

**BEFORE THE
FEDERAL MARITIME COMMISSION**

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

**MEMORANDUM IN SUPPORT OF RESPONDENTS’ PARTIAL MOTION TO
DISMISS**

Respondents Hapag-Lloyd AG (“HLAG”) and Hapag-Lloyd (America) LLC (“HLA”), (together, “Hapag”) submit this memorandum in support of their Partial Motion to Dismiss (“Motion”).

I. Legal Standard

Although the FMC Rules do not expressly provide for motions to dismiss, it is well established that a respondent may bring motions pursuant to the Federal Rules of Civil Procedure when such motions are not inconsistent with FMC Rules or sound administrative practice. *See* 46 C.F.R. § 502.12; *See e.g., Marine Transp. Logistics, Inc. v. CMA-CGM (America) LLC*, Docket No. 18-07, 2019 WL 5206007, at *2 (FMC ALJ Oct. 8, 2019); *Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, 32 S.R.R. 126, 136 (FMC 2011).

Under Federal Rule of Civil Procedure 12(b)(1), a court must grant a motion to dismiss if the court lacks subject matter jurisdiction, and Complainant bears the burden of establishing subject matter jurisdiction. *Branon v. Debus*, 289 Fed. Appx. 181,183 (9th Cir. 2008). Whether the Federal Maritime Commission has jurisdiction over a claim for cargo damage is a question of subject matter jurisdiction. *See A. N. Deringer Inc. v. Marlin Marine Services, Inc.*, 25 S.R.R. 1273, 1277 (FMC 1990).

II. The Complaint Should be Dismissed To The Extent It Involves An Alleged Claim for Cargo Loss.

The portion of the Complaint relating to the alleged cargo loss and associated \$198,798.11 in damages should be dismissed with prejudice.

The Commission does not have subject matter jurisdiction over cargo loss claims. *See A. N. Deringer Inc. v. Marlin Marine Services, Inc.*, 25 S.R.R. 1273, 1277 (FMC 1990) (“The Commission has never asserted jurisdiction over damage and loss claims.”). Rather, claims for cargo loss and damage are reviewed in federal courts pursuant to the Carriage of Goods by Sea Act (“COGSA”). *Earlean Edwards Dukart v. Ocean Star International Inc.*, 2020 WL 13512914 at *8 (FMC 2020) (“Pursuant to COGSA, jurisdiction over loss and damage claims arising from transportation by ocean is vested in the federal district courts”); *Definition of Package*, 23 S.R.R. 111, 113 (FMC 1985) (“COGSA is not a statute which has been delegated to the Commission for its administration.”).

One of the alleged violations of 46 U.S.C. § 41102(c) of the Shipping Act enumerated in the Complaint is that Hapag’s actions led to the deterioration of the apple juice shipped by Rahal, which caused Rahal to sustain \$198,798.11 in damages due to the resulting damage to the cargo. Complaint, ¶¶ 70-75. This is a claim for cargo loss. As explained above, the Commission does not have subject matter jurisdiction over Complainant’s claim for \$198,798.11 in damages for the

spoilage of Complainant's apple juice because it is a claim for cargo loss or damage, which must be litigated pursuant to COGSA, not the Shipping Act. Accordingly, Complainant's claim for \$198,798.11 should be dismissed.

The Shipping Act regulates free time and demurrage practices; however, it does not regulate cargo claims. Demurrage concerns the amount of time cargo remains on a marine terminal or other facility beyond the expiration of free time, and the charges associated therewith. Demurrage does not include or deal with the cargo's physical state or any damages the cargo may suffer while it is at the marine terminal or other facility. Thus, any allegations or disputes regarding demurrage charges should not be conflated with or mistakenly linked to commercial law cargo claims. These are two distinct claims governed by two different bodies of law, and should be addressed independently in the legal forum appropriate to each. If the Commission asserts jurisdiction over claims for cargo loss or damage that are thinly veiled as Shipping Act claims, it would be enabling parties to circumvent the limitations on liability provided for under COGSA would frustrate the purpose of COGSA, and run contrary to Congress' intent to vest the oversight of cargo loss claims in the federal courts, and not with the Commission. *See Earlean Edwards Dukart*, 2020 WL 13512914 at *8. Such a result would render the \$500 per package limit on liability under COSGA meaningless, as any person who suffered cargo loss or damage could circumvent the limitations on liability by couching its cargo loss/damage claim as a Shipping Act violation. That is not what Congress intended, and to date the Commission has properly declined to entertain cargo damage claims disguised as Shipping Act allegations. It should do the same here.

III. Conclusion

For the foregoing reasons, Complainant's \$198,798.11 claim for damages should be dismissed with prejudice.

Respectfully submitted,



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Dated: August 22, 2023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August 2023, the foregoing Respondents' Partial Motion to Dismiss and the Memorandum in support of same was served via electronic mail on:

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