

**BEFORE THE
FEDERAL MARITIME COMMISSION**

M.E. DEY & CO., INC.,)	
<i>Complainant,</i>)	
)	
v.)	
)	
HAPAG-LLOYD (AMERICA) LLC)	
)	
)	DOCKET NO. 22-35
<i>Respondent.</i>)	
)	

MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS

Respondent Hapag-Lloyd (America) LLC (“Hapag-Lloyd America”) submits this memorandum in support of its Motion to Dismiss (“Motion”).

I. The Commission Lacks Jurisdiction Over Hapag-Lloyd (America) LLC

The complaint must be dismissed in its entirety because the Commission lacks personal jurisdiction over Hapag-Lloyd America.¹

The complaint alleges violations of 46 U.S.C. §41102(c) and §41104(a)(14) of the Shipping Act as amended. See Complaint, ¶¶ 66, 69. As the complaint acknowledges in paragraph

¹ This case is distinguishable from the recent decision in *TCW v. Evergreen* case because that case named both the ocean common carrier and the United States agent as parties to the dispute. *See TCW v. Evergreen*, Docket No. 1966(I) (December 29, 2022). In that case, the Commission asserted personal jurisdiction over the United States agent through pendant jurisdiction “attached” to the claim asserted against the ocean common carrier. *Id.* Here, the complaint names only the United States agent. Furthermore, the Commission’s reliance on the *Action Embroidery* case and associated pendent jurisdiction principals is flawed. *See TCW*, Docket No. 1966(I) at 7 (citing *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 268 F. 3d 1174 (9th Cir. 2004)). *Action Embroidery* held that a court may assert pendant personal jurisdiction if the second claim is directed at the same person, but under a different statute. The *TCW* case contemplates extending pendant jurisdiction over two different parties with respect to one claim under a single statute. These situations are not analogous, and the finding of personal jurisdiction over an agent in *TCW* is flawed and incorrect.

13, §41102(c) prohibits an ocean 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. As the complaint acknowledges in paragraph 68, §41104(a)(14) prohibits an ocean common carrier from assessing charges that do not comply with §41102(c). The complaint incorrectly alleges that Hapag-Lloyd America is subject to §41102(c) and §41104(a)(14) because it is an ocean common carrier. Complaint, ¶ 59.

The Act defines an “ocean common carrier” as a vessel operating common carrier. 46 U.S.C. §40102(17). The Act defines a “common carrier” as:

...a person that (i) holds itself out to the general public to provide transportation by way of passengers or cargo between the United States and a foreign country for compensation, (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 U.S.C. §40102(7).

Hapag-Lloyd America does not meet these definitions. Hapag-Lloyd America is a wholly-owned subsidiary of Hapag-Lloyd AG, and operates as Hapag-Lloyd AG’s agent in the United States. As such, Hapag-Lloyd America does not provide transportation of cargo between the United States and a foreign country. In a previous decision the ALJ held that the Commission lacks personal jurisdiction over Hapag-Lloyd America because it does not operate as a regulated entity as required by §41102(c). *See Hapag-Lloyd A.G. and Hapag-Lloyd (America) LLC Possible Violations of 46 U.S.C. §41102(c)*, 4 F.M.C. 2d 53, 74 (April 22, 2022).

II. Conclusion

The complaint against Hapag-Lloyd America should be dismissed with prejudice because Hapag-Lloyd America is not an ocean common carrier or marine terminal operator, and is not subject to §41102(c) or §41104(a)(14).

Respectfully submitted,

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

Wayne R. Rohde
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Dated: January 17, 2023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 2023, the foregoing Respondent's Memorandum in Support of Motion to Dismiss was served via electronic mail on:

Brendan Collins
bcollins@gkglaw.com

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

Wayne R. Rohde