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.

**MEMORANDUM OF LAW BY RAHAL INTERNATIONAL, INC.
IN OPPOSITION TO RESPONDENTS' PARTIAL MOTION TO DISMISS**

PRELIMINARY STATEMENT

Complainant Rahal International, Inc. ("Rahal") respectfully submits this memorandum of law in opposition to the partial motion to dismiss by Respondents Hapag-Lloyd AG and Hapag-Lloyd (America), LLC (collectively, "Hapag"). *See* Respondents' Partial Motion To Dismiss (Aug. 22, 2023), FMC Docs. 16-17. Accepting Rahal's allegations as true, Rahal seeks reparations for the actual injury Hapag caused as a result of, *inter alia*, the logistical paralysis Hapag created at the Port of New York and New Jersey (the "Port") by Hapag's failure to establish reasonable regulations and practices relating to receiving, handling, storing, and delivering Rahal's cargo. Thus, Rahal's claims are based upon Hapag's violations of the Shipping Act of 1984, Pub. L. No. 98-237, 98 Stat. 67 (1984), as amended by the Ocean Shipping Reform Act of 2022, Pub. L. No. 117-146, 136 Stat. 1272, 46 U.S.C.S. §§ 40101 to 46108 (LexisNexis 2023) (collectively the "Shipping

Act") and for the damages proximately caused by those violations and not for cargo damage under the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 30701 (note) (2018). As explained below, COGSA simply is inapplicable. As for Rahal's remedies under the Shipping Act, it is entitled to recover its actual injuries regardless of whether those injuries were by way of demurrage or spoiled product. Although not cited by Hapag, the Commission has previously rejected the same jurisdictional argument by Hapag that it again makes against Rahal. See *Kobel v. Hapag-Lloyd AG*, No. 10-06, Opinion, *available at* 2013 FMC LEXIS 21, *15 (FMC July 12, 2013). Accordingly, Hapag's motion should be denied.

FACTUAL BACKGROUND

Rahal commenced this proceeding on June 22, 2023, after negotiations with Hapag failed to reach a resolution. *See generally* Compl. (June 22, 2023), FMC Doc. 1. The allegations in Rahal's Complaint are accepted as true for purposes of assessing Hapag's motion to dismiss. *See Fry v. Napoleon Cmty. Sch.*, 580 U.S. 154, 162 n.2 (2017).

Rahal alleges several violations of the Shipping Act in the Complaint, some of which are discussed more fully below in connection with Rahal's grounds for opposing Hapag's motion. *See id.* ¶¶ 76-83. Rahal sustained actual injuries, which are also enumerated in the Complaint, as a result of Hapag's violations of the Shipping Act. *See id.* ¶¶ 85-89. Those damages include, foremost, wrongful and unreasonable detention and demurrage charges. *See id.* ¶ 86. They also include damages for the deteriorated fruit product (apple juice) in seven containers that was proximately caused by Hapag's failure to establish and observe just and reasonable regulations and practices relating to receiving,

handling, storing, and delivering cargo such as Rahal's, all in violation of the Shipping Act. *See id.* ¶ 88.

LEGAL ARGUMENT

Hapag argues that the portion of Rahal's damages for the spoilage of apple juice "is a claim for cargo loss or damage, which must be litigated pursuant to COGSA, not the Shipping Act." As an initial matter, Hapag is incorrect — as a matter of law — that COGSA applies. COGSA expressly provides that it applies to "contracts for the *carriage of goods* by sea to or from ports of the United States." 46 U.S.C. § 30701, note sec. 13 (2018) (emphasis added). The "carriage of goods" is defined by COGSA as "cover[ing] the period from the time when the goods are loaded on to the time when they are discharged from the ship." *Id.*, note sec. 1(e). Consequently, COGSA only applies "tackle-to-tackle." *Norfolk S. Ry. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 29, 125 S. Ct. 385, 396 (2004)("By its terms, COGSA governs bills of lading for the carriage of goods from the time when the goods are loaded on to the time when they are discharged from the ship." (internal quotation marks omitted)); *Rexroth Hydraudyne B.V. v. Ocean World Lines, Inc.*, 547 F.3d 351, 354 (2d Cir. 2008) ("COGSA has the force of federal law at sea ('tackle-to-tackle') but is stripped of its statutory power during the land portion of the shipment's journey ('beyond the tackles')."). Here, the seven relevant containers of apple juice were received at the Port from Hapag's vessel after which the damage occurred. *See* Compl. ¶¶ 71-72 (June 22, 2023), FMC Doc. 1. As also explained more fully below, Hapag's liability arises from its actions before and after the tackle-to-tackle period. In short, COGSA simply does not apply Hapag's motion should be denied. *See Kobel v. Hapag-Lloyd AG*, No. 10-06, Order on Dispositive Motions, *available at* 2011 FMC Lexis 14, *7 (FMC May 24, 2011)

(denying Hapag's motion to dismiss based upon alleged application of COGSA because "Complainants allege violations of the Shipping Act for conduct both before loading on the ship and after discharge at the port").

More fundamentally, Rahal's claim is for Hapag's multiple violations of the Shipping Act and not for cargo damage due to Hapag's negligence. *See generally* Compl. ¶¶ 76-83 (June 22, 2023), FMC Doc. 1. Just as in *Kobel v. Hapag-Lloyd AG*, No. 10-06, Opinion, *available at* 2013 FMC LEXIS 21, *15 (FMC July 12, 2013), "Respondents in this proceeding cannot avoid the Shipping Act issue by cloaking Complainants' claims in terms of COGSA." Hapag's violations of the Shipping Act include, *inter alia*, Hapag's failure to establish reasonable practices regarding receiving, handling, storing, and delivering Rahal's cargo. For example, Hapag accepted Rahal's cargo for carriage to the Port while knowing that Hapag had inadequate facilities to handle the cargo once it arrived. *See id.* ¶ 45. As a result, Rahal's seven containers were unavailable for pickup for nearly a month and, unsurprisingly, the apple juice in the containers spoiled. *See id.* ¶¶ 71-72.

When accepting Rahal's cargo for carriage to the Port, Hapag failed to advise Rahal of the backlog that Hapag had created at the Port due to its accumulation of empty containers. *See* Compl. ¶ 47 (June 22, 2023), FMC Doc. 1. Once the cargo was enroute, Hapag failed to offer to deviate or otherwise change the destination of Rahal's containers notwithstanding Hapag's knowledge of the conditions it had created at the Port. *See id.* ¶ 48. Had Hapag taken such reasonable and rudimentary steps, Rahal could have sought to avoid the Port and Hapag's logistical paralysis such that the apple juice could have been timely delivered before it spoiled. Thus, because of Hapag's lack of reasonable practices,

Rahal's containers of apple juice were effectively trapped at the Port, during which time the apple juice spoiled. The spoiled apple juice is, therefore, one of Rahal's compensable "actual injuries" within the meaning of the Shipping Act.

Hapag's violations of the Shipping Act also include a misleading and unusable appointment-based practice for returning empty containers to the Port. *See* Compl. ¶ 55 (June 22, 2023), FMC Doc. 1. When Hapag refused to accept empty containers returned to the Port, Rahal's drayage providers effectively had their chassis and storage yards impounded by Hapag and converted into *de facto* storage for Hapag's empty containers. This resulted in a chain reaction whereby the drayage providers were unable to retrieve newly arrived loaded containers with Rahal's goods because the chassis were burdened with empty Hapag containers. *See id.* ¶ 54. Hapag's appointment-based practice for returning empty containers was unreasonable because, *inter alia*, on some days there were no return locations offered by Hapag, the locations offered by Hapag had no available appointments, the terminal operator was not accepting containers from Hapag, or the appointments were cancelled in the course of the drayage provider's attempt to return an empty container. *See id.* ¶ 57. As a proximate result of the foregoing, Rahal's containers of apple juice were delayed for weeks and spoiled. *See id.* ¶¶ 71-72. Thus, Rahal is entitled to damages under the Shipping Act, including for the damage to its cargo. Consequently, the Commission has jurisdiction because "Complainant['s] claims are not for simple loss or damage to their cargoes, but for injuries caused by Respondents' alleged violations of the Shipping Act." *Kobel v. Hapag-Lloyd AG*, No. 10-06, Opinion, *available at* 2013 FMC LEXIS 21, *15 (FMC July 12, 2013),

Significantly, the Shipping Act provides the "Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this [Act]." 46 U.S.C. § 41305. Of course, the Commission's award of actual injuries to complainants may include the value of their lost or damaged cargo where there is a violation of the Shipping Act, such as the case here. *See, e.g.*, *Hangzhou Qianwang Dress Co. v. RDD Freight Int'l Inc.*, No. 17-02, 1 F.M.C.2d 158, 171 (Aug. 29, 2018) (awarding cargo interests the proven value of cargo released by the ocean transportation intermediary without obtaining an original bill of lading in violation of the Shipping Act).

CONCLUSION

In light of the foregoing, Rahal respectfully requests that Hapag's partial motion to dismiss be denied and Rahal granted such other and further relief as the Court deems just and proper.

Dated: September 6, 2023
New York, NY

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, William M. Fennell, certify that, on September 6, 2023, a true and correct copy of the Memorandum Of Law By Rahal International, Inc. In Opposition To Respondents' Partial Motion To Dismiss, 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 counsel:

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