

BEFORE THE FEDERAL MARITIME COMMISSION

<p>D. F. YOUNG, INC., <p style="text-align: center;">Complainant</p><p style="text-align: center;">v.</p><p>WALLENIUS WILHELMSSEN LOGISTICS, <p style="text-align: center;">Respondent.</p></p></p>	<p style="text-align: center;">DOCKET NO. 23-14</p>
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A. RELIEF REQUESTED BY THIS MOTION

Complainant moves for leave to file and serve an amended complaint in the form attached to this motion.

B. RULE 502.71(a) STATEMENT

On Tuesday, January 16, 2024, the parties conferred over email and agreed that Respondent would voluntarily withdraw its Motion to Dismiss and consent to this motion for leave to amend the complaint, and that Respondent would have the standard time of 25 days to answer the amended complaint.

C. NATURE OF THIS CASE

This is a claim for unpaid freight forwarder compensation. Complainant is a licensed freight forwarder. Respondent is sued as common carrier of goods by water. Complainant damages are estimated at \$110,925.44.

D. HISTORY OF THIS CASE

1. The Docket Sheet shows:

- 12/13/2023: Verified Complaint filed pro se by Complainant.
 - 1/08/2024: Respondent's Motion to Dismiss filed.
2. Respondent's counsel filed a Motion to Dismiss this Complaint, in which Complainant had mis-named the Respondent parties.
 3. Respondent's counsel does not oppose this amendment.

E. AUTHORITIES RELIED ON IN THIS MOTION

1. Rule 66(a) [46 C.F.R. 502.66] provides in relevant part:

Amendments or supplements to any pleading (complaint, Order of Investigation and Hearing, counterclaim, crossclaim, third-party complaint, and answers thereto) will be permitted or rejected, either in the discretion of the Commission or presiding officer.
2. *Tak Consulting Engrs. V. Bustani*, 1998 WL 940845, at *7-8 (F.M.C. Oct.22, 1998) (Pleadings in administrative proceedings are easily amendable, even more so than in federal courts, and are not considered to be critically important. Rather they are general notice-giving instruments that allow respondents to prepare their defense.)
3. *Barbeau v. M. Anderson, etc.*, 1991 WL 382895, at *2 (F.M.C. May 16, 1991) (FMC Rules governing amendments are flexible and amendments are liberally allowed.)
4. Rule 12 [46 C.F.R. 502.12] (“In proceedings under this part, 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.”)

5. *Forman v. Davis*, 371 U.S. 178, 181-82 (1962) (Pleading is not a game of skill in which one misstep by counsel may be decisive to the outcome. The purpose of pleading is to facilitate a proper decision on the merits. Absent any apparent or declared reason such as undue delay, bad faith, dilatory motive, undue prejudice, or futility of amendment, leave to amend should be freely given.).

F. SPECIFIC AMENDMENTS BEING REQUESTED

If leave is granted, Respondent would amend its original answer as follows:

1. Named Defendants will be “Wallenius Wilhelmsen Logistics AS, n/k/a Wallenius Wilhelmsen Ocean As (“WWL Ocean”) and Wallenius Wilhelmsen Logistics Americas, LLC (“WWL Americas”), (collectively “WLL” and/or “Respondents”).
2. Paragraph 5 will be amended to note that “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.
3. Paragraph 6 will now note that “Wallenius Wilhelmsen Logistics Americas, LLC” is the Delaware corporation with a place of business at 300 Interpace Parkway, Parsippany, NJ 07054.
4. Paragraph 7 will clarify the identity of the respondent, noting that:

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.
5. Quotation marks will be removed from Paragraph 12 (formerly 10).

6. Paragraph 19 (formerly 17) has been corrected to note that Respondent was paying Freight Forwarding Compensation to Complainant until November 2023, whereas the unamended complaint said no compensation was ever paid.
7. Paragraphs 21-22 (formerly 19-20) adds periods after the citations for “46 U.S.C. §40501(a)(1),” “46 U.S.C. §40501(b)(3),” “46 U.S.C. §40904(a),” and “46 U.S.C. §40904(c).”
8. Paragraphs 20-25, 32 (formerly 18-23, 31) add periods for “U.S.C.”
9. Paragraphs 23 and 25 (formerly 21 and 23) add periods for “46 CFR Section 515.42” and replaces bullet points with numerals.
10. Paragraph 24 corrects several transcription errors where letters were replaced by numerals, including “1f” “1s” and “Sec10n.”
11. Former Paragraph 25 regarding to continued accrual of damages has been removed.
12. Paragraph 32 (formerly 31) notes that Respondent may have violated Title 46 U.S.C. §41104, not §41103(3).

G. FACTUAL BACKGROUND

1. Claims for freight forwarder compensation are governed by 46 C.F.R. 515.42.
2. Under that Regulation, a common carrier may not pay compensation to a forwarder unless, among other things, it is provided for in the carrier’s tariff. Reg.

515.42(b). A forwarder is forbidden from accepting compensation other than what is provided by the tariff. Reg. 515.42(d).

3. 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.
4. 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.
5. 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.
6. Respondent has provided Freight Forwarding Compensation to Complainant for past shipments until November 2024, when Respondent refused further payment.
7. The amendment should be granted for the following reasons:
 - (a) Respondent consents to the amendment and is withdrawing its Motion to Dismiss.
 - (b) Complainant will suffer no prejudice. No rights or claims over have become time barred or been otherwise lost since the original answer was filed, nor have any relevant witnesses become unavailable as a result.
 - (c) There will be no need for additional documentary discovery. Each of the shipments generated a finite set of documents, and these documents—or representative samples—have already been produced.

- (c) The amendment will simply allow the proper parties to answer to the allegations brought against them by Complainant.

H. REQUEST FOR RELIEF

Respondent asks that its motion be granted.

Respectfully submitted,

LAW OFFICES OF THOMAS J. WAGNER, LLC

/s/ THOMAS J. WAGNER

Date: January 22, 2024

By:

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Attorneys for Complainant, D. F. Young, Inc.

Proposed Amended Answer

**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, n/k/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 “WWL” 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 by 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

Date: January __, 2024

By: _____

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BEFORE THE FEDERAL MARITIME COMMISSION

D. F. YOUNG, INC., Complainant	DOCKET NO. 23-14
v.	
WALLENIOUS WILHELMSSEN LOGISTICS, Respondent.	

ORDER GRANTING COMPLAINANT'S MOTION TO FILE AN AMENDED COMPLAINT

Upon consideration of Complainant's Motion for Leave to File an Amended Complaint and Respondents' consent to that request, it is hereby **ORDERED** that the Motion is **GRANTED** and Complainant may file an Amended Complaint within ten (10) days. Respondents shall have 25 days within which to answer Complainant's Amended Complaint.

Erin M. Wirth
Chief Administrative Law Judge

BEFORE THE FEDERAL MARITIME COMMISSION

<p>D. F. YOUNG, INC., Complainant</p> <p style="text-align: center;">v.</p> <p>WALLENIUS WILHELMOSEN LOGISTICS, Respondent.</p>	<p>DOCKET NO. 23-14</p>
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the enclosed Motion to Amend Complaint on behalf of Complainant, D.F.Young, Inc., was served via U.S. Mail and Email on the following:

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Rachel Schwartz, Esquire
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LAW OFFICES OF THOMAS J. WAGNER, LLC

/s/ THOMAS J. WAGNER

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Date: January 22, 2024