

BEFORE THE  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 22-35

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

RESPONDENTS AND THIRD-PARTY COMPLAINANTS,

v.

CSX TRANSPORTATION, INC.

THIRD-PARTY RESPONDENT.

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**THIRD-PARTY COMPLAINT**

1. Pursuant to 46 C.F.R. § 502.62(b)(4) and the Order on Motion for Leave to File Third-Party Complaint on April 27, 2023, Respondents/Third-Party Complainants Hapag-Lloyd AG and Hapag-Lloyd (America) LLC (“Third-Party Complainants” or respectively “Hapag AG” and “Hapag USA” and collectively “Hapag”) by their undersigned attorneys, bring this re-filed Third-Party Complaint against Respondent CSX Transportation, Inc. (“Third-Party Respondent” or “CSX”). As noted in the original motion and the ALJ’s Order, this Third-Party Complaint arises out of the actions of CSX that led to M.E. Dey & Co.’s (“Complainant” or “Dey”) filing an FMC Complaint (“Initial Complaint”) against Hapag, alleging violations of the Ocean Shipping Reform Act of 2022, 46 U.S.C. § 40101, *et. seq.* (OSRA 2022). As alleged herein, CSX’s actions, which ultimately led to the filing of the Initial Complaint, violated the Ocean Shipping Reform Act of 2022, 46 U.S.C. § 40101, *et. seq.* (OSRA 2022).

2. The Initial Complaint alleges that Hapag is liable to Dey for charges imposed on certain cargo containers, which charges Dey alleges constitute a violation of OSRA 2022. Because the charges in question were assessed, billed, and collected by CSX, without involvement by or approval of Hapag, in the event Hapag is found liable to Dey, CSX is liable to Hapag.

### **I. COMPLAINANT**

3. Complainant is a non-vessel-operating common carrier (NVOCC) as defined by 46 U.S.C. § 40102(17), is licensed by the Commission, and is organized and existing under the laws of Wisconsin. Its principal place of business is located at 700 W. Virginia Street, Suite 300, Milwaukee, Wisconsin, 53204.

### **II. RESPONDENTS/THIRD-PARTY COMPLAINANTS**

4. Respondent and Third-Party Complainant Hapag-Lloyd AG is a global ocean carrier company based in Germany. It has its headquarters at Ballindam 25, D-20095 Hamburg, Germany.

5. Respondent and Third-Party Complainant Hapag-Lloyd (America) LLC is a United States subsidiary and agent of Hapag AG. Its office is located at 3 Ravinia Drive NE, Suite 1600, Atlanta, Georgia, 30346.

### **III. THIRD PARTY RESPONDENT**

6. Third-Party Respondent CSX is a rail and intermodal transportation carrier. It has its headquarters at 500 Water Street, 15<sup>th</sup> Floor, Jacksonville, Florida 32202.

### **IV. JURISDICTION**

7. The FMC has subject-matter jurisdiction over this Third-Party Complaint pursuant to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Acts of 1998 and 2022, 46 U.S.C. § 40101, *et seq.*, 46 C.F.R. 502.12, and Federal Rule of Civil Procedure 14.

8. The FMC's jurisdiction extends to ocean transportation involving through transportation, and the fact that the practice in dispute involves the inland portion of the through transportation does not deprive the FMC of subject matter jurisdiction.

9. The FMC has personal jurisdiction over CSX through pendent jurisdiction because claims against CSX arise out of a common nucleus of operative facts with those against Hapag.

10. The FMC has personal jurisdiction over CSX for the same reasons that the FMC has personal jurisdiction over Hapag-Lloyd (America) LLC.

11. Considering that the Complainant's claim is a Shipping Act claim arising out of the terms and conditions controlled by CSX and applicable directly to Dey, this is the only appropriate venue for this claim.

12. Hapag-Lloyd AG was the VOCC for the transportations at issue, and CSX independently imposed and collected the per diem charges. Thus, the FMC has jurisdiction to adjudicate the matter.

#### **V. INITIAL COMPLAINT AND ANSWER**

13. Dey filed the Initial Complaint, attached hereto as Exhibit A, on February 1, 2023.

14. The Initial Complaint alleges that Hapag violated 46 U.S.C. § 41102(c) and 46 U.S.C. § 41104(a)(14) because CSX, while acting as Hapag's agent, unreasonably assessed and collected fees from Dey in connection with containers that were allegedly unavailable for pick up in Nashville, Tennessee in September and October 2022.

15. The Initial Complaint alleges that Dey contracted with Hapag AG in early August 2022 for the intermodal transport of sixteen (16) containers from Rotterdam to Nashville.

16. The Initial Complaint alleges that the goods moved by ocean transport from Antwerp, Belgium to Charleston, South Carolina and then were transported by rail by CSX, from Charleston to CSX's rail terminal in Nashville, Tennessee.

17. The Initial Complaint alleges that for all sixteen containers, Hapag AG acted as ocean common carrier and CSX acted as rail carrier under the same bills of lading.

18. The Initial Complaint alleges that CSX was largely unresponsive and uncooperative with Dey's requests for updates related to the availability of the containers for pick up.

19. The Initial Complaint alleges that Hapag's failure to provide chassis on arrival for the relevant containers caused Dey to accrue demurrage charges in the amount of \$136,500, which were assessed and subsequently collected by CSX.

20. The Initial Complaint states that Hapag waived its own demurrage charges (totaling in excess of in excess of \$153,000) that accrued in connection with the containers.

21. Dey is seeking reparations in the form of a repayment of the \$136,500 in storage fees, interest, and attorney's fees.

22. Hapag filed an Answer to Dey's Initial Complaint on March 27, 2022, which is attached hereto as Exhibit B.

23. Hapag denied Dey's allegations that the containers in question were unavailable for pick up due to any action or omission of Hapag.

24. Hapag denied that the storage charges in connection with the containers were unreasonable or unjustified under the Shipping Act and OSRA.

25. Hapag admitted that the containers moved from Rotterdam to Nashville, and that CSX acted as the rail carrier for all of the containers in question.

26. Hapag admitted that it waived its own demurrage fees in connection with the containers.

27. Hapag was largely unable to admit or deny the factual allegations that pertained to CSX's actions, fees, or communications with respect to Dey.

## **VI. FACTUAL ALLEGATIONS**

28. CSX had exclusive control over the facility where CSX stored the containers that are at issue in the Initial Complaint.

29. CSX established the charges applicable to the storage of containers on its facility.

30. CSX independently assessed the \$136,500 in storage charges that are at issue in the Initial Complaint.

31. CSX independently billed the \$136,500 in storage charges that are at issue in the Initial Complaint.

32. CSX independently collected the \$136,500 in storage charges at are at issue in the Initial Complaint.

33. CSX retained 100% of the \$136,500 in storage charges for its own benefit, and Hapag did not profit from the collection of the charges in dispute.

34. While Hapag waived its own demurrage charges in connection with the containers, CSX was unwilling to waive its storage charges as imposed on Dey.

## **VII. VIOLATIONS OF THE SHIPPING ACT**

### **COUNT I: VIOLATIONS OF 46 U.S.C. § 41102(c)**

35. Section 41102(c) of the Shipping Act 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.”

36. An ocean carrier's obligation to deliver cargo is satisfied by delivering the cargo to a safe pier and affording the customer a reasonable opportunity to retrieve its cargo.

37. Hapag fulfilled that obligation by causing the cargo to be delivered to the CSX facility and as agreed and reflected in the governing through transportation documents.

38. After free time expired, Hapag's delivery obligations ended and CSX was handling and storing the cargo on behalf of Complainant.

39. CSX has exclusive control over the facility to which the containers were delivered and at which they were stored.

40. Dey was responsible for transportation of the containers beyond the CSX facility on merchant haulage terms.

41. After Hapag had completed delivery and free time had expired, CSX had sole control over the containers which Dey had to transport under merchant haulage, and CSX independently assessed, billed, collected, and retained the \$136,500 in storage fees at issue without prior notice to or approval of Respondents.

42. If the charges assessed by CSX are found to be unreasonable, and Hapag is found liable to Complainant the charges unilaterally imposed by CSX then CSX, as the party responsible for the charges, is in violation of the Shipping Act and liable to Hapag.

43. Even if CSX was acting as the subcontractor of Hapag at the time it independently assessed, billed, collected, and retained the \$136,500 in storage fees at issue, the analysis does not change and if Hapag is found to have violated the Shipping Act based on charges assessed, billed, collected and retained by CSX without prior notice to or approval of Hapag, then CSX as the party responsible for the charges is in violation of the Shipping Act and liable to Hapag.

44. CSX's failure to permit Dey's motor carrier to provide its own chassis constitutes an unreasonable practice that violates § 41102(c).

COUNT II:  
VIOLATIONS OF 46 U.S.C. § 41104(a)(14)

45. 46 U.S.C. § 411014(a)(14) provides that "a common carrier, either alone or in conjunction with any other person, directly or indirectly, shall not . . . assess any party for a charge that is inconsistent or does not comply with all applicable provisions and regulations, including subsection (c) of section 41102 or part 545 of title 46, Code of Federal Regulations (or successor regulations)".

46. In assessing, billing, charging, and collecting \$136,500 in storage charges, CSX acted as "any other person" as described in section 411014(a)(14).

47. CSX independently assessed, billed, collected, and retained the \$136,500 in storage fees at issue without prior notice to or approval of Hapag.

48. If Hapag is found to have violated the Shipping Act based on the charges assessed by CSX then CSX, as the party responsible for the charges, is in violation of the Shipping Act and liable to Respondents.

**VIII. CAUSATION AND INJURY TO COMPLAINANTS**

49. As a result of Third-Party Respondent's assessment, billing, and collection of the storage charges at issue in the Initial Complaint, Third-Party Complainants have been sued by Complainant for violations of the Shipping Act and OSRA. Because the charges in question were assessed, billed, and collected solely by CSX without prior notice to or approval of Respondents, in the event that Respondents are found to be in violation of 46 U.S.C. § 41102(c) and/or 46 U.S.C. § 41104(a)(14), CSX is likewise in violation of 46 U.S.C. § 41102(c) and/or or 46 U.S.C.

§ 41104(a)(14) and is liable to Respondents for whatever reparations and other relief Respondents may be ordered to pay to Complainant.

### **IX. PLACE OF HEARING**

50. Complainants requests a hearing on this matter, and further requests that the hearing be held at the Federal Maritime Commission, 800 N. Capitol St., NW, Washington, D.C. 20573-0001.



## X. PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully requests that Third-Party Respondent be required to answer the charges in this Third-Party Complaint, and that after the Commission's investigation and hearing, and in the event that the Commission finds Third-Party Complainants liable under the Initial Complaint, the Commission shall issue an order:

- 1) Requiring Third-Party Respondent to pay for all damages assessed as a result of the Initial Complaint, as well as Complainants' attorneys' fees and costs pursuant to 46 U.S.C. § 41305.

DATE: May 4, 2023

Respectfully submitted,



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*Attorneys for Hapag-Lloyd AG and Hapag-Lloyd (America) LLC*

**VERIFICATION**

I, Thomas Mansfeld, am the General Counsel of Hapag-Lloyd AG and hereby declare and attest under penalty of perjury that I have read the forgoing Verified Third Party Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: May 4, 2023



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Name: Thomas Mansfeld  
Title: General Counsel

**VERIFICATION**

I, Andreas Brauch, am the SVP Business Admin. & Finance of Hapag-Lloyd (America) LLC and hereby declare and attest under penalty of perjury that I have read the forgoing Verified Third Party Complaint and believe, to the best of my knowledge, information, and belief, that the facts stated therein are true and correct.

Dated: May 4, 2023



Name: Andreas Brauch

Title: SVP Business Admin. & Finance

**CERTIFICATE OF SERVICE**

I certify that, on May 4, 2023, a true copy of the foregoing Third-Party Complaint 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](mailto:bcollins@gkglaw.com))  
*Counsel for M.E. Dey & Co. Inc.*

Jonathan Todd, Esq. ([jtodd@fmc.gov](mailto: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