

**Before the
FEDERAL MARITIME COMMISSION**

Docket No. 24-10

**Impact Products, LLC *et al.*, Complainants v. Yang Ming Marine Transport Corp.,
Respondent**

UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Pursuant to 46 CFR § 502.66(a) and 46 CFR § 502.69, and 502.71 of the Federal Maritime Commission's Rules of Practice and Procedure, Complainants Impact Products, LLC and Safety Zone, LLC (collectively, the “Complainants”), by and through their undersigned counsel, hereby submit this motion for leave to file amended complaint (the “Motion”), requesting the Presiding Officer to grant leave to file the attached Verified Amended Complaint (the “Amended Complaint”). In support of the Motion, Complainants state as follows:

Complainants filed their Verified Complaint (the “Complaint”) against Yang Ming Marine Transport Corp. (“Respondent”) on February 14, 2024 (Doc. No. 1). The initial Complaint alleged various violations of the Shipping Act, including violations of 46 U.S.C. § 41102(c) for failure to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering Complainants’ property and 46 U.S.C. § 41104(a)(10) for unreasonable refusal to deal or negotiate.

To date, the Parties have exchanged Rule 502.141(b) disclosures, and propounded written discovery. On May 17, 2024, Respondent served answers and objections to Complainants’ discovery requests, along with an initial document production. On May 31, 2024, Complainants served their answers and objections to the Respondent’s discovery requests, including their initial document production. Most recently, during the week of August 5, 2024, the Parties produced

supplemental document productions and filed a joint motion to extend discovery and briefing deadlines, which was granted on August 19, 2024 (Doc. No. 11). Complainants then served their expert report to Respondent on August 20, 2024.

I. Complainants' bankruptcy proceeding and the sale of their assets.

On May 21, 2024, Complainants filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware, Case No. 24-bk-11055 (the "Bankruptcy Proceeding"). In the interim, Complainants were working through the bankruptcy process to determine who would ultimately purchase Complainants' assets. On July 10, 2024, the Bankruptcy Court entered an order (a) approving the sale of the debtors' assets free and clear of lien, claims, interests, and encumbrances, (b) approving the assumption and assignment of certain executory contracts and unexpired leases, and (c) granting related relief (the "Bankruptcy Order"). *See **Exhibit 2***. As part of the Bankruptcy Order, the Bankruptcy Court approved the sale and purchase of all rights, or causes of action which Complainants may have against *any* person with respect to the purchased assets. *See **Exhibit A*** p. 16, attached to the Bankruptcy Order.

TZ SSE Buyer, LLC, a Delaware limited liability company ("TZ SSE Buyer"), purchased and is now the owner of all of Complainants' assets (as of July 10, 2024), including the claims at issue in this proceeding. Pursuant to the Bankruptcy Order, Complainants have transferred and assigned all of the claims they have against Respondent in this proceeding to TZ SSE Buyer, who will now prosecute the claims against Respondent.

The undersigned counsel did not need bankruptcy court approval to continue to prosecute this case because no assets of the bankruptcy estate were used to fund the prosecution of the underlying claims against Respondent. Clark Hill PLC, Complainants' undersigned counsel, was not required to be listed in Complainants' Motion to Authorize Debtors to Employ Professionals

Utilized in the Ordinary Course of Business, as no estate assets were used to pay Clark Hill's attorneys' fees and costs. Additionally, the Bankruptcy Court was fully aware of the agreement between Clark Hill and Complainants for the legal advice and representation concerning the claims against Respondent, as it was disclosed to the Bankruptcy Court. *See* attached as **Exhibit 3**, a true and correct copy of Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpected Leases in connection with Sale of Substantially All Assets, Schedule A p. 5, which was filed with the Bankruptcy Court on June 20, 2024, Docket 175-1.

II. Complainants' proposed Verified Amended Complaint.

The Amended Complaint will simply substitute TZ SSE Buyer as the new complainant (the "Substitute Complainant") and remove Impact Products, LLC and Safety Zone, LLC as the Complainants. The remaining allegations in the Verified Complainant will remain substantially similar. The Amended Complaint will also provide more detail about the sequence of events (who did what and when) and correct any errors in identifying Laufer Group International as a freight forwarder, while also explaining Laufer's role in assisting Complainants with the delivery of the relevant containers. Importantly, the Amended Complaint *does not* introduce any new allegations or charges.

In accordance with 46 C.F.R. § 502.66, the Commission or Presiding Officer has discretion to permit or reject amendments to any pleading, including complaints. Any proposed amendment may not broaden the issues without offering the opposing party the opportunity to reply to the amended pleading and to prepare for the broadened issues. *Id.* The Commission's rules do not provide predetermined criteria for assessing whether to grant or deny a motion to amend a complaint. 46 C.F.R. § 502.12 provides that "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.” The Federal Rules of Civil Procedure, more specifically, Fed. R. Civ. P. 15(a)(2) provides that, beyond the one-time allowance for a party to amend its pleading as a matter of course within 21 days of service of a responsive pleading outlined in Fed. R. Civ. P. 15(a)(1)(B), amendments to a pleading are also permitted either with opposing parties' written consent or leave of court. Leave should be freely given when justice so requires. Fed. R. Civ. P. 15(a)(2). “Denial of leave to amend therefore constitutes an abuse of discretion unless the court gives sufficient reason, such as futility of amendment, undue delay, bad faith, dilatory motive, undue prejudice, or repeated failure to cure deficiencies by previous amendments... A court should not deny leave to amend based solely on time elapsed between the filing of the complaint and the request for leave to amend. Nor does the prolonged nature of a case affect whether the plaintiff may amend its complaint. Rather, the court should take into account the actions of other parties and the possibility of resulting prejudice.” *Bancoult v. McNamara*, 214 F.R.D. 5, 8 (D.D.C. 2003) (citing *Caribbean Broad. Sys., Ltd. v. Cable & Wireless P.L.C.*, 148 F.3d 1080, 1084 (D.C.Cir.1998) (concluding that the length of litigation is relevant only insofar as it suggests bad faith or prejudice)).

Complainants' proposed Amended Complaint is attached hereto as **Exhibit 1**. The proposed amendment does not broaden the issues in this action but instead: (1) replace the Complainants with the party that purchased all of their assets, including the claims at issue in this proceeding; (2) provide more specificity regarding the sequence of events (who did what and when), and (3) correct any errors in identifying Laufer as a freight forwarder.

Fed. R. Civ. P. 15(a)(2) provides that leave to amend should be freely given “when justice so requires.” This is clearly such an instance. The proposed amendments aim to add the new owner of the claims asserted against Respondent and to more accurately describe the relationships and

facts already alleged in Complainants' Verified Complaint. These changes will ultimately lead to a more just decision by the Commission.

This Motion for Leave to Amend is brought for good cause, is not futile, and is made without the opposing party's consent. Pursuant to 46 CFR § 502.71(a), on September 25, 2024, Complainants' counsel informed Respondent's counsel of the intention to file this instant Motion and amended complaint. Respondent's counsel indicated that Respondent does not oppose the Motion.

For all the foregoing reasons, Complainants respectfully request that the Presiding Officer grant the Motion and accept the Amended Complaint attached as **Exhibit 1**.

Dated: September 27, 2024

Respectfully jointly submitted,

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CERTIFICATE OF SERVICE

I certify that on September 27, 2024, a true and correct copy of the foregoing **Complainants' Motion for Leave to File Amended Complaint** was served by email on all counsel of record in accordance with 46 CFR Part 502.

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