

FEDERAL MARITIME COMMISSION

GLOBAL LINK LOGISTICS,
INC.

Complainant,

v.

HAPAG-LLOYD AG

Respondent.

Docket No. 13-07

Served: September 4, 2014

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

Order Granting Motions

I. PROCEEDING

This proceeding is before the Commission for consideration of a Motion to File a Brief as *Amicus Curiae* in Support of Respondent (Motion), filed on July 14, 2014, by the World Shipping Council (WSC). WSC conditionally filed a Brief as *Amicus Curiae* in Support of Respondent (Brief) at the same time

that it filed the Motion, pursuant to 46 C.F.R. § 502.78(a) (Rule 78). In its Motion, WSC states that “Counsel for Complainant Global Link Logistics, Inc. . . . has authorized [WSC’s Counsel] . . . to represent to the Commission that Global Link does not oppose the Council’s motion for leave to file.” Motion at 2. In addition, WSC states that “Counsel for Hapag-Lloyd AG . . . has authorized [WSC’s Counsel] . . . to represent to the Commission that Hapag-Lloyd supports the Council’s motion.” *Id.*

On August 5, 2014, Global Link Logistics, Inc. (Global Link) filed a Motion for Leave to File Response to Amicus Brief of the World Shipping Council, accompanied by a Reply to Amicus Brief of the World Shipping Council. Global Link does not oppose WSC’s Motion to File a Brief as *Amicus Curiae* in Support of Respondent.

This proceeding was initiated on September 10, 2013, in a Complaint filed by Global Link, in which Global Link alleges that Hapag-Lloyd AG (Hapag-Lloyd) violated three sections of the Shipping Act of 1984 (Shipping Act) in connection with a 2012 Service Contract between the two parties. Hapag-Lloyd filed a Motion to Dismiss, arguing that the Complaint failed to state a claim that it violated any section of the Shipping Act. On April 17, 2014, the Administrative Law Judge (ALJ) issued an Initial Decision Granting Respondent’s Motion to Dismiss (ID). In the ID, the ALJ concluded that Global Link failed to establish that Hapag-Lloyd violated sections 10(b)(10) (46 U.S.C. § 41104(10)); 10(b)(3) (46 U.S.C. § 41104(3)); or 10(d)(1) (46 U.S.C. § 41102(c)) of the Shipping Act. Therefore, the ALJ granted Hapag-Lloyd’s Motion to Dismiss and dismissed the Complaint with prejudice for failure to state a claim upon which relief could be granted. ID at 36. Global Link filed Exceptions to the ID on May 27, 2014, and Hapag-Lloyd filed a Reply on July 7, 2014. As described above, on July 14, 2014, WSC filed a Motion to File a Brief as *Amicus Curiae*, and on August 5, 2014, Global Link filed a Motion for Leave to File Response to Amicus Brief.

II. DISCUSSION

WSC filed its Motion for leave to file a brief as *amicus curiae* pursuant to Rule 78, which provides for the filing of *amicus curiae* briefs, subject to certain requirements. Generally, Rule 78 requires that “[a] brief of an amicus curiae must be limited to questions of law or policy.” 46 C.F.R. § 502.78(a). In addition, a “motion for leave to file an amicus brief must identify the interest of the applicant and must state the reasons why such a brief is desirable.” *Id.* § 502.78(b). Rule 78 sets out a specific time frame for filing an amicus brief, as follows: “Except as otherwise permitted by the Commission or the presiding officer, an amicus curiae must file its brief no later than 7 days after the initial brief of the party it supports is received at the Commission.” *Id.* at § 502.78(c).

In this case, WSC filed its Motion and Amicus Brief seven days after Hapag-Lloyd, the party it supports, filed its Reply to Global Link’s Exceptions. In an earlier proceeding, the Commission considered the filing deadline for amicus motions and briefs pursuant to Rule 76, the predecessor to Rule 78, and concluded that “[w]hen a case is on exceptions to the Commission from an initial decision, . . . the filing deadline established by Rule 76 is correctly understood as ‘the time allowed’ for filing a brief on exceptions, or a reply to exceptions if the prospective amicus wishes to support the party that prevailed before the administrative law judge.” *Sea-Land Service, Inc. – Possible Violations of Sections 10(b)(1), 10(b)(4) and 19(d) of the Shipping Act of 1984*, 29 S.R.R. 1326, 1328 (FMC 2003). The Commission specifically stated that it would “not require earlier participation before an administrative law judge as a threshold to justify filing an amicus brief before the Commission.” *Id.* WSC filed its Motion and Amicus Brief no later than seven days after Hapag-Lloyd filed its Reply to Global Link’s Exceptions, and the Motion is therefore timely filed under Rule 78.

WSC’s Brief meets the requirement that an amicus brief address questions of law and policy. In its brief, WSC addresses

application of the involved sections of the Shipping Act and the Commission's regulations to the facts alleged in the Complaint, and discusses the conflict between Global Link's theory of the case and changes in the Shipping Act put in place by Congress in the Ocean Shipping Reform Act of 1998 (OSRA). WSC's arguments are thus limited to questions of law and policy.

With regard to WSC's interest in the case and why its amicus brief is "desirable," WSC states that it "represents twenty-nine liner shipping company members that together carry approximately 90% of global containerized cargo," and in the United States foreign trades, most of this cargo is carried pursuant to arrangements negotiated in service contracts. Motion at 3. WSC states that if Global Link's interpretation of the Shipping Act were to be adopted by the Commission, "it would undermine the fundamental structure and policy intent of the Ocean Shipping Reform Act of 1998 ("OSRA")" *Id.* WSC further states that "the case has potential implications for the entire [liner shipping] industry." Brief at 1. WSC has identified its interest in this proceeding and has shown why its Brief will assist the Commission in analyzing the issues presented, consistent with Rule 78.

With regard to Global Link's Motion for Leave to File Response to Amicus Brief of the World Shipping Council, the Commission has previously allowed parties to respond to amicus briefs. *See Sea-Land Service*, 29 S.R.R. at 1331. Global Link has not previously had the opportunity to address the arguments made by WSC in its Amicus Brief, and therefore there is justification for allowing Global Link to file a reply.

III. CONCLUSION

WSC has met the requirements in Commission Rule 78, and taking into consideration that the Motion is unopposed, we conclude that the Motion should be granted and the Amicus Brief accepted for filing. As Global Link has not had an opportunity to respond to WSC's Amicus Brief, we further conclude that its

Motion for Leave to file a Response to Amicus Brief should be granted, and the accompanying Reply to Amicus Brief accepted for filing.

THEREFORE, IT IS ORDERED, That the Motion of the World Shipping Council to File a Brief as *Amicus Curiae* in Support of Respondent is granted, and the Brief of the World Shipping Council as *Amicus Curiae* in Support of Respondent is accepted for filing.

IT IS FURTHER ORDERED, That Global Link Logistics, Inc.'s Motion for Leave to File Response to Amicus Brief of the World Shipping Council is granted, and Global Link Logistic, Inc.'s Reply to Amicus Brief of the World Shipping Council is accepted for filing.

By the Commission.

Karen V. Gregory
Secretary