

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO.: 23-14

D.F. YOUNG, INC.,

**1235 Westlakes Drive
Suite 255
Berwyn, PA 19312.**



COMPLAINANT

V.

**Wallenius Wilhelmsen Logistics AS, k/n/a Wallenius Wilhelmsen
Ocean AS, and Willenius Wilhelmsen Logistics Americas, LLC,**

**300 Interpace Parkway
Building A – 300
Secaucus, NJ 07094**

RESPONDENTS

VERIFIED AMENDED COMPLAINT

**Thomas J. Wagner, Esq.
Law Offices of Thomas J. Wagner, LLC
8 Penn Center, 6th Floor
1628 John F. Kennedy Boulevard
Philadelphia, PA 19103
Attorneys for Complainant**

VERIFIED AMENDED COMPLAINT

Complainant, D.F. Young, Inc. (“Complainant” or “DFY”) files this Verified Amended Complaint against Respondents, Wallenius Wilhelmsen Logistics AS, k/n/a Wallenius Wilhelmsen Ocean AS (“WWL Ocean”) and Wallenius Wilhelmsen Logistics Americas, LLC (“WWL Americas”), (collectively “Wallenius” and/or “Respondents”) pursuant to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (“the Shipping Act”), 46 U.S.C. §§ 40101, *et seq.*, the Federal Maritime Commission’s (“FMC”) authority under 46 U.S.C. §41301, and pursuant to FMC regulation 46 CFR §515 seeking payment of past due freight forwarder compensation.

I. COMPLAINANT

1. Complainant is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.
2. Complainant’s principal place of business is 1235 Westlakes Drive, Suite 255, Berwyn, PA 19312.
3. Complainant is in the business of providing services as an ocean transportation intermediary as defined and described in 46 U.S.C. §40102(19) and 46 CFR §515.2(m), operates as a non-vessel operating common carrier (“NVOCC”) as defined and described in 46 U.S.C. §40102(16) and 46 CFR §515.2(k), and as licensed by the FMC under License No. 656F.
4. Complainant has a Customhouse Broker License, License No. 1259.

II. RESPONDENT

5. Respondent Wallenius Wilhelmsen Logistics AS, n/k/a Wallenius Wilhelmsen Ocean AS,

upon information and belief, is a Norwegian corporation or other business entity with a principal place of business located at Strandveien 20, 1324 Lysaker, Norway.

6. Respondent Wallenius Wilhelmsen Logistics Americas, LLC, upon belief and information, is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 300 Interpace Parkway, Parsippany, NJ 07054.
7. During the relevant time period with reference to Complainant, WWL Americas was wholly owned and controlled by WWL Ocean and acted as WWL Ocean's US representative, agent and affiliate WWL directly, or through their wholly-owned or controlled subsidiaries, provided, marketed, and sold roll on, roll off cargo services for vehicle shipments from and between United States and international ports.
8. Collectively, Respondent is a common carrier of goods by water for hire, as defined and described in 46 U.S.C. §§40102(6) and 40102(17), as well as 46 CFR §515.2(e) and (l).

III. JURISDICTION

9. The FMC has jurisdiction over this Complaint pursuant to 46 U.S.C. §§41301, *et seq.* and pursuant to 46 U.S.C. §§40904, 41102, and 41104, as well as 46 CFR §515.42, as Complainant seeks reparations related to freight forwarding compensation withheld by Respondent that is required by Respondent's applicable tariffs.

IV. STATEMENT OF FACTS AND MATTERS COMPLAINED OF

A. TARIFFS

10. At all times applicable to the facts alleged in this Complaint, Respondent had tariffs in effect that established the rate and requirements for compensation to entities providing freight forwarding services on shipments accepted by Respondent as a common carrier.

11. Such tariffs stated the following regarding Freight Forwarding Compensation, “To the Far East All Cargo shipped via U.S. North Atlantic, South Atlantic, & West Coast Ports will be paid 2.50% compensation on base ocean freight.”, “To Oceanic trade All Cargo shipped from U.S. Ports will be paid 2.0% compensation on base ocean freight on Breakbulk, Ro Ro Cargo and \$40 per container on containerizable cargo.” And “To South, Central America & Mexico trades All Cargo shipped from U.S. Ports FF Compensation will be paid at 2.5% of the base ocean freight on all shipments unless otherwise specified.”
12. Such tariffs also stated that Freight Forwarding Compensation will be allowed to be paid only to independent Freight Forwarders licensed under the Federal Maritime Commission under Section 19(A) of the Shipping Act of 1984 and has certified in writing that it holds a valid license and has performed Freight Forwarding services.

B. COMPLAINANT FREIGHT FORWARDING

13. Complainant performed freight forwarding services related to shipments of automobiles from General Motors Company and its affiliated companies (“GM”) and Ford Motor Company and its affiliated companies (“Ford”) by arranging for shipment of such vehicles on vessels owned and/or operated by Respondent and/or its agents or affiliates.
14. The freight forwarding services performed by Complainant included engaging, booking, securing, reserving, and/or contracting directly with Respondent and/or its agents for space aboard its/their vessels and/or confirmed availability of that space for GM and Ford shipments.
15. Furthermore, Complainant prepared and processed the ocean bills of lading and related documents respective of Ford and GM shipments placed on Respondent’s vessels.

16. Complainant had no beneficial interest in any of the Ford or GM shipments for which it performed freight forwarding services and for which it arranged shipment on Respondent's vessels.
17. At all relevant times, Complainant held a valid FMC license.
18. To date, Complainant has provided freight forwarding services on hundreds of GM and Ford shipments placed on Respondent's vessels, and continues to do so.
19. Respondent has provided Freight Forwarding Compensation to Complainant for those shipments until November 2024, when Respondent refused further payment.

V. STATEMENT OF VIOLATIONS

20. Title 46 U.S.C. Section 41102 provides:

A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

46 U.S.C. §41102(c)

21. Title 46 U.S.C. Section 40501 states:

Each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.

46 U.S.C. §40501(a)(1). Section 40501 also states that “[a] tariff under subsection (a) shall ... state the level of compensation, if any, of any ocean freight forwarder by carrier or conference; ...” 46 U.S.C. §40501(b)(3).

22. Title 46 U.S.C. Section 40904 states that compensation to common carriers to ocean transportation intermediaries is appropriate “only when the ocean freight forwarder has

certified in writing that it holds an ocean transportation intermediary's license (if required under section 40901 of this title [46 U.S.C. §40901]) and has (1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and (2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment." 46 U.S.C. §40904(a). Section 40904 also states that "[a]n ocean freight forwarder may not receive compensation from a common carrier for a shipment in which the ocean freight forwarder has a direct or indirect beneficial interest." 46 U.S.C. §40904(c).

23. Title 46 CFR Section 515.42 provides:

When a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification as prescribed in paragraph (c) of this section ...

46 CFR §515.42(b). Section 515.42 also provides:

When a licensed freight forwarder is entitled to compensation, the forwarder shall provide the common carrier with a certification which indicates that the forwarder has performed the required services that entitle it to compensation. The required certification may be provided electronically by the forwarder or may be placed on one copy of the relevant bill of lading, a summary statement from the forwarder, the forwarder's compensation invoice, or as an endorsement on the carrier's compensation check. Electronic certification must contain confirmations by the forwarder and the carrier identifying the shipments upon which forwarding compensation may be paid. Each forwarder shall retain evidence in its shipment files that the forwarder, in fact, has performed the required services enumerated on the certification. The certification shall read as follows:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No. 2, issued by the Federal Maritime Commission and has performed the following services:

- (1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and
- (2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

46 CFR §515.42(c). Section 515.42 also provides:

No licensed freight forwarder, or employee thereof, shall accept compensation from a common carrier which is different from that specifically provided for in the carrier's effective tariff(s).

46 CFR §515.42(d). Section 515.42 also provides:

A licensed freight forwarder may not receive compensation from a common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

46 CFR §515.42(i).

24. Title 46 U.S.C. Section 41305 states that if a Complaint is filed with the FMC “within the period specified in section 40301(a) of this title ... the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by violation of this part [46 U.S.C. §40101, *et seq.*].” 46 U.S.C. §41305 (b). Section 41305 also provides that prevailing parties may be awarded reasonable attorney fees in any action brought under section 41301. 46 U.S.C. §41305 (e).
25. Respondent has violated Title 46 U.S.C. Section 41102 and Title 46 CFR Section 515.42 by refusing to compensate Complainant for the freight forwarding services performed on Ford and GM shipments placed on vessels owned/and or operated by Respondent and/or its agents or affiliates, for which Respondent received freight charges, according to the terms of the Respondent’s applicable tariffs in effect when such shipments were made, and when demands were made by Complainant to Respondent for such compensation.

VI. DAMAGES

26. As a result of Respondent's aforementioned and continuing violations of the Ocean Shipping Reform Act, Complainant has sustained, and continues to sustain, injuries and damages in excess of \$110,925.44.
27. Complainant will supplement its claimed damages as further demands for compensation are made upon Respondent.

VII. PRAYER FOR RELIEF

28. Statement regarding ADR procedures: Alternative dispute resolution procedures were not used prior to filing this Complaint, and Complainant has not consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution.
29. Complainant seeks an award of reparations of \$110,925.44 for actual injuries caused to it by Respondent as a result of the aforementioned violations, plus further amounts as may be demonstrated after further demands for compensation are made on Respondent as a result of the violations to the same applicable statutes and regulations.
30. Complainant also seeks an award of interest on all compensation owed to it by Respondent from the date any such compensation became due.
31. Complainant also seeks an award for all reasonable attorney's fees related to bringing this Complaint.
32. Should evidence show that respondent has also violated Title 46 U.S.C. §41104, Complainant seeks a payment of additional amounts, not exceeding twice the amount of any award for injuries.
33. Complainant requests that a hearing in this matter be held in Philadelphia, Pennsylvania, or,

alternatively, in Washington, D.C.

34. Complainant seeks such other relief or award as the FMC shall determine.

Respectfully submitted,

LAW OFFICES OF THOMAS J. WAGNER, LLC

Thomas J. Wagner

Date: January __, 2024

By: _____

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PA Bar ID No. 52876
Attorney for Complainant, D. F. Young, Inc.

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF CHESTER)

Melissa Mayo, being duly sworn states:

I am the Accounting Manager of the corporate Complainant, D. F. Young, Inc., in the action herein. I have read the annexed Amended Complaint and know the contents thereof, and the same are true and correct to the best of my knowledge. As to those matters therein which are stated to be alleged upon information and belief, I believe them to be true based upon facts, records, and/or other pertinent information in Complainant's files.

Handwritten signature 'fu 1 rwv1 fl' over a horizontal line. Below the line: MELISSA MAYO, Accounting Manager, D.F. Young, Inc.

Subscribed and sworn to before me, a notary public in and for the Commonwealth of Pennsylvania, County of Chester, this day of VAJJUJ4flf, 2024.

Handwritten signature 'Kimberly A Byers' above the printed text 'NOTARY PUBLIC'.

My Commission Expires: // 01
Commission No.: /JL-f

Commonwealth of Pennsylvania - Notary Seal
Kimberly A. Byers, Notary Public
Chester County
My commission expires November 6, 2026
Commission number 1342101
Member, Pennsylvania Association of Notaries