

# FEDERAL MARITIME COMMISSION

YAKOV KOBEL AND VICTOR  
BERKOVICH,

*Complainants,*

v.

HAPAG-LLOYD, A.G., HAPAG-LLOYD,  
INC., LIMCO LOGISTICS, INC., AND  
INTERNATIONAL TLC, INC.,

*Respondents.*

Docket No. 10-06

Served: May 5, 2016

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**BY THE COMMISSION:** Mario CORDERO, *Chairman*,  
Rebecca F. DYE, Richard A. LIDINSKY, Jr., Michael A. KHOURI,  
and William P. DOYLE, *Commissioners*.

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## **Order Denying Petition for Reconsideration**

On June 24, 2015, Respondent Limco Logistics, Inc. (Limco) filed with the Commission a Petition for Reconsideration and Stay of Enforcement (Petition) of the Commission's May 26, 2015, Order Affirming Remand Initial Decision, No. 10-06, 2015 FMC LEXIS 6 (FMC May 26, 2015) (May 26 Order). For the reasons discussed below, the Commission denies the Petition.

## I. BACKGROUND

The May 26 Order affirmed the Administrative Law Judge's (ALJ) Remand Initial Decision, *Kobel v. Hapag-Lloyd, A.G.*, 33 S.R.R. 594 (ALJ 2014), which held that Respondents Limco and International TLC, Inc. (ITLC) violated 46 U.S.C. § 41102(c) (section 10(d)(1) of the Shipping Act of 1984) and found Respondents jointly and severally liable to Complainants for the resulting damages. *Id.* at 606. Limco's Petition seeks reconsideration of the Commission's imposition of joint and several liability as between Limco and ITLC, and a stay of enforcement of the award pending the Commission's decision on reconsideration. Pet. at 1. On July 8, 2015, Complainants filed their reply to the Petition (Reply).

## II. DISCUSSION

### A. Standard of Review and Burden of Proof

Rule 261 of the Commission's Rules of Practice and Procedure governs petitions for reconsideration. 46 C.F.R. § 502.261. The rule limits the grounds upon which such petitions may be filed and provides that the Commission will summarily reject a petition unless it:

- (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order;
- (2) Identifies a substantive error in material fact contained in the decision or order; or
- (3) Addresses a finding, conclusion or other matter upon which the party has not previously had the opportunity to comment or which was not addressed in the briefs or arguments of any party.

§ 502.261(a) "Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received."

§ 502.261(a)(3).

### **B. Limco's Petition for Reconsideration**

Limco neither asserts that there has been a change in material fact or applicable law since the issuance of the May 26 Order, nor alleges that the Order contains a substantive error in material fact. Rather, Limco argues that its Petition should be considered by the Commission because “[t]he imposition of joint and several liability with respect to Limco and ITLC and the apportionment of damages among all of the parties to this proceeding are matters that have not been addressed in the briefs or arguments of any party.” Pet. at 5. Limco claims that the apportionment of reparations among the parties is appropriate in this proceeding because Complainants significantly contributed to the causation of damages by refusing to pick up their cargo for several months after demurrage began to accrue and because Limco’s culpability in this matter is secondary to that of ITLC. *Id.* at 6-7.

Complainants counter that the Petition should be summarily dismissed. Complainants assert that Limco had the opportunity to comment on the issues of joint and several liability and the apportionment of liability at each stage of the proceedings and did not do so, and they argue that the Petition merely repeats arguments regarding causation of damages, an issue raised by the parties on several occasions throughout the proceedings. Reply at 1–3. Complainants further argue that the Commission correctly imposed joint and several liability. *Id.* at 4–13. Finally, Complainants urge the Commission to deny Limco’s request for a stay of enforcement or, in the event the stay is granted, to make it contingent upon Limco posting a supersedeas bond in the full amount of the reparations award. *Id.* at 13.

The record belies Limco’s assertion that the issues of joint and several liability and apportionment of damages were not addressed by any of the parties during the proceeding. To the contrary, the extent to which Complainants and the individual respondents were liable for Complainants’ damages was a recurring issue throughout the proceedings, with Limco arguing that either

ITLC or Complainants should be found solely liable. *See, e.g.*, Closing Arg. and Post Trial Mem. of Limco Logistics Inc., at 5–6, Oct. 28, 2011 (“If it were determined . . . that the liquidation of the cargo was not proper, then [ITLC] would be solely liable to the Complainants for any and all damages sustained.”); Remand Opp’n Br. of Limco Logistics, Inc., at 10, Oct. 17, 2013 (“Complainants are solely responsible for any injury they incurred as they did not properly care for the cargo or fulfill their obligations under the bill of lading agreement with Limco.”). Complainants, on the other hand, consistently argued that Respondents should be held jointly and severally liable for those damages. *See, e.g.*, Complainant’s Post-Trial Br. and Closing Statement at 14, Sep. 29, 2011 (“[E]ven if the Court [sic] found that the wrongful actions of Limco and [ITLC] regarding the liquidation of [the container] was a substantial factor causing Complainants’ damage, at most the Court [sic] should find that these were concurrent causes with [Hapag-Lloyd] and render parties jointly and severally liable for actual damages”); Complainants’ Reply to Respondents’ Post-Trial Briefs at 17, Nov. 9, 2011 (“Both Limco and [ITLC] should be held jointly and severally liable for the wrongful delivery of these containers.”).

The ALJ addressed the issue of liability in the Remand Initial Decision, holding Limco and ITLC jointly and severally liable for Complainants’ damages. 33 S.R.R. at 606. Limco did not object to this finding in its exceptions to the Remand Decision, and the Commission affirmed the ALJ’s determination. May 26 Order, slip op. at 2, 14, 2015 FMC LEXIS 6, at \*2–3, \*22.

In short, joint and several liability and apportionment of damages were issues raised by the parties in their briefs and arguments. Limco also had the opportunity in its exceptions to address the ALJ’s finding on these issues, but failed to do so.

### III. CONCLUSION

For the reasons discussed above, we summarily reject Limco’s request for reconsideration because its subject matter does

not fall within one of the specified grounds for reconsideration under Rule 261. We further deny Limco's request for a stay of enforcement as moot in light of the summary rejection of the request for reconsideration.<sup>1</sup>

THEREFORE, IT IS ORDERED, that Limco's Petition for Reconsideration and Stay of Enforcement be DENIED.

By the Commission.

Karen V. Gregory  
Secretary

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<sup>1</sup> Complainants filed a Petition for Attorney's Fees on November 16, 2015. The Commission will address this petition after the Commission's decision becomes final under 46 C.F.R. § 502.254(c).