FEDERAL MARITIME COMMISSION

RAHAL INTERNATIONAL INC., *Complainant* v. HAPAG-LLOYD AG, HAPAG-LLOYD (AMERICA), LLC, AND HAPAG-LLOYD USA, LLC, *Respondents* AND HAPAG-LLOYD AG AND HAPAG-LLOYD (AMERICA), LLC, *Third-Party Complainants* v. MAHER TERMINALS, LLC, GCT NEW YORK LP, AND GCT BAYONNE LP, *Third-Party Respondents*.	**DOCKET NO. 23-05**

Served: September 27, 2023

ORDER OF: Linda S. Harris CROVELLA, *Administrative Law Judge*.

ORDER ON MOTION FOR SUMMARY JUDGEMENT AND MOTION TO DISMISS

I. Introduction and Procedural Background

On June 30, 2023, the Commission issued a Notice of Filing of Complaint and Assignment, noting that Complainant Rahal International, Inc. ("Rahal") had filed a complaint alleging that Respondents Hapag-Lloyd AG, ("HLAG"), Hapag-Lloyd (America), LLC ("HLA"), and Hapag-Lloyd USA, LLC ("HLUSA") had violated 46 U.S.C. §§ 41102(c), 41104(a)(2)(A), 41104(a)(14), 41104(a)(15), 41104(d) and the Commission's regulations at 46 C.F.R. §§ 545.4 and 545.5, in connection with the delivery of Complainant's cargo consisting of fruits products from overseas suppliers to the United States through the Port of New York and New Jersey ("PNYNJ").[1] Among other allegations, Complainant asserts that Respondents failed to provide adequate facilities for the return of empty containers at the PNYNJ, causing a

[1] On September 8, 2023, the Commission issued a Notice of Filing of Third-Party Complaint, noting that Respondents had filed a third-party complaint in this proceeding against Maher Terminals, LLC, GCT New York LP, and GCT Bayonne PL. The case caption has, therefore, been modified to reflect the Third-Party Complainants and Respondents.

"logistical paralysis," and accepted business from Complainant despite being aware that they lacked adequate facilities to process shipments, resulting in their inability to timely process Complainant's shipments, including seven containers of apple juice, which caused the apple juice to then ferment and deteriorate, and Complainant to incur damages in the amount of $198,798.11.

On August 1, 2023, HLUSA filed an Answer to the Complaint. HLAG and HLA (collectively "Hapag"), filed a joint Answer to the Complaint the same day. On August 22, 2023, Respondent HLUSA moved for summary judgment in its favor as to the entirety of the Complaint ("Summary Judgment Motion") against it. Also, on August 22, 2023, Respondents HLAG and HLA (collectively "Hapag") filed a partial motion to dismiss Complainant's claim for damages in the amount of $198,798.11, and a memorandum in support of their motion ("Partial Dismissal Motion"). On September 6, 2023, Complainant filed an opposition to the Partial Dismissal Motion ("Partial Dismissal Opposition") as well as an opposition to the Summary Judgment Motion ("Summary Judgment Opposition"). No reply was received to either Opposition.

For the reasons set forth below, summary judgment is granted in favor of HLUSA, and the Complaint against it is dismissed in its entirety. However, Hapag's partial motion to dismiss the Complainant's claim for damages against them is denied. The parties must file a joint status report, as discussed below, by October 10, 2023.

II. Motion for Summary Judgment

A. Arguments of the Parties

HLUSA notes that it is an ocean common carrier and "a separate and distinct legal entity from Hapag-Lloyd." Summary Judgment Motion at 2. It maintains that it neither called at the PNYNJ during the 2022 calendar year, nor transported any cargo to the PNYNJ for Complainant in 2022. Summary Judgment Motion at 2. HLSA asserts that it operates five US-Flag ships in international trades in support of military and civilian agencies of the United States Government. Summary Judgment Motion at 2. HLUSA argues:

> 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.

Summary Judgment Motion at 2.

However, Complainant argues that although HLUSA asserts that it played no role in the events that are the basis of the Complaint, the affidavit submitted by HLUSA makes no such express statement. Summary Judgment Opposition at 1. Complainant posits that the affidavit in question "makes a mere five actual allegations, four of which pertain to HLUSA's corporate relations, and none of which support HLUSA's sweeping assertions in support of its motion," therefore, HLUSA fails "to establish its *prima facie* entitlement to summary judgment."

Summary Judgment Opposition at 1. In addition, Complainant contends that "the paltriness" of the assertions in HLUSA's supporting affidavit compels denial of HLUSA's motion because the affidavit makes only one factual assertion – that HLUSA did not call at the PNYNJ during 2022 and did not transport cargo for Complainant to PNYNJ – but despite that sole assertion HLUSA "sweepingly argues" that it was not engaged in any of the conduct that forms the basis for the Complaint. Summary Judgment Opposition at 12. Further, Complainant asserts that although HLUSA argues that it was not engaged in any of the conduct that formed the basis for the Complaint, "[c]uriously, the affiant [in HLUSA's affidavit] did not include a sworn statement coextensive with – and thus substantiating of – HLUSA's sweeping assertion," and "the affiant makes no attempt to substantiate – let alone do so under oath – the complete refutation of HLUSA's involvement in relevant events." Summary Judgment Opposition at 2.

Complainant also argues that HLUSA's failure to address in its affidavit Complainant's allegations that HLUSA "assessed excessive charges against Rahal" in violation of the Shipping Act, "invoiced Rahal," and failed to establish reasonable practices and to provide adequate facilities for the return of empty containers at the PNYNJ, "are more telling than its affirmative statements." Summary Judgment Opposition at 2-3. Complainant asserts that HLUSA thus fails to establish that it is entitled to summary judgment and urges that "[t]o the extent that the Commission determines that HLUSA has established its *prima facie* entitlement to summary judgement," it be permitted to conduct discovery on the allegations. Summary Judgment Opposition at 3.

B. Summary Judgment Standard

The Commission's Rules do not explicitly provide for motions for summary judgment. However, under Commission Rule 12, to the extent that application of the Federal Rules is consistent with sound administrative practice, the Federal Rules of Civil Procedure ("FRCP") must be followed in instances that are not covered by the Commission's Rules. 46 C.F.R. § 502.12.

Pursuant to FRCP 56(a), summary judgment must be granted when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." "At the summary judgment stage, the judge's function is not himself 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) (internal citations omitted). When a properly supported motion for summary judgment is made, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial, and the judge must grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. There is no requirement that the trial judge make findings of fact. *Anderson*, 477 U.S. at 250.

The Commission has emphasized that:

> At the summary judgment stage, the role of the judge ". . . is not himself 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)]. The party seeking summary judgment . . . has the burden of

> demonstrating that there is no genuine issue of material fact. *Adickes v. Kress & Co.*, 398 U.S. 144, 157 (1970); [10A]Wright, Miller & Kane, [*Federal Practice and Procedure* § 2727, p. 455 (3d ed. 1998)].

EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. § 515.27, 31 S.R.R. 540, 545 (FMC 2008).

The party moving for summary judgment bears the initial burden of identifying evidence that demonstrates the absence of any genuine issue of material fact. *Green v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986)). The mere existence of a factual dispute will not in and of itself defeat an otherwise properly supported motion for summary judgment. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-48 (1986). However, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986) (citation omitted). The inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Matsushita,* 475 U.S. at 587.

C. Discussion

HLUSA submitted the following statement of undisputed material facts, supported with an affidavit by its President and CEO, David P. Zimmerman:

1) It is an ocean common carrier;

2) It is a "separate and distinct legal entity from Hapag-Lloyd;"

3) It is not an agent of Hapag-Lloyd AG;

4) It did not call at PNYNJ during 2022;

5) It did not transport cargo to the PNYNJ in 2022.

HLUSA Findings of Fact Nos. 1-6; Zimmerman Affidavit ¶¶ 1-6. Complainant does not dispute any of these material facts.

Summarized, Complainant alleges Respondents violated the enumerated Shipping Act provisions in that: Respondents "continued to accept Complainant's containerized goods for receipt, handling, storage and/or delivery through the PNYNJ despite knowing that they lacked reasonable practices and the capacity and/or facilities to handle and store the return of such containers once emptied;" that they charged Complainant excessive ocean freight fees for the shipments; that they failed to advise Complainant that there was a backlog of empty containers "building up in and about the [PNYNJ] in and around April 2022" or "offer to deviate or otherwise change the destination of [Complainant's] goods that Hapag was carrying to the [PNYNJ];" and "failed to provide reasonable free time to [Complainant] for containers Hapag transported into the [PNYNJ] during the period of time whilst Hapag had failed to clear the container backlog;" that Respondents refused to accept empty containers Complainant attempted

to return to Hapag's facilities through its drayage providers and thus the drayage providers were unable to retrieve newly arrived loaded contains with Complainant's goods that Respondents had carried, the end result being that Complainant incurred extra expenses from its drayage providers and its drayage providers were unwilling to retrieve newly arrived Hapag containers, creating a "logistical paralysis, which caused Complainant to further incur additional expenses;" that in April 2022 through June 2022, Hapag still lacked adequate facilities for the return of empty containers and retrieval of loaded containers, but yet, continued to deliver Complainant's fruit products into PNYNJ, for which they charged Complainant detention and/or demurrage charges; that for the duration of the "logistical paralysis" Respondents imposed "unreasonable and excessive charges against Complainant;" that the "logistical paralysis" caused by Respondents resulted in the inability by Complainant to retrieve seven containers of organic apple juice shipped by Respondents for Complainant and received at the PNYNJ from May 2022 to June 2022, causing the apple juice to ferment and deteriorate, and Complainant to incur "damages in the amount [of] no less than $198,798.11." Complaint ¶¶ 32, 45-48, 52-68; 70-75.

Complainant argues in its opposition to the motion for summary judgment that HLUSA did not include a statement in its affidavit substantiating its argument that it was not involved in the relevant events. Be that as it may, the material facts, undisputed by Complainant, establish that HLUSA is not an agent of HLAG which transported the shipments at issue, that HLUSA did not call at PNYNJ in 2022, and did not transport any cargo to PNYNJ for Complainants in 2022. Thus, HLUSA was not under any obligation to advise Complainant of any backlog occurring at the PNYNJ, could not have provided free time or imposed any charges on the containers in question since it did not ship them and was not an agent of HLAG. Further, since HLUSA did not do business at the PNYNJ or transport Complainant's cargo in 2022, HLUSA could not have been responsible for any extra charges Complainant incurred for drayage at PNYNJ or the damages suffered by Complainant due to the "logistical paralysis" alleged by Complainant, and HLUSA could not be liable for the damage to Complainant's containers of organic apple juice. Therefore, HLUSA has established that it is entitled to summary judgment in its favor as a matter of law. Accordingly, the Complaint against HLUSA is dismissed.

II. Partial Motion to Dismiss

A. Arguments of the Parties

Respondents Hapag contend that the complaint should be dismissed to the extent it involves an alleged claim for cargo loss, arguing that the Commission lacks subject matter jurisdiction over cargo loss claims. Dismissal Motion at 2. They posit that because the Complaint alleges that Hapag's actions in violation of section 41102(c) led to the deterioration of the apple juice shipped by Complainant, leading to $198,798.11 in damages, the Complaint "is a claim for cargo loss or damage, which must be litigated pursuant to [the Carriage of Goods by Sea Act ("COGSA")], not the Shipping Act. Accordingly, Complainant's claim for 198,798.11 should be dismissed," as the "Shipping Act regulates free time and demurrage practices; however, it does not regulate cargo claims." Dismissal Motion at 2-3. Respondents further assert that "[i]f 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 [which] 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." Dismissal Motion at 3.

Complainant argues that COGSA does not apply in this case because the damage occurred to the apple juice after they were discharged from the vessel at the PNYNJ, whereas COGSA only applies during the period when the goods are loaded on to the vessel until the time they are discharged from the vessel, described as "tackle-to-tackle." Dismissal Opposition at 3. Further, Complainant asserts that its claim is for damages incurred due to Respondents' multiple violations of the Shipping Act, not for cargo damage due to their negligence. Dismissal Opposition at 4. Complainant posits that thus, the Commission has jurisdiction since the claim for $198,798.11 in damages pertains to injuries caused by Respondents' alleged violations of the Shipping Act, not simple loss or damage to cargo. Dismissal Opposition at 5.

B. Motion to Dismiss Standard

Under Federal Rule of Civil Procedure 12(b)(1) a party may move to dismiss a Complaint for lack of subject matter jurisdiction. Proper jurisdiction "is fundamental and necessary" for the Commission to adjudicate a Complaint brought before it. *Arena v. Graybar Electric Co. Inc.*, 669 F.3d 214, 223 (5th Cir. 2012); *see also Earlean Edward Dukart v. Ocean Star Int'l Inc.*, FMC Docket No. 20-03, 2020 WL 13512914 at *8 (ALJ July 10, 2020). A person asserting subject-matter jurisdiction bears the burden of proving by a preponderance of the evidence that it exists. *See Earlean Edward Dukart*, 2020 WL 13512914 at *8 (citing *Garanti Finansal Kiralama A.S. v. Aqua Marine & Trading, Inc.*, 697 F.3d 59, 65 (2d Cir. 2012)).

C. Discussion

Respondents' argument that the Commission lacks subject matter jurisdiction pursuant to COGSA to adjudicate the portion of the Complaint alleging a claim for cargo loss or damage is contradicted by Commission case law. The Complaint does not merely allege damages while the cargo in question was being shipped but rather, that Respondents' conduct in violation of the Shipping Act caused the cargo to incur the alleged damages.

In *Kobel*, the respondents similarly asserted that the Commission lacked jurisdiction over cargo loss claims, and that were the Commission to assert jurisdiction over claims for cargo loss or damages the Commission would be enabling parties to circumvent COGSA's limitations on liability. The Commission dismissed those assertions, noting that in the past it had "held that the appropriate test for the Commission's jurisdiction is whether Complainants' allegations 'also involve elements peculiar to the Shipping Act.'" *Kobel v. Hapag-Lloyd*, FMC Docket No. 10-06, 2013 WL 9808671 at *6 (FMC July 12, 2013) (citing *Cargo One, Inc. v. COSCO Container Lines Co., Ltd.*, FMC Docket No. 99-24, 2000 WL 1648961 at *14, 28 S.R.R. 1635, 1645 (FMC Oct. 31, 2000)). Further, the Commission stated: "Respondents in this proceeding cannot avoid the Shipping Act issue by cloaking Complainants' claims in terms of COGSA." *Kobel*, 2013 WL 9808671 at *6. Here, as in *Kobel*, 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," and the Complaint contains allegations "peculiar to the Shipping Act." *Kobel*, 2013 WL 9808671 at *6. Therefore, the Commission is authorized to decide Complainant's claims involving elements peculiar to the Shipping Act.

Moreover, "COGSA only applies compulsorily during the tackle-to-tackle period to contracts for the carriage of goods to or from U.S. ports in foreign trade" unless a carrier and a shipper extend COGSA's application by contract. *Forster Wheeler Energy Corp. v. An Ning Jiang MV*, 383 F.3d 349, 355 (5th Cir. 2004). Complainant's allegations pertain to conduct that occurred prior to the time its containers were loaded on board the vessel that transported them and to damages that occurred after the containers were discharged at the PNYNJ. The parties do not argue that they entered into a contract extending COGSA's application past the tackle-to-tackle period. Thus, the COGSA limitations do not apply to the claim at issue. Accordingly, Respondents' motion to dismiss the portion of Complainant's claim alleging cargo damages in the amount of $198,798.11 for lack of jurisdiction under COGSA, is denied.

D. Joint Status Report

Pursuant to the August 21, 2023, scheduling order, discovery should already have commenced in this proceeding. The parties should submit a joint status report by October 10, 2023, discussing their progress with discovery and any outstanding issues.

V. Order

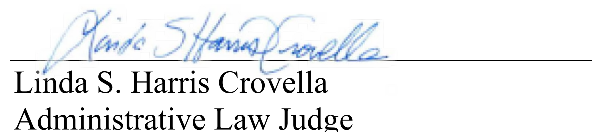
Upon consideration of the record herein, the arguments of the parties, and the conclusions and findings set forth above, it is hereby

ORDERED that Respondent Hapag-Lloyd USA, LLC's motion for summary judgment be **GRANTED**. It is

FURTHER ORDERED that the Complaint against Hapag-Lloyd USA, LLC be **DISMISSED**. It is

FURTHER ORDERED that Respondents Hapag-Lloyd AG and Hapag-Lloyd (America), LLC's partial motion to dismiss be **DENIED**. It is

FURTHER ORDERED that the parties shall submit a joint status report by October 10, 2023.



Linda S. Harris Crovella
Administrative Law Judge