

**BEFORE THE
FEDERAL MARITIME COMMISSION**

D. F. YOUNG, INCORPORATED,)	
<i>Complainant,</i>)	
)	
v.)	DOCKET NO. 23-14
)	
WALLENIUS WILHELMSSEN LOGISTICS,)	
)	
<i>Respondent.</i>)	
)	

MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION TO DISMISS

Respondent Wallenius Wilhelmsen Logistics (“Respondent”) submits this memorandum in support of its Motion to Dismiss (“Motion”).

I. The Commission Lacks Jurisdiction Over Wallenius Wilhelmsen Logistics

The complaint must be dismissed in its entirety because the Commission lacks personal jurisdiction over Respondent.

The complaint states that Wallenius Wilhelmsen Logistics is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 300 Interpace Parkway, Suite A300, Parsippany, NJ 07054. See Complaint, ¶ 5. There is no Wallenius Wilhelmsen Logistics entity registered in New York. See, New York Department of State, Division of Corporations Corporation and Business Entity Database, <https://apps.dos.ny.gov/publicInquiry/>.¹ Two Wallenius Wilhelmsen Logistics entities are registered in Delaware (Wallenius Wilhelmsen Logistics America, LLC, and Wallenius

¹ In considering a Motion to Dismiss the ALJ may take judicial notice of facts that are not subject to reasonable dispute, regardless of whether those facts are alleged in the complaint. See, 46 C.F.R. § 502.12; Fed. R. Evid. 201(b); *Brass v. American Film Technologies*, 987 F. 2d 142, 150 (2nd Cir. 1993).

Wilhelmsen Logistics Services, LLC)², but it is unclear whether Complainant means to name one, both, or neither of these entities in its complaint.

Furthermore, the complaint incorrectly alleges that Wallenius Wilhelmsen Logistics is an ocean common carrier that is subject to §41102 and 46 C.F.R. § 515.42. See Complaint, ¶ 6. The complaint alleges violations of 46 U.S.C. §41102 of the Shipping Act as amended, and 46 C.F.R. § 515.42.³ See Complaint, ¶ 23. As the complaint acknowledges in paragraph 18, 46 U.S.C. §41102 prohibits an ocean 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. As the complaint acknowledges in paragraph 21, 46 C.F.R. §515.42 requires that a common carrier's tariff provide for the payment of compensation, and that such compensation must be paid on any shipment forwarded on behalf of others where the forwarder has provided a certification.

The Act defines an “ocean common carrier” as a vessel operating common carrier. 46 U.S.C. §40102(17). The Act defines a “common carrier” as:

...a person that (i) holds itself out to the general public to provide transportation by way of passengers or cargo between the United States and a foreign country for compensation, (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 U.S.C. §40102(7).

Wallenius Wilhelmsen Logistics does not meet these definitions. Neither the Wallenius Wilhelmsen Logistics entity named in the complaint, nor either of the Wallenius Wilhelmsen

² See, Delaware Department of State: Division of Corporations Entity Search, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>.

³ Complainant also states “should evidence show that respondent has also violated Title 46 U.S.C. § 41103(3), Complainant seeks a payment of additional amounts . . .” See Complaint, ¶ 31. There is no such provision in the Shipping Act, and as such, this argument is not addressed further in this Motion.

Logistics entities registered in Delaware, provide transportation of cargo between the United States and a foreign country.

As shown by the Federal Maritime Commission's website, Wallenius Wilhelmsen Ocean AS is the only Wallenius Wilhelmsen entity that acts as an ocean common carrier and is registered with the Federal Maritime Commission as an ocean common carrier. See, Federal Maritime Commission, Vessel Operating Common Carriers. Moreover, the tariffs quoted in paragraphs 8 through 10 of the Complaint are tariffs published by Wallenius Wilhelmsen Ocean AS. Because the named respondent is not an ocean common carrier, the Commission does not have personal jurisdiction over Wallenius Wilhelmsen Logistics.

II. Conclusion

The complaint against Wallenius Wilhelmsen Logistics should be dismissed with prejudice because no Wallenius Wilhelmsen Logistics entity acts as an ocean common subject to 46 U.S.C. §41102 or 46 C.F.R. § 515.42.

Respectfully submitted,



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Dated: January 8, 2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2024, the foregoing Respondents' Motion to Dismiss and Memorandum in support of same was served via electronic mail on:

Melissa Mayo
Melissa.mayo@dfyoung.com

A handwritten signature in black ink, appearing to read "Wayne R. Rohde", is written above a horizontal line.

Wayne R. Rohde