

BEFORE THE FEDERAL MARITIME COMMISSION

M.E. DEY & CO. INC.

Complainant,

v.

HAPAG-LLOYD AG and HAPAG LLOYD
(AMERICA) LLC,

Respondents.

Docket No. 22-35

**RESPONDENTS' RENEWED MOTION FOR LEAVE
TO FILE THIRD-PARTY COMPLAINT**

Pursuant to 46 C.F.R. §§502.69 and 502.71, as well as the Presiding Officer's April 27 Order, Respondents Hapag-Lloyd AG and Hapag Lloyd (America) LLC (together, "Respondents"), through counsel, hereby move for leave to file a third-party complaint in this proceeding. A copy of the third-party complaint, naming CSX Transportation, Inc. as a third-party respondent, is attached hereto.

I. Introduction

In this proceeding, complainant M. E. Dey, Inc. ("Complainant") seeks reparations from Respondents for storage charges imposed on and collected from Complainant by CSX Transportation, Inc. ("CSX"). Respondents did not assess, collect or receive all or any portion of the storage charges herein at issue.

II. The Applicable Legal Standard

The Commission's Rules of Practice and Procedure do not expressly provide for the filing of third-party complaints, but implicitly recognize that such complaints may be filed. See, e.g., 46 C.F.R. §§502.62(b)(4), 502.66(a) and 502.67. Moreover, under 46 C.F.R. §502.12, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent they are consistent with sound administrative practice.

Third-party complaints are governed by F.R.C.P. 14. F.R.C.P. 14 permits filing of third-party complaints as a matter of right within 14 days of the filing of an answer. Beyond that time, third-party complaints may be filed with the leave of the court. This motion is being filed because more than 14 days have lapsed since Respondents filed their answer.

A motion for leave to file a third-party complaint is addressed to the sound discretion of the trial court. *Kopan v. George Washington Univ.*, 67 F.R.D. 36, 38 (D.D.C. 1975). Numerous factors guide the court's discretion in determining whether the third-party complaint should proceed, including: "(1) potential prejudice to plaintiffs or [the third-party defendant]; (2) whether the impleader will add new and complicated issues that will threaten the orderly and prompt resolution of the case and delay the trial; (3) whether defendants unreasonably delayed in filing the third party complaint; and (4) whether the third-party complaint is so insubstantial that it fails to state a claim." *Disability Rights Council of Greater Washington v. WMATA*, No. 04-498, 2006 WL 1102767, at *1 (D.D.C.

Apr. 26, 2006). Additionally, courts must consider the underlying purpose of Rule 14, “which is to avoid circuity of action and eliminate duplication of suits based on closely related matters.” *Id.* So long as the third-party action is “proper” and does not prejudice the other parties, motions for leave under Rule 14(a) should be granted. *See* 6 Charles Alan Wright, et al., *Federal Practice & Procedure* § 1443 (3d ed. 2007) (noting that “if the claim is a proper third-party action and will not prejudice the other parties or unduly complicate the litigation, there is no reason to deny an application under Rule 14(a)). Courts have also held that motions for leave to file third-party complaints should be liberally granted. *See, e.g., Parker v. John Moriarty & Assoc.*, 249 F. Supp.3d 507 (D.D.C. 2017).

III. Respondents’ Motion Meets The Legal Standard

Respondents’ motion for leave to file a third-party complaint meets the standard set forth above and should be granted.

A. Granting This Motion Will Not Result in Prejudice

Granting this motion and permitting the filing of a third-party complaint will not result in prejudice to Complainant or to the third-party defendant. We are just barely beyond the 14-day period during which Respondents could have filed the third-party complaint as a matter of right, and the grant of this motion will cause no prejudice to any party.

This is particularly true given that this proceeding is in the early stages. The parties are not scheduled to submit a proposed procedural schedule until April 17, and will not begin discovery until after that date.

B. Addition Of Third-Party Defendant Does Not Complicate The Proceeding

Granting this motion and allowing the third-party complaint will not add new and complicated issues that threaten the orderly and prompt resolution of this case. This case involves two relatively straightforward issues: (i) are the charges imposed on Complainant unreasonable under the Shipping Act; and (ii) if so, who is responsible for refunding those charges to Complainant?

Courts have held that basic contribution or indemnification claims are not found to complicate matters at a trial because those third-party claims typically involve the same factual circumstances as the underlying complaint. *Millers Capital Ins. Co. v. Hydrofarm, Inc.*, 340 F.R.D. 198, 221 (D.D.C. 2022). Here, the third-party complaint is essentially tantamount to a claim for contribution/indemnification and thus does not complicate the proceeding within the meaning of Rule 14.

Moreover, Complainant has named employees of CSX as potential witnesses in Complainant's initial disclosure, and discovery will be sought from CSX, either through production of documents or deposition testimony. Given that CSX will necessarily be involved in discovery, the addition of CSX as a party would not adversely impact the orderly and prompt resolution of this proceeding.

C. There Has Been No Unreasonable Delay In Filing

As noted above, this motion is being filed only days after the 14-day period when the third-party complaint could have been filed as a matter of right. Furthermore, the ALJ's Order on Motion for Leave to File Third-Party Complaint on April 27, 2023, welcomed the filing of this Third-Party Complaint by May 4, 2023. Accordingly, there has been no unreasonable delay in filing this motion.

D. The Third-Party Complaint Is Substantial

The proposed complaint is substantial and does not fail to state a claim. There is no dispute that the charges in question were imposed and collected by CSX, and that CSX has refused to refund those charges. See, e.g., paragraph 52 of the Amended Complaint. The proposed complaint clearly alleges specific violations of the Shipping Act. Accordingly, a claim that CSX should be held liable to Respondents should Respondents be ordered to refund the sum in question to Complainant is straightforward and substantial.

IV. Meet And Confer Obligation

As required by 46 C.F.R. §502.71(a), counsel for Respondents conferred with counsel for Complainant and counsel for the Bureau of Enforcement, Investigations, and Compliance (“BEIC”), which has been granted leave to intervene in this proceeding prior to the filing of the original motion for leave. Neither Complainant nor BEIC opposed the motion.

V. Conclusion

Respondents’ motion for leave to file a third-party complaint is timely filed. Leave to file such complaints is to be granted liberally, and Respondents’ motion complies with all applicable legal standards. Under those standards, there is no reason to deny this motion. Moreover, Respondents believe that granting this motion will facilitate resolution of this dispute and the issues it presents more efficiently than if Respondents were to file a separate complaint against CSX.

In light of the foregoing, Respondents respectfully request that this motion be granted.

Respectfully submitted,

By: /s/ Wayne R. Rohde

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May 4, 2023

CERTIFICATE OF SERVICE

I certify that, on May 4, 2023, a true copy of the Motion was filed via electronic mail with the Secretary of the Federal Maritime Commission, and a copy was served via electronic mail on the following counsel:

Brendan Collins, Esq. (bcollins@gkglaw.com)
Counsel for M.E. Dey & Co. Inc.

Jonathan Todd, Esq. (jtodd@fmc.gov)
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*Bureau of Enforcement, Investigations, and Compliance
Federal Maritime Commission*

Dated: May 4, 2023

/s/ Wayne Rohde

Wayne Rohde
Cozen O'Connor