



Before the
FEDERAL MARITIME COMMISSION

Washington, DC 20573

Docket No. 24-10

Impact Products, LLC and Safety Zone, LLC v. Yang Ming Marine Transport Corp.

VERIFIED COMPLAINT

I. INTRODUCTION

1. Complainants Impact Products, LLC and Safety Zone, LLC (collectively, “Supply Source”), by its undersigned counsel, brings this Verified Complaint against Respondent Yang Ming Marine Transport Corp., pursuant to 46 U.S.C. Section 41301 to seek reparations for injuries to Supply Source caused by Respondent’s violations of the Shipping Act of 1984, as amended, 46 U.S.C. Sections 40101 *et seq.* (the “Shipping Act”), alleged herein.

2. Since the beginning of the COVID-19 pandemic, global ocean carriers, including Respondent Yang Ming Marine Transport Corp., have, as alleged herein, and upon information and belief, unjustly and unreasonably exploited customers, vastly increasing their profitability at the expense of shippers and the U.S. public generally, which bears increased freight cost in the form of inflation.

3. As alleged herein, Respondent Yang Ming Marine Transport Corp. assessed demurrage, detention, per diem, and yard storage charges (the “Charges”) to Supply Source for periods of time in which Supply Source’s ability to pick up containers at the ports, or return empty containers promptly, was significantly constrained due to circumstances outside of the control of Supply Source, such as congestion at ports and shortage of equipment.

4. Respondent Yang Ming Marine Transport Corp.'s conduct alleged herein with respect to the receipt, handling, storage, and/or delivery of the property of Supply Source and, upon information and belief, of other shippers, occurred on a normal and customary basis.

II. THE COMPLAINANT

5. Complainants 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 they have an email address of Thomas.russo@suppliesourceglobal.com. Safety Zone LLC has an address of 385 Long Hill Rd., Guilford, CT 06437 and an email address of Thomas.russo@suppliesourceglobal.com Their parent corporation is Supply Source Enterprises. Supply Source is a "shipper" pursuant to 46 U.S.C. 40102(23). Supply Source is a leader in cleaning and safety products such as personal protective equipment, that has been in business for over sixty-five years as it was formed as Impact Products in 1963. Safety Zone was formed in 1973. Supply Source also has service centers in Connecticut, Ohio, and Shanghai, China and distribution centers in Connecticut, Indiana, California, Texas, and Florida.

III. THE RESPONDENT

6. 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.

7. 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

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

9. 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 Complainant.

10. 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 Supply Source, 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.

11. Respondent’s assessment of the Charges or a substantial majority thereof and the alleged acts and omissions of Yang Ming 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

12. For the period of 2021 through 2022, Supply Source shipped 2,149 unique containers using Yang Ming. Of those containers, Yang Ming assessed Supply Source 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 (the “Charges”).

13. Throughout the relevant period, Supply Source used a freight forwarder Laufer Group International (“Laufer”) to assist in the facilitation of the relevant containers. While Laufer invoiced Supply Source for the Charges, it was simply acting as a conduit for the Charges that were sent by Yang Ming.

14. 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.”

15. 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.”

16. Yang Ming’s assessment of the Charges, or a substantial majority thereof, and Yang Ming’s acts and omissions that led to the assessment of the Charges, were incapable of incentivizing cargo movement and therefore unreasonable.

17. 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.

18. Yang Ming refused to act reasonably by increasing the number of free days available to Supply Source even though Yang Ming created delays beyond Supply Source's control.

19. In 2021 and 2022, the volume of shipments coming into certain ports had surged, compared to 2020. Even though the volume increased, Yang Ming refused to divert shipments to less crowded ports and also failed to extend the number of free days before it assessed the Charges.

20. The Charges assessed by Yang Ming and paid by Complainant were assessed during periods of time in which such Charges were not just or reasonable because of circumstances outside the control of Supply Source and its agents and services providers, such as congestion at ports and shortage of equipment.

21. Yang Ming failed to provide adequate practices and facilities to handle and store Yang Ming's empty containers and also failed to provide adequate facilities for its customers, including Supply Source, to return empty containers.

22. Despite that knowledge, Yang Ming continued to accept Supply Source's goods for ocean common carriage and for receipt, handling, storage, and/or delivery through the ports.

23. Yang Ming failed to provide reasonable free time for Supply Source for containers Yang Ming transported into the ports during the time Yang Ming failed to clear its container backlog.

24. 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 Supply Source for

circumstances over which Supply Source and its agents and service providers had little to no control.

25. Yang Ming also failed to provide sufficient detail on its invoices to allow Supply Source to understand the reasons for the Charges and to be able to contest the Charges.

26. If not fixed, Yang Ming's unlawful practices will become industry standard and leading to a situation where all global container lines can impose the improper detention and demurrage charges upon shippers because of delays and conditions outside of shippers' control.

VI. CAUSES OF ACTION

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

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

28. Yang Ming's assessment of the Charges, and the alleged acts or omissions of Yang Ming that led to the assessment of such Charges, constitutes failures by Yang Ming to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering Supply Source's 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)

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

30. Yang Ming's assessment of the Charges, and the alleged acts or omissions of Yang Ming that led to the assessment of such Charges, constitutes unreasonable refusal to deal or negotiate with Supply Source, in violation of 46 U.S.C. Section 41104(a)(10).

VII. CAUSATION

31. The foregoing alleged illegal acts of Respondent have directly and proximately injured Supply Source by forcing Supply Source to make alternate transportation arrangements for cargo that was supposed to be shipped by Respondent pursuant to the terms of their respective Service Contracts at substantially higher spot market prices or forgo shipping such cargo altogether.

VIII. COMPLAINANT'S DAMAGES

32. Supply Source has been, and continues to be, actually and materially injured by each Respondent's continuous conduct in violation of the Shipping Act alleged herein.

33. Respondent's violations alleged herein are causing direct, proximate, and ongoing financial damages to Supply Source in an amount already believed to exceed \$1,000,000, currently accruing, and to be further demonstrated in this proceeding.

IX. PRAYER FOR RELIEF

WHEREFORE, Impact Products, LLC and Safety Zone, LLC respectfully request that the FMC require Respondent to answer the charges made in this Verified Complaint and prays for relief from the FMC as follows:

1. An investigation by the FMC of the allegations in this Verified 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 has violated 46 U.S.C. Section 41102(c) in connection with its respective receipt, handling, storage, and delivery of the property of Impact Products, LLC and Safety Zone, LLC;

3. An Order requiring Respondent to pay Impact Products, LLC and Safety Zone, 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), Impact Products, LLC and Safety Zone, 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. Complainant requests an oral hearing in Washington, DC. Respectfully

submitted,

CLARK HILL PLC

/s/ Timothy R. Herman

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VERIFICATION

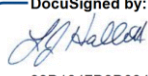
I, Lawrence Hallett, hereby verify as follows:

1. I am Director of Global Logistics for Complainant Supply Source Enterprises who is the parent corporation of Impact Products, LLC and Safety Zone, LLC.

2. I am authorized to make this verification on behalf of Complainants Impact Products, LLC and Safety Zone, LLC.

3. I hereby verify that the facts contained in the foregoing Verified 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.

DocuSigned by:

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Lawrence Hallett, Impact Products, LLC and Safety Zone, LLC 2/6/2024

Dated: _____