



Before the
FEDERAL MARITIME COMMISSION
Washington, DC 20573
Docket No. 24-10

TZ SSE Buyer, LLC v. Yang Ming Marine Transport Corp.

VERIFIED AMENDED COMPLAINT

I. INTRODUCTION

1. Complainant TZ SSE Buyer, LLC (“Complainant”), by its undersigned counsel, brings this Verified Amended Complaint against Respondent Yang Ming Marine Transport Corp., Ltd. (or “Respondent”), pursuant to 46 U.S.C. Section 41301, to seek reparations for injuries to Impact Products, LLC and Safety Zone, LLC (the “Injured Parties”) caused by Respondent’s violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 *et seq.* (the “Shipping Act”).

2. The Injured Parties originally filed the Verified Complaint against Respondent on February 14, 2024. However, on May 21, 2024, the Injured Parties filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware, Case No. 24-bk-11055 (Bankr. Del.) (the “Bankruptcy Proceeding”). As part of the Bankruptcy Proceedings, the Injured Parties sold all of their assets, including the claims asserted against Respondent in this case, to Complainant. The Bankruptcy Court approved the sale on July 10, 2024. As a result, the Complainant now brings these claims on behalf of the Injured Parties.

3. Since the beginning of the COVID-19 pandemic, global ocean carriers, including Respondent, have, as alleged herein, and upon information and belief, unjustly and unreasonably exploited customers, such as the Injured Parties, by vastly increasing their profits at the expense

of shippers and the U.S. public generally, which bears increased freight cost in the form of inflation.

4. As explained further below, beginning in 2021 through 2022 (the “Relevant Period”), Respondent assessed demurrage, detention, per diem, and yard storage charges (the “Charges”) to the Injured Parties for periods of time in which the Injured Parties’ ability to pick up containers at the ports, or return empty containers promptly, was significantly constrained due to circumstances outside of the Injured Parties’ control, such as congestion at the ports and shortage of equipment.

5. Respondent’s conduct, as alleged herein, with respect to the receipt, handling, storage, and/or delivery of the Injured Parties’ property and, upon information and belief, of other shippers, occurred on a normal and customary basis.

II. THE COMPLAINANT

6. The Injured Parties Impact Products, LLC and Safety Zone, LLC are corporations with offices in Ohio, Tennessee, and Connecticut, among other locations. Impact Products LLC is located at 2840 Centennial Rd., Toledo, OH 43617 and it has an email address of Thomas.russo@supplysourceglobal.com. Safety Zone LLC has an address of 385 Long Hill Rd., Guilford, CT 06437 and an email address of Thomas.russo@supplysourceglobal.com. Their parent corporation is Supply Source Enterprises (“Supply Source”). The Injured Parties are “shippers” pursuant to 46 U.S.C. 40102(23). Impact Products LLC was the leading manufacturer of supplies and accessories for the cleaning industry, and Safety Zone LLC manufactured safety equipment and products. They were in business for over fifty years. Impact Products LLC was formed in 1963 and Safety Zone LLC in 1973. The Injured Parties had service centers in Connecticut, Ohio, and Shanghai, China and distribution centers in Connecticut, Indiana, California, Texas, and Florida.

7. Complainant is a Delaware limited liability company located at 2840 Centennial Drive, Toledo, Ohio 43617 and has an email address of tlondo@tranzonic.com.

III. THE RESPONDENT

8. Upon information and belief, Respondent Yang Ming Marine Transport Corp. is a company existing under the laws of Taiwan with its principle place of business located at No. 271, Ming De 1st Road, Cidu District, Keelung 20646, Taiwan, acting in the United States by and through its agent, Yang Ming (America) Corp., a company existing under the laws of the State of Texas with offices located at 3250 Briarpark Drive, Suite 201, Houston, TX 77042. Respondent Yang Ming Marine Transport Corp. is a Taiwanese global ocean carrier that offers container transportation and serves multiple ports in the United States.

9. Upon information and belief, Respondent Yang Ming Marine Transport Corp. and its agent Yang Ming (America) Corp. acted jointly in the conduct alleged herein with respect to Complainant and, upon information and belief, other shippers, and therefore are referred to herein collectively as “Yang Ming” or “Respondent.”

IV. JURISDICTION AND LEGAL AUTHORITY

10. The Federal Maritime Commission (“FMC”) has jurisdiction over this Verified Amended Complaint pursuant to 26 U.S.C. §§ 41301 through 41309.

11. The FMC has personal jurisdiction over Respondent as an ocean common carrier, as that term is defined by 46 U.S.C. Section 40102(18), that has entered into a “service contract”, as that term is defined by 46 U.S.C. Section 40102(21), with Laufer Group International (“Laufer”).

12. Respondent’s actions alleged herein constitute failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and

delivering the property of the Injured Parties, in violation of 46 U.S.C. Section 41102(c) and the FMC's Interpretive Rule on Demurrage and Detention under the Shipping Act, 85 Fed. Reg. 29,638 (May 18, 2020 (partially codified at 46 C.F.R. Section 545.5) (the "Interpretive Rule"), and in particular the Incentive Principle articulated in the Interpretive Rule.

13. Respondent's assessment of the Charges or a substantial majority thereof, and the alleged acts and omissions of Respondent that led to the assessment of such Charges, also constitute violations of 46 U.S. Section 41104, including 46 U.S.C. Section 41104(a)(10)'s prohibition on unreasonable refusals to deal or negotiate.

V. ALLEGED FACTS

14. For the period of 2021 through 2022, the Injured Parties used Laufer, a non-vessel operating common carrier ("NVOCC"), to assist in delivering containers with the Injured Parties' goods (the "Relevant Containers") from outside the United States to the United States. Upon information and belief, Laufer entered into a service contract or service contracts with Respondent for the shipment of the Relevant Containers on Respondent's vessels. Laufer, as an NVOCC, booked the shipments of the Relevant Containers under these service contracts.

15. Throughout the Relevant Period, the Injured Parties, through Laufer, shipped 2,149 unique containers using Respondent. Of those containers, Respondent assessed Laufer with demurrage on 309 containers, detention charges on one container, per diem charges on 39 containers, and yard storage charges on 358 containers. The total demurrage, detention, per diem, and yard storage charges total \$1,304,526.00.

16. Laufer passed the Charges through to the Injured Parties with no markups. While Laufer invoiced the Injured Parties for the Charges, it was simply acting as a conduit for the Charges that were assessed by Respondent. The Injured Parties subsequently paid Laufer a total

of \$1,304,526.00 for the Charges assessed by Respondent during the Relevant Period. Laufer then used the proceeds it received from the Injured Parties to pay Respondent.

17. On April 4, 2024, Laufer assigned the claims alleged herein against Respondent to the Injured Parties. A true and correct copy of the Assignment of Claims Agreement between the Injured Parties and Laufer is attached herein as **Exhibit A**.

18. As Commissioner Rebecca F. Dye emphasized in her Final Report from the FMC's Fact Finding Investigation 29, "the Interpretive Rule on Detention and Demurrage promulgated by the Commission pursuant to Fact Finding 28 provides the shipping public with an enforceable principle that the Commission employs to assess the reasonableness of demurrage and detention practices and regulations under the Shipping Act of 1984, as amended."

19. As set forth in the FMC's Interpretive Rule, "the purpose of demurrage and detention are to incentivize cargo movement," and therefore the FMC "will consider in the reasonableness analysis under section 41102(c) the extent to which demurrage and detention are serving their intended purposes as financial incentives to promote freight fluidity."

20. Respondent's assessment of the Charges, or a substantial majority thereof, and Respondent's acts and omissions that led to the assessment of the Charges, were incapable of incentivizing cargo movement and were therefore unreasonable.

21. To maximize container use and port storage space, carriers charge a daily fee to shippers who fail to pick up containers promptly or after the number of free days has expired. Similarly, an importer faces detention charges if it fails to unload a container and return the empty container to the port within the free period.

22. Respondent refused to act reasonably by extending the number of free days available for the Injured Parties to retrieve the Relevant Containers, despite the fact that the delays

were caused by circumstances outside the Injured Parties' control and were attributable to Respondent' acts or omission.

23. In 2021 and 2022, the volume of shipments entering certain ports surged compared to 2020. Despite this increase, Respondent refused to divert shipments to less congested ports and failed to extend the number of free days for the Injured Parties to retrieve the Relevant Containers and to drop off empty containers before it assessed the Charges.

24. The Charges assessed by Respondent and paid by the Injured Parties were assessed during periods of time in which such Charges were not just or reasonable because of circumstances outside the control of the Injured Parties and its agents and services providers, such as congestion at ports and shortage of equipment.

25. Respondent failed to provide adequate practices and facilities to handle and store the Relevant Containers and also failed to provide adequate facilities for its customers, including the Injured Parties, to return empty containers.

26. Despite that knowledge, Respondent continued to accept Complainants' goods for ocean common carriage and for receipt, handling, storage, and/or delivery through the ports.

27. Respondent also failed to provide the Injured Parties with reasonable free time to retrieve the Relevant Containers, which Respondent transported into the ports while failing to clear their container backlog.

28. The Charges did not serve, and could not have served, as a financial incentive to promote freight fluidity, but instead operated only as a punitive penalty on the Injured Parties for circumstances over which they and their agents and service providers had little to no control.

29. Respondent also failed to provide sufficient detail on their invoices to allow the Injured Parties to understand the reasons for the Charges and to be able to contest the Charges.

30. Unless addressed, Respondent's unlawful practices risk becoming the industry standard, allowing global container lines to impose improper detention and demurrage charges on shippers for delays and conditions beyond the shippers' control.

VI. CAUSES OF ACTION

COUNT I: VIOLATION OF 46 U.S.C. § 41102(c)

31. Complainant repeats and realleges the allegations above as if fully set forth herein.

32. Respondent's assessment of the Charges, and the alleged acts or omissions of Respondent that led to the assessment of such Charges, constitutes failures by Respondent to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering the Injure Parties' property in violation of 46 U.S.C. Section 41102(c), 46 C.F.R. Section 545.5, and the FMC's Interpretive Rule.

COUNT II: VIOLATION OF 46 U.S.C. § 41104(a)(10)

33. Complainant repeats and realleges each and every allegation above as if fully set forth herein.

34. Respondent's assessment of the Charges, and the alleged acts or omissions of Respondent that led to the assessment of such Charges, constitutes unreasonable refusal to deal or negotiate with the Injured Parties, in violation of 46 U.S.C. Section 41104(a)(10).

VII. CAUSATION

35. The foregoing alleged illegal acts of Respondent have directly and proximately injured Complainant, through the Injured Parties, by forcing the Injured Parties to pay the Charges.

VIII. COMPLAINANT'S DAMAGES

36. Complainant, through the Injured Parties, have been, and continue to be, actually and materially injured by each of Respondent's continuous illegal conduct in violation of the Shipping Act alleged herein.

37. Respondent's violations alleged herein have caused direct and proximate financial damages to Complainant, through the Injured Parties, in an amount already believed to exceed \$1,300,000.00, currently accruing, and to be further demonstrated in this proceeding.

IX. PRAYER FOR RELIEF

WHEREFORE, Complainant TZ SSE Buyer, LLC respectfully request that the FMC require Respondent to answer the charges made in this Verified Amended Complaint and prays for relief from the FMC as follows:

1. An investigation by the FMC of the allegations in this Verified Amended Complaint pursuant to 46 U.S.C. Section 41301(c);
2. An Order, after due investigation pursuant to 46 U.S.C. Sections 41302 and 41303 and a hearing pursuant to 46 U.S.C. Section 41304, finding that Respondent have violated 46 U.S.C. Section 41102(c) in connection with its respective receipt, handling, storage, and delivery of the property of the Injured Parties, Impact Products, LLC and Safety Zone, LLC;
3. An Order requiring Respondent to pay Complainant TZ SSE Buyer, LLC reparations for the unlawful conduct alleged herein in an amount to be proven pursuant to 46 U.S.C. Section 41305, with interest pursuant to 46 U.S.C. Section 41305(a), Complainant TZ SSE Buyer, LLC's reasonable attorneys' fees as "the prevailing party" pursuant to 46 U.S.C. Section 41305(e), and any other sum the FMC determines to be proper; and
4. Such other and further orders or relief as the FMC deems just and proper.

X. REQUEST FOR ORAL HEARING

1. Complainants requests an oral hearing in Washington, DC.

Respectfully submitted,

CLARK HILL PLC

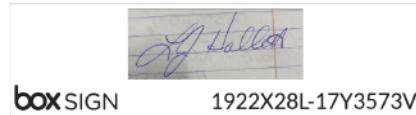
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VERIFICATION

I, Larry Hallett, hereby verify as follows:

1. I am Director of Global Logistics for Complainant TZ SSE Buyer, LLC.
2. I am authorized to make this verification on behalf of Complainant TZ SSE Buyer, LLC.
3. I hereby verify that the facts contained in the foregoing Verified Amended Complaint are true and correct to the best of my knowledge, information and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.



Larry Hallett, TZ SSE Buyer, LLC

Dated: Sep 25, 2024