

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 23-05

RAHAL INTERNATIONAL, INC.,
Complainant,

v.

HAPAG-LLOYD AG,
HAPAG-LLOYD (AMERICA) LLC, and
HAPAG-LLOYD USA, LLC
Respondents.

**COMPLAINANT’S RESPONSE IN PARTIAL OPPOSITION
TO RESPONDENTS’ MOTION TO FILE THIRD-PARTY COMPLAINTS**

Pursuant to Federal Maritime Commission Rule 69(f),¹ Complainant Rahal International, Inc. (“Rahal”) respectfully submits this response in partial opposition to the motion by Respondents Hapag-Lloyd AG and Hapag-Lloyd (America), LLC (collectively “Hapag”) to file two Third-Party Complaints (FMC Doc. 13).² Hapag seeks leave to file a Third-Party Complaint against Maher Terminals, LLC and a separate Third-Party Complaint against GCT New York LP and GCT Bayonne LP.

First, Respondents’ motion seeks leave to file against “GCT Global Container Terminals, Inc.” among other Third-Party Respondents. However, neither Third-Party Complaint asserts claims against GCT Global Container Terminals, Inc. Therefore, to the

¹ Unless otherwise specified, references herein to “Rule ___” refer to the Federal Maritime Commission’s Rules, 46 C.F.R. §§ 502.1 to 502.709 (2023).

² Citations to “FMC Doc. ___” reference the specific document assigned to the filing in the Federal Maritime Commission’s docket log for this proceeding. The two Third-Party Complaints were served upon Complainant, but do not appear in the docket log.

extent Respondents' motion is granted, it should be limited to the parties in the proposed Third-Party Complaints.

Second, Federal Rule of Civil Procedure 14(a)(4), which the Federal Maritime Commission will follow to the extent that it is "consistent with sound administrative practice" (*see* Rule 12), provides that "[a]ny party may move to strike the third-party claim, to sever it, or to try it separately." Additionally, Federal Civil Procedure Rule 42(b) provides that "[f]or convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims."

In the absence of discovery between the parties, determining whether the issues and claims raised in the two Third-Party Complaints should be tried together with Complainant Rahal's claims is premature. *See, e.g., Atain Specialty Ins. Co. v. 3g Homes*, No. 4:19-CV-00267, 2020 U.S. Dist. LEXIS 248606, at *11 (S.D. Iowa June 8, 2020) (denying motion for separate trials and reasoning that "[t]he Court will be better positioned to consider a motion for separate trials when discovery is complete and the parties' dispositive motions, if any, have been resolved"); *Benitez v. Am. Standard Circuits, Inc.*, No. 08-CV-1998, 2009 U.S. Dist. LEXIS 22113, at *17 (N.D. Ill. Mar. 18, 2009) (denying, at the pleading stage, motion to sever and for separate trials because they were "premature at this point" and finding that "[a] more appropriate time to decide the matter would be at the conclusion of discovery"). Thus, to the extent Respondents' motion seeks to have the Third-Party Respondents "brought into this case"³ the motion, if granted, should not preclude Complainant's right to seek severance and/or separate trials at a subsequent time in the

³ FMC Doc. 13, p.2.

proceedings. *See Driver v. W.E. Pegues, Inc.*, No. 7:11-CV-1374, 2012 U.S. Dist. LEXIS 202216, at *6 (N.D. Ala. Jan. 19, 2012) (granting leave to renew motion to sever at “more appropriate time” following untimely filing of third-party complaint).

Dated: August 23, 2023
New York, NY

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William M. Fennell, certify that, on August 23, 2023, a true and correct copy of the Complainant's Response In Partial Opposition To Respondents' Motion To File Third-Party Complaints, to which this certification is annexed, was filed via electronic mail with the Secretary of the Federal Maritime Commission, and a copy was served via electronic mail on the following:

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