07960, having its registered agent as THE CORPORATION TRUST COMPANY, located at CORPORATION TRUST CENTER 1209 ORANGE ST, WILMINGTON, DE 19801. Hamburg NA is and was at all times relevant to this Complaint a marine terminal operator ("MTO") within the meaning of the Shipping Act, 46 U.S.C. § 40102(15), subject to regulation by the FMC.

See footnote #2 above.

4. The FMC has subject-matter jurisdiction over this Complaint pursuant to the Shipping Act of 1984.

Denied.

5. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. OJC is seeking reparations for injuries caused to it by Respondents due to their violations of 46 U.S.C. § 41102(c).

The first sentence of paragraph 5 states legal conclusions which require no response. The second sentence requires no response as the complaint speaks for itself.

6. The FMC has personal jurisdiction over Hamburg Germany as a "common carrier" as defined in 46 U.S.C. § 40102(7).

HSDG repeats its response to paragraph 2 of the complaint, which is incorporated herein by reference.

7. The FMC has personal jurisdiction over Hamburg NA as a "MTO" as defined in 46 U.S.C. § 40102(15).

See footnote #2.

8. Respondents' actions alleged herein constitute failures by each Respondent to establish,

observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the property of OJC, in violation of 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5.

Denied.

9. On or about June 23, 2020, OJC entered into a service agreement with Respondents, for the shipment of goods by sea and delivery to warehouse facilities within the United States via truck, a copy of the agreement is hereby attached as Exhibit A. (the "Agreement").

HSDG admits that it entered in the Agreement with OJC. HSDG denies that Hamburg NA is a party to the Agreement. The terms of the Agreement speak for themselves.

10. The Agreement governed the parties' relationship between June 23, 2020 to May 31, 2021 (the "Active Term").

HSDG admits that the term of the Agreement ran from June 23, 2020 to May 31, 2021, but denies that the Agreement was the only document governing the parties' relationship during that period.

11. During the Active Term of the Agreement, Respondents wrongfully billed 13 containers a total of \$40,680.32 in demurrage fees, as follows:

Denied.

11.1. Container No. MRKU2875026. The container was discharged on February 1, 2021, the last free day on port was February 5, 2021, yet gate out was not until March 3, 2021. OJC was nevertheless wrongfully charged a total of \$7,540 in demurrage fees.

The first sentence is admitted. The second sentence is denied.

11.2. Container No, BEAU5182625. The container was discharged on February 2, 2021, the last free day on port was February 8, 2021, yet gate out was not until March 2, 2021. OJC was nevertheless wrongfully charged a total of \$6,280 in demurrage fees.

The first sentence is admitted. The second sentence is denied.

11.3. Container No. SEGU4327705. The container was discharged on January 27, 2021, the last free day on port was February 2, 2021, yet gate out was not until March 1, 2021. OJC was nonetheless wrongfully charged a total of \$7,855 in demurrage fees.

The first sentence is admitted. The second sentence is denied.

11.4. Container No. MSKU0595352. The container was discharged on May 22, 2021, yet OJC did not receive notice until May 25, 2021. Additionally, the container was subject to a VACIS

exam, but OJC did not receive such notice until June 1, 2021. Gate out was on June 7, 2021. Despite that, OJC was wrongfully charged a total of \$3,765 in demurrage fees.

Admit the container was discharged on May 22, 2021, but deny arrival notice was not sent until May 25. Admit the third sentence. Deny the fourth sentence.

11.5. Container No. SUDU8646980. The container was discharged on June 16, 2021. Hamburg NA failed to schedule a delivery order for the trucking company altogether resulting in a gate out date of July 8, 2021. Nevertheless, OJC was wrongfully charged a total of \$4,075 in demurrage fees.

Admit the first and second sentences. Deny the third sentence.

11.6. Container No. MRKU3142506. The container was discharged on June 23, 2021, But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 14, 2021 gate out date. Nonetheless, OJC was wrongfully charged a total of \$2,485 in demurrage fees.

Admit the container was discharged on June 23, 2021. Admit there was delay in providing a chassis for the container. Deny the remainder of this paragraph.

11.7. Container No. GCXU5721300. The container was discharged on June 23, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 14, 2021 gate out date. Nonetheless, OJC was wrongfully charged a total of \$2,750 in demurrage fees.

Admit the first sentence. Admit there was a delay in providing a chassis for the container, but deny the gate out date was July 14, 2021. Deny the third sentence.

11.8. Container No. MSKUI597679. The container was discharged on June 23, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 15, 2021 gate out date. OJC was nonetheless wrongfully charged a total of \$3,015 in demurrage fees.

Admit the first sentence. Admit there was a delay in providing a chassis for the container, but deny the gate out date was July 15, 2021. Deny the third sentence.

11.9. Container No. TLLU6852525. The container was discharged on June 23, 2021. OJC did not receive the arrival notice until June 24, 2021. Such a delay in arrival notice prevented OJC from making the proper arrangements for a timely pickup or pre-pull resulting in a July 1, 2021 gate out date. OJC was thereafter wrongfully charged a total of \$645 in demurrage fees.

Admit the first sentence. Deny the second sentence. Admit the gate out date was July 1, 2021, but deny the remainder of the third sentence. Deny the fourth sentence.

11.10. Container No. MRSU3300327. The container was discharged on June 25, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper

equipment to its truckers to do a pre-pull resulting in a July 13, 2021 gate out date. OJC was nonetheless wrongfully charged a total of \$742.22 in demurrage fees.

Admit the first and second sentences. Deny the third sentence.

11.11. Container No. SUDU6976489. The container was discharged on June 24, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 13, 2021 gate out date. OJC was nonetheless wrongfully charged a total of \$742.22 in demurrage fees.

Admit the first and second sentences. Deny the third sentence.

11.12. Container No. MSKU1228177. The container was discharged on June 23, 2021. But the prepull pickup process was delayed because Hamburg NA failed to arrange for a proper trucking company. Instead, it arranged for a trucking company that could not handle more than 3 containers per day, and this container was not one of those, resulting in a July 8, 2021 gate out date. OJC was nonetheless wrongfully charged a total of \$392.94 in demurrage fees.

Admit the first sentence. Deny the second, third and fourth sentences.

11.13. Container No. BMOU4268879. The container was discharged on July 1, 2021. But the prepull pickup process was delayed because Hamburg NA failed to provide the proper equipment to its truckers to do a pre-pull resulting in a July 14, 2021 gate out date. Again, OJC was wrongfully charged a total of \$392.94 in demurrage fees.

Admit the first and second sentences. Deny the third sentence.

12. Additionally, pursuant to the Agreement, Respondents agreed to a minimum volume commitment of 400 TEU, which is equivalent to 200 containers.

13. During the Active Term, OJC repeatedly provided adequate booking notice to schedule shipment of containers, pursuant to the Agreement, but Hamburg NA refused to schedule such shipments.

14. During the Active Term, Hamburg NA provided a total of 185 containers, which is 30 TEUs below the 400 TEU minimum commitment in the Agreement.

15. As a result of Respondent's wrongful conduct, on some occasions OJC was forced to retain alternate shipping carriers at significantly higher shipping rates per container.

16. Also as a result of Respondent's wrongful conduct, on some occasions OJC was unable to retain alternate shipping carriers at all, and incurred significant economic damages in excess of \$100,000, including but not limited to costs for warehouse facilities and manufacturers, as well as lost sales, cancellations of orders, customer appeasement expenses, and unutilized marketing expenses.

Paragraphs 12-16 are the subject of HSDG's motion to dismiss. See footnote #2 above, which is incorporated herein by reference.

17. Section 41102(c) of the Shipping Act (46 U.S.C. § 41102(c)) prohibits a common carrier or marine terminal operator from failing to "establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

Paragraph 17 requires no response, as the Shipping Act speaks for itself.

18. Respondent Hamburg Germany is an ocean common carrier as defined by the Shipping Act.

HSDG repeats its responses to paragraphs 2 and 6, which are incorporated herein by reference.

19. Respondent Hamburg NA is a marine terminal operator as defined by the Shipping Act.

See footnote #2, which is incorporated herein by reference.

20. Respondents' practices and regulations relating to the assessment of demurrage are directly related to receiving, handling, storing, or delivering property, are occurring on a normal, customary, and continuous basis, and are unjust and unreasonable.

Denied.

21. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges against Shipments Nos. 1-3 (B/L Nos. SSZ0849867, SSZ0845076, and S5Z0852138) that were subject to governmental holds for examination by Customs, and therefore, unavailable for pick-up.

Denied.

22. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges against Shipment No. 4 (B/L No. SSZ0853173) that was unavailable for pickup due to congestion-related delays at the Port.

Denied.

23. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by assessing demurrage charges that serve no incentivizing principle and do not promote freight fluidity.

Denied.

24. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by failing to provide OJC with detailed billing information and/or invoices relating to the demurrage charges assessed that would allow OJC to meaningfully understand and contest the charges.

Denied.

25. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by refusing to extend free time and/or waive or reduce demurrage charges for the Shipments that were unavailable for pickup.

Denied.

26. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by failing to have a clear dispute resolution policy with respect to demurrage charges.

Denied.

27. Respondents failed to establish and observe just and reasonable practices in violation of § 41102(c) by failing to honor the minimum 400 TEU minimum volume within the Active Term.

See footnote #2, which is incorporated herein by reference.

28. As a result of Respondents' violations of the Shipping Act, the Complainant has sustained injuries and damages in the amount of well over \$50,000, including \$40,680.32 in erroneous demurrage charges and additional damages in the amount to be determined but in excess of \$100,000, for Respondents' failure to honor the minimum 400 TEU commitment.

Denied.

29. OJC made numerous unsuccessful attempts to resolve this matter with Respondents prior to filing this Verified Complaint. Considering statements made by Respondents and noncooperation from Respondents in resolving this matter, OJC did not seek to use the FMC's alternative dispute resolution procedures prior to filing this Verified Complaint. For the same reasons, Complainant has not had any preliminary consultations with the FMC's Dispute Resolution Specialist regarding the availability of alternative dispute resolution (ADR) under the FMC's ADR program, 46 C.F.R. § 502.64.

Paragraph 29 requires no response.

Affirmative Defenses

1. The Commission lacks subject matter jurisdiction.
2. The Commission lacks personal jurisdiction over respondent Hamburg NA.
3. The complaint fails to state a claim for which relief may be granted.
4. Delays in delivering cargo were due in whole or in part to the acts and/or omissions of complainant and/or its agents.

5. Respondent's conduct was reasonable in light of the totality of the circumstances.

WHEREFORE, Respondent prays that after due oral hearing to be conducted in Washington, D.C., an order be made dismissing the complaint.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wayne R. Rohde". The signature is written in a cursive style with a large initial "W".

Wayne R. Rohde
Kathryn Sobotta
COZEN O'CONNOR
1200 Nineteenth Street, NW
Suite 300
Washington, DC 20036
(202) 463-2507

Dated: January 18, 2022

VERIFICATION OF RESPONDENT MAERSK A/S
(as successor to Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & CO. KG)

Michael W. Gast, Jr., hereby verifies as follows:

1. I am Supervisor, Risk Management of Maersk Agency USA, Inc., the U.S. agent of Maersk A/S.
2. I am authorized to make this verification on behalf of Maersk A/S.
3. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.

Dated: January 18, 2022

A handwritten signature in black ink, appearing to read "Michael W. Gast, Jr.", written over a horizontal line.

Name: Michael W. Gast, Jr
Title: Supervisor, Risk Management

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2022, the foregoing Answer was served via electronic mail on:

Shlomo Y. Hecht
sam@hechtlawpa.com

and

Aaron Davis, Esq.
davis@valhallalegal.com

A handwritten signature in black ink, appearing to read "Wayne R. Rohde", is written above a horizontal line.

Wayne R. Rohde