

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 13-07

**GLOBAL LINK LOGISTICS, INC.,
COMPLAINANT**

V.

**HAPAG-LLOYD AG,
RESPONDENT.**

**MOTION OF THE WORLD SHIPPING COUNCIL
TO FILE A BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENT**

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Dated: July 14, 2014

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The World Shipping Council (“WSC” or the “Council”), pursuant to 46 C.F.R § 502.78, moves the Commission for leave to file a brief as *amicus curiae* in the above-captioned proceeding. Counsel for Complainant Global Link Logistics, Inc. (“Global Link”) has authorized the undersigned to represent to the Commission that Global Link does not oppose the Council’s motion for leave to file. Counsel for Hapag-Lloyd AG (“Hapag-Lloyd”) has authorized the undersigned to represent to the Commission that Hapag-Lloyd supports the Council’s motion.¹ The Council’s brief as *amicus curiae*, which supports the position of Respondent Hapag-Lloyd, is filed conditionally with this motion as provided by 46 C.F.R. § 502.78(a).

¹ Hapag-Lloyd is a member of the World Shipping Council. The full membership of the Council may be found at www.worldshipping.org.

**Interest of the World Shipping Council and
Reasons for Seeking Leave to File a Brief as *Amicus Curiae***

The Council represents twenty-nine liner shipping company members that together carry approximately 90% of global containerized cargo. In the United States foreign trades, a very high percentage of that cargo is carried under service contracts. Complainant Global Link has urged the Commission to adopt a novel interpretation of the Shipping Act in connection with Global Link's 2012-2013 service contract with Hapag-Lloyd. If that interpretation were adopted by the Commission, it would undermine the fundamental structure and policy intent of the Ocean Shipping Reform Act of 1998 ("OSRA") and would undermine service contracts as the legal and commercial instruments that define the terms of transporting the nation's international liner commerce.

Specifically, although Global Link has not alleged that the service contract at issue here on its face violates the Shipping Act, and although Global Link does not allege that Hapag-Lloyd has breached the service contract, Global Link nevertheless alleges that Hapag-Lloyd violated the Shipping Act by failing to follow an alleged "normal and customary practice" in the industry of amending service contracts to make them more economically attractive to the other party.

Global Link has summarized its case this way:

Global Link's contention is that Hapag-Lloyd failed to follow a procedure and practice that was not only previously established between Global Link and Hapag-Lloyd but that is the usual and customary practice of most carriers with respect to service contracts and, in particular, contracts between ocean common carriers and NVOCCs. These normal customary practices consisted of (a) agreeing to adjust the contract rates during the term of the contract to keep them at or close to market levels to enable the NVOCC customer to attract sufficient cargo to meet the MQC; and (b) agreeing, if the shipper was unable to meet the MQC, to adjust the MQC downwards to the amount of cargo shipped or extend the contract for another year and roll the MQC into the extended

contract. By failing and refusing to follow these normal and customary practices, Hapag-Lloyd unreasonably refused to deal or negotiate with Global Link in violation of Section 41104(10) of the Shipping Act; discriminated against Global Link in violation of Section 41103(3) of the Act; and failed to observe just and reasonable practices in violation of Section 41102(c) of the Act. Exceptions at 5.

In essence, Global Link is asking the Commission to require an ocean carrier to amend a service contract in order to provide a shipper commercial terms that the carrier is unwilling to agree to. As is discussed in greater detail in the attached brief, by claiming that the Shipping Act requires carrier parties to match “market rates” that may be provided by that carrier or by other carriers to other shippers, Global Link in fact seeks to resurrect the “me-too” service contract right that was expressly repealed by OSRA. As a legal matter, Global Link’s argument is contrary to Congress’ clear legislative instructions in OSRA. As a practical matter, adoption of such an interpretation of the Shipping Act would nullify the sanctity of service contracts and create massive commercial uncertainty in the market for ocean transportation services in the U.S. foreign trades. Such an interpretation would also create a new regulatory incentive for carriers not to agree to amend contracts for some shippers because of the possibility that other shippers might claim a right to similar contract amendments.

Because the legal, policy and practical implications of Global Link’s novel theory, if it were adopted by the Commission, are so substantial, the Council seeks leave to file the attached *amicus curiae* brief in the hopes of assisting the Commission in its analysis of Global Link’s arguments. The Council’s brief is limited to questions of law and policy, does not add or take issue with any allegations of fact, and will not enlarge or in any way modify the issues presented in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "John W. Butler". The signature is written in black ink and is positioned above a horizontal line.

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