

**FEDERAL MARITIME COMMISSION**  
**Office of Administrative Law Judges**

M.E. DEY & CO., INC., *Complainant*

v.

HAPAG-LLOYD AG AND HAPAG-LLOYD (AMERICA) LLC,  
*Respondents.*

**DOCKET NO. 22-35**

Served: April 27, 2023

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**ORDER OF:** Linda S. Harris CROVELLA, *Administrative Law Judge.*

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**ORDER ON MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT**

M.E. Dey & Co., Inc., (“M.E. Dey”) initiated this proceeding by filing a complaint, which was later amended, alleging that Hapag-Lloyd AG and Hapag-Lloyd (America) LLC, (collectively, “Hapag-Lloyd” or “Respondents”) violated the Shipping Act of 1984 (“Shipping Act”) and the Ocean Shipping Reform Act of 2022 (“OSRA”) regarding Hapag-Lloyd’s actions to collect demurrage and storage fees on containers which were unavailable for pick up and were not released until said fees were paid. Hapag-Lloyd submitted an answer to the amended complaint denying the allegations and raising affirmative defenses.

On April 10, 2023, the Commission’s Bureau of Enforcement, Investigations, and Compliance (“BEIC”) was granted leave to intervene pursuant to Commission Rule 68(c)(2)(ii).

On April 13, 2023, Respondents Hapag-Lloyd filed a Motion for Leave to File Third-Party Complaint (“Third-Party Complaint Motion”) alleging that CSX Transportation, Inc. (“CSX”), a rail carrier, should be named as a third-party respondent because CSX, not Hapag-Lloyd, collected or received “the storage charges herein at issue.” Third-Party Complaint Motion at 1. Also on April 13, 2023, M.E. Dey and Hapag-Lloyd filed a Joint Status Report (“JSR”) with proposed discovery and briefing schedule.

On April 19, 2023, a Scheduling Order issued, adopting the proposed schedule submitted by M.E. Dey and Hapag-Lloyd, and subsequently agreed to for briefing purposes by BEIC. Bureau of Enforcement, Investigations, and Compliance Supplement to the Joint Status Report at 1-2. The schedule provides for initial discovery requests to be provided by May 3, 2023, and for discovery to close on August 24, 2023.

In support of its motion, Respondents rely on Federal Rules of Civil Procedure, Rule 14, as amended in 2009, which allows a third-party complaint filing by right within 14-days of filing the answer. If a defendant (here, respondent) wishes to implead a third-party respondent more than 14-days after the answer is filed, leave of the court is required. 6 Charles Alan Wright &

Arthur R. Miller, *Federal Practice and Procedure* § 1443 (3d ed. 2007). However, the Commission’s Rule at 46 C.F.R. § 502.62(b)(4) addresses third-party complaints:

In addition to filing an answer to a complaint, a respondent may include in the answer a counterclaim against the complainant, a crossclaim against another respondent, or a third-party complaint. A counterclaim, a crossclaim, or a third-party complaint must allege and be limited to violations of the Shipping Act within the jurisdiction of the Commission. The service and filing of a counterclaim, a cross claim, or a third-party complaint and answers or replies thereto are governed by the rules and requirements of this section for the filing of complaints and answers.

Hapag-Lloyd filed an Answer to the Amended Complaint on March 27, 2023, and the Third-Party Complaint Motion 17-days later. No party to the current proceeding filed an opposition or response to Hapag-Lloyd’s Third-Party Complaint Motion. Given the short time that elapsed between the filing of the answer and the filing of the motion, the early stage of the proceeding as illustrated by the recently issued Scheduling Order, and the fact that neither M.E. Dey or BEIC opposed or even responded to the motion, no undue delay, disadvantage, or prejudice would result from allowing a third-party complaint to proceed despite the late filing. In addition, a review of the Third-Party Complaint reveals that the factual allegations present closely related matters. The last consideration in determining whether to allow the post-answer third-party complaint is whether it alleges violations of the Shipping Act.

In the third-party complaint, Hapag-Lloyd alleges that it has “been sued by Complainant [M.E. Dey] for violations of the Shipping Act and OSRA,” but that CSX is the entity responsible for imposing and collecting charges from M.E. Dey. While Hapag-Lloyd sets forth factual allegations and further alleges “causation and injury to complainants,” Hapag-Lloyd does not clearly allege a violation of the Shipping Act or OSRA. Third-Party Complaint at paragraphs 32, 33. As described above in Rule 502.62(b)(4), a third-party complaint “*must* allege and be limited to violations of the Shipping Act...” (emphasis added).

Since it is still very early in the proceeding, this defect in the pleading can be cured if Respondents wish to do so in an expeditious manner. *See, Mitsui O.S.K. Lines Ltd. V. Global Link Logistics, Inc., et al*, Docket No. 09-01, Global Link Logistics, Inc.’s Verified Answer and Affirmative Defenses to Mitsui O.S.K. Lines LTD.’s Complaint, Counterclaim and Crossclaims, filed June 17, 2009, for reference. *Also see, Commission’s Order Denying Appeal of Olympus Respondents, Granting in Part Appeal of Global Link, and Vacating Dismissal of Alleged Violations of Section 10(d)(1) in June 22, 2010 Memorandum and Order on Motions to Dismiss*, 2011 WL 7144008 (August 1, 2011). Both the answer and the order may be found in the reading room section of the Commission’s website, <https://www2.fmc.gov/readingroom>.

Accordingly,

**IT IS ORDERED** that Respondent Hapag-Lloyd’s Third-Party Complaint Motion be **DENIED**, without prejudice.

**IT IS FURTHER ORDERED** that if Respondents wish to file a revised Third-Party Complaint that clearly alleges violations of the Shipping Act, it must do so by May 4, 2023.



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Linda S. Harris Crovella  
Administrative Law Judge