

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 23-05

RAHAL INTERNATIONAL, INC.,
Complainant,

v.

HAPAG-LLOYD AG and
HAPAG-LLOYD (AMERICA) LLC,
Respondents–Third-Party Complainants,

v.

MAHER TERMINALS LLC,
GCT NEW YORK LP, and
GCT BAYONNE LP,
Third-Party Respondents.

JOINT STATUS REPORT

Complainant Rahal International, Inc. (“Rahal”), Respondents–Third-Party Complainants Hapag-Lloyd AG and Hapag-Lloyd (America), LLC (collectively, “Hapag”), and Third-Party Respondents Maher Terminals LLC (“Maher”), GCT New York LP and GCT Bayonne LP (collectively “GCT”) hereby submit this Joint Status Report (1) pursuant to the August 21, 2023 Scheduling Order of Hon. Linda S. Harris Crovella, Administrative Law Judge (the “8/21/23 Scheduling Order”) requiring a status report be filed by October 27, 2023, and (2) as a result of a 46 C.F.R. § 502.141(h) scheduling conference that was conducted by the parties on October 17, 2023 in view of Maher’s Verified Answer and Affirmative Defenses that was filed on October 3, 2023.

Status Report Pursuant to 8/21/23 Scheduling Order

On October 10, 2023, the parties filed a Joint Status Report (the “10/10/23 Report”). The 10/10/23 Report set forth, among other things, the status of discovery and the initial expectations of Maher and GCT (the “Third-Party Respondents”) that appeared in the case on October 3, 2023.

The following are the parties’ updates since the filing of the 10/10/23 Report:

On October 10, Maher served its initial disclosures.

On October 13, Rahal and Hapag exchanged responses to initial discovery requests. On October 13, Rahal also made its initial production of documents. Hapag’s initial production of confidential documents will be made upon the entry of a discovery confidentiality agreement; production of non-confidential documents is past due.

On October 17, the parties conducted a scheduling conference pursuant to 46 C.F.R. § 502.141(h) to discuss a discovery schedule for discovery pertaining to Hapag’s third-party complaint with respect to Maher. On October 17, 2023, Maher also contacted the Commission’s Office of Consumer Affairs and Dispute Resolution Services (“CADRS”) in accordance with Rule 46 C.F.R. § 502.64(a) and, on October 23, had a remote meeting with a representative of CADRS. Maher is weighing the feasibility of alternative dispute resolution.

On October 18, Hapag filed its opposition to the Motion to Dismiss filed by GCT. GCT’s reply in further support of its Motion to Dismiss is due by October 25, 2023.

Status Report Resulting from 46 C.F.R. § 502.141(h) Scheduling Conference

As stated above, on October 17, 2023, the parties conducted a 46 C.F.R. § 502.141(h) scheduling conference in view of the filing of Maher’s Verified Answer and

Affirmative Defenses on October 3, 2023.

During the October 17 conference, the parties discussed the timing of third-party discovery which at present would commence only with respect to Maher and, pending the outcome of GCT's Motion to Dismiss, may or may not commence at a later time with respect to GCT, thereby impacting the 8/21/23 Scheduling Order. Those discussions more specifically included the following: first, that the introduction of third-parties in this proceeding does not impact the ongoing exchange of documents and responses to interrogatories among the original parties (Rahal and Hapag) pursuant to the 8/21/23 Scheduling Order; second, that the prospect of commencing additional discovery as to one third-party, and the possibility of commencing discovery again at a later date against two other third-parties, could result in significant inefficiencies; and third, the prospect of commencing depositions without initial third-party discovery from and by Maher, and with the possible future involvement of the GCT third-parties if GCT's Motion to Dismiss is denied, would result in additional inefficiencies, including the possibility of calling back witnesses. In view of the foregoing, the parties agreed to propose, and herewith respectfully request, a discovery schedule regarding discovery in the following manner:

First, Rahal and Hapag will continue with document productions and satisfying their current documentary discovery obligations and have agreed to make that discovery available to the Third-Party Respondents (subject to agreeable confidentiality stipulations). Second, Rahal and Hapag will stay the commencement of depositions for a period of thirty (30) days. Third, in lieu of an immediate proposal to commence discovery regarding one third-party (Maher), the parties propose reconvening on November 20, 2023 (i.e., in four weeks) to discuss and propose a joint global schedule (taking into consideration the status

of the case, most principally the decision, if any, on GCT's Motion to Dismiss) for the completion of written/paper discovery relating to Third-Party Respondents, which will include discovery being sought from the Third-Party Respondents and discovery being sought by the Third-Party Respondents from the parties and potentially from non-parties, and a commensurate extension to certain deadlines set forth in the 8/21/23 Scheduling Order, namely the deadlines for depositions, expert discovery and post-discovery briefing.¹

As mentioned above, the parties' proposal to postpone a new joint case schedule at this time and instead reconvene on November 20, 2023 is primarily based on GCT's pending Motion to Dismiss, which in the event GCT is not dismissed would impact any schedule proposed at this time. Reconvening on November 20, 2023 may provide clarity on the status of GCT's participation in the case and, if so, would allow for the parties to set a global schedule at that time aligning the deadlines for discovery relating to the Third-Party Respondents, depositions and expert discovery so that the time, effort and expense associated with those items occurs only once.

In addition to the above, between the date of this Joint Status Report and November 20, 2023, the parties will work on drafting a proposed discovery confidentiality agreement for consideration by the Commission. Maher is also amenable to serving its non-party subpoenas prior to November 20, 2023, to the extent Maher decides to seek such non-party discovery.

¹ Should no decision have been made on GCT's Motion to Dismiss on or before the November 20, 2023 meeting of the parties, then Hapag had advised the parties that it intends to discuss the possibility of third-party discovery to and from GCT in effort to ensure this case's discovery is on a global track.

Dated: October 23, 2023

Respectfully submitted,

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