

**BEFORE THE
FEDERAL MARITIME COMMISSION**

RAHAL INTERNATIONAL, INC., <i>Complainant,</i>)	
)	
v.)	
)	
HAPAG-LLOYD USA, LLC)	
)	
)	DOCKET NO. 23-05
<i>Respondent.</i>)	
)	

**MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION FOR
SUMMARY JUDGMENT**

Respondent Hapag-Lloyd USA LLC (“HLUSA”) submits this memorandum in support of its Motion for Summary Judgment (“Motion”). The required statement of undisputed material facts is attached hereto as Exhibit #1.

I. Legal Standard

The Commission has no procedural summary judgment rule, and thus the Commission follows the Federal Rules of Civil Procedure and pertinent case law when deciding motions for summary judgment. *See* 46 C.F.R. § 502.12; *Maher Terminals, LLC, v. The Port Auth. Of New York and New Jersey Served Order Granting in Part and Denying in Part Respondent’s Motion for Summary Judgment*, Docket No. 08-03 at *4 (FMC 2013).

Under the Federal Rules of Civil Procedure, summary judgment must be granted if no genuine dispute of material fact exists, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). At the summary judgment stage, the judge’s function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine

issue for trial. *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 249 (1986). A dispute over a material fact is genuine if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. With respect to materiality, only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Id.*

II. Summary Judgment Should Be Granted for Hapag-Lloyd USA

Summary judgment should be granted with respect to HLUSA because HLUSA was not engaged in any of the conduct which is the basis of the Complaint.

HLUSA is an ocean common carrier with its principal place of business in New Jersey. It is a separate and distinct legal entity from Hapag-Lloyd AG. Complaint, ¶¶ 3 and 13. HLUSA operates five US-Flag ships in international trades in support of military and civilian agencies of the United States Government. *See* Hapag-Lloyd, Area US Flag, USA, <https://www.hapag-lloyd.com/en/services-information/offices-localinfo/north-america/usa/piscataway-area-us-flag-main-office.html> (last visited August 3, 2023). HLUSA did not call the Port of New York/New Jersey at all in calendar year 2022, and did not transport any cargo to New York for Rahal during 2022. *See* Affidavit of David P. Zimmerman attached hereto as Exhibit #2, ¶5; Hapag-Lloyd, US Flag Services, https://www.hapag-lloyd.com/en/services-information/cargo-fleet/us-flag/route-finder.html/north_america.html (last visited August 3, 2023).

Because HLUSA did not transport the cargo at issue, and did not act as an agent of the carrier that did (Hapag-Lloyd AG), HLUSA played no role whatsoever in the events that are the basis of the Complaint. Accordingly, summary judgment in favor of Hapag-Lloyd USA should be granted with respect to the entirety of the Complaint.

III. Conclusion

For the foregoing reasons, summary judgment should be granted in favor of Hapag-Lloyd USA.

Respectfully submitted,



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