

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

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

v.

HAPAG-LLOYD (AMERICA) LLC, *Respondent*.

**DOCKET NO. 22-35**

Served: February 28, 2023

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

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**ORDER ON MOTION TO AMEND COMPLAINT AND MOTION TO DISMISS**

**I. Introduction and Procedural Background**

On December 23, 2022, the Federal Maritime Commission (“FMC” or “Commission”) issued a Notice of Filing of Complaint and Assignment (“Notice”), stating that M.E. Dey & Co. Inc. (“Dey”) had filed a complaint against Hapag-Lloyd (America), LLC (“Hapag USA”) alleging that Hapag USA violated 46 U.S.C. §§ 41102(c) and 41104(a)(14) of the Shipping Act and the Commission’s regulations at 46 C.F.R. §§ 545.4 and 545.5 in connection with certain demurrage and detention charges assessed by Hapag USA against Complainant’s shipments.

On January 17, 2023, Hapag USA filed a motion to dismiss Dey’s complaint (“Dismissal Motion”), asserting that the Commission lacks personal jurisdiction over it because it is not a Commission regulated entity, but rather, the agent of Hapag-Lloyd AG, an ocean common carrier. In reaction to Hapag America’s motion to dismiss, on February 1, 2023, Dey filed a motion for leave to amend its complaint (“Amended Complaint Motion”), to which it attached an amended complaint. The amended complaint joins Hapag-Lloyd AG (“Hapag AG”) as a respondent in this proceeding, in addition to Hapag USA.

For the reasons set forth below, Dey’s motion to amend its complaint is granted, and Hapag USA’s motion to dismiss the complaint is denied as moot. By copy of this order, the Office of the Secretary is requested to serve the amended complaint on Hapag AG. Respondents must file a response to the amended complaint within 25 days after the date of service. In addition, the parties must file a joint status report within twenty days of Respondents’ answer.

**II. Motion to Amend Complaint**

Complainant asserts that in addition to joining Hapag AG as a respondent in this proceeding the amended complaint names Hapag USA as a respondent based on pendent jurisdiction which exists, according to Complainant, because the claims against Hapag USA “arise out of a common nucleus of operative facts with those against Hapag AG, over which the

Commission has jurisdiction as a [vessel-operating-common carrier]”. Amended Complaint Motion at 1-2 (citing *TCW, Inc. v. Evergreen Shipping Agency (am) Corp. & Evergreen Line Joint Service Agreement*, 2022 WL 18068977, at \* 3 (FMC 2022) (internal quotations and formatting marks omitted)). Complainant states that Respondents consented to the amended complaint naming Hapag AG as a respondent but oppose concurrent jurisdiction over Hapag USA. Amended Complaint Motion at 2. No response was received from Respondent Hapag USA regarding Complainant’s request to amend its complaint.

Commission Rule 66(a) provides in pertinent part that amendments “will be permitted or rejected, either in the discretion of the Commission or presiding officer. No amendment will be allowed that would broaden the issues, without opportunity to reply to such amended pleading and to prepare for the broadened issues.” 46 C.F.R. § 502.66(a).

The rules do not provide criteria for evaluating whether to grant or deny a motion to amend a complaint. However, Commission Rule 12 provides that “for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice.” 46 C.F.R. § 502.12. Under Federal Rule 15(a)(1)(B), “a party may amend its pleading once as a matter of course” within 21 days after service of a responsive pleading. F.R.C.P. 15(a)(1)(B). After that period, an amended pleading is permitted with opposing party’s written consent or leave of court, which should be freely given when justice so requires. F.R.C.P. 15(a)(2). “Denial of leave to amend therefore constitutes an abuse of discretion unless the court gives sufficient reason, such as futility of amendment, undue delay, bad faith, dilatory motive, undue prejudice, or repeated failure to cure deficiencies by previous amendments.” *Bancoult v. McNamara*, 214 F.R.D. 5, 8 (D.D.C. 2003) (citations omitted); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962).

The amended complaint addresses Hapag USA’s contention in its motion to dismiss that this proceeding should be dismissed based on its claim that the Commission lacks jurisdiction to adjudicate the complaint against it. Further, there are no grounds under the Federal Rules warranting denial of the proposed amendment. Complainant will thus be allowed to amend its complaint.

Respondents should file a response to the amended complaint within 25 days of the service of the complaint. In addition, the parties must file a joint status report within twenty days of the service of Respondents’ answer, outlining a proposed schedule, and stating whether they have exchanged settlement offers, but not the content of any settlement offers.

### **III. Order**

Upon consideration of the record herein, the arguments of the parties, and the conclusions and findings set forth above, it is hereby

**ORDERED** that the motion to amend the complaint be **GRANTED**. The Secretary is requested to serve the amended complaint. Respondents must respond to the amended complaint within 25 days of service of the amended complaint. It is

**FURTHER ORDERED** that Respondents’ motion to dismiss be **DENIED AS MOOT**.  
It is

**FURTHER ORDERED** that the parties shall submit a joint status report with proposed schedule within twenty days of service of Respondents' answer.



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Linda S. Harris Crovella  
Administrative Law Judge