

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 23-05

RAHAL INTERNATIONAL, INC.,
COMPLAINANTS,

v.

HAPAG-LLOYD AG, HAPAG-LLOYD (AMERICA) LLC, and HAPAG-LLOYD USA, LLC,
RESPONDENTS.

**RESPONDENTS' MOTION FOR LEAVE
TO FILE THIRD-PARTY COMPLAINT**

Pursuant to 46 C.F.R. §§ 502.69 and 502.71, Respondents Hapag-Lloyd AG, Hapag-Lloyd (America) LLC, and Hapag-Lloyd USA, LLC (collectively, “Hapag”), through counsel, hereby move for leave to file a third-party complaint in this proceeding. A copy of the Third-Party Complaint, naming GCT New York LP and GCT Bayonne LP (respectively “GCT New York” and “GCT Bayonne” (collectively “GCT”)) and Maher Terminals, LLC (“Maher”) (collectively, the “Third-Party Respondents”), as third-party respondents, is attached hereto as **Exhibit “1”**.

I. Introduction

Consistent with the Court’s Order on Hapag’s Motion for Leave (the “Order”), Hapag files this renewed Motion and consolidates the third-party complaints into one document within one day of the Order’s filing. As such, Hapag’s Motion should be granted.

In this proceeding, complainant Rahal International, Inc. (“Complainant”) seeks reparations for charges imposed on and collected from Complainant by the Third-Party Respondents. The Complainant also seeks reparations for costs incurred due to excessive haulage

and deteriorated, spoiled, and/or otherwise unfit fruit products held in containers. Third-Party Respondents, not Hapag, controlled the terminal and containers at issue (the “Containers”) and the pricing and billing regarding these containers. Indeed, the Complainant and Third-Party Respondents maintained privity of contract through a terminal services agreement and Complainant made payment for the costs regarding the Containers to Third-Party Respondents directly. As such, Third-Party Respondents, not Hapag, violated 46 U.S.C. § 41104(a)(2) of the Shipping Act and, therefore, are liable for the underlying alleged damages and should be brought into this case.

II. Legal Standard

The Commission’s Rule at 46 C.F.R. § 502.62(b)(4) expressly provides for third-party complaints, stating that:

In addition to filing an answer to a complaint, a respondent may include . . . a third-party complaint. A . . . third-party complaint must allege and be limited to violations of the Shipping Act within the jurisdiction of the Commission.

Because 46 C.F.R. § 502.62(b)(4) addresses third-party complaints, the Federal Rules of Civil Procedure are not controlling.¹ Recognizing the liberal nature of 46 C.F.R. § 502.62(b)(4), the Commission routinely permits third-party complaints to be filed. *M.E. Dey & Co., Inc. v. Hapag-Lloyd AG and Hapag-Lloyd (America) LLC*, Doc. No. 22-35 (Federal Maritime Commission May 8, 2023) (granting Respondents’ motion for leave to file third-party complaint). This liberal application is consistent with the Federal Rules of Civil Procedures, which can be referenced as persuasive at the discretion of the Commission and affirm that motions for leave to file third-party complaints should be liberally granted. *See, e.g., Parker v. John Moriarty & Assoc.*, 249 F. Supp. 3d 507 (D.D.C. 2017) (finding that leave shall be liberally granted). As such. Respondent respectfully submits this Motion for Leave.

¹ While not controlling, the Federal Rules of Civil Procedure allow third-party complaints as a matter of right within 14 days of the filing of an answer. Fed. R. Civ. P. 14.

III. Respondents' Motion Meets the Legal Standard

Grounds exist for Respondents to file their Third-Party Complaints. 46 C.F.R. § 502.62(b)(4) establishes that the only requirement for a third-party complaint is that it “allege and be limited to violations of the Shipping Act . . .” Respondents' Third-Party Complaint alleges that:

[t]he Third-Party Respondents violated 46 U.S.C. § 41102(c) by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property by charging Complainant for storage of these containers..

(Exhibit “1” at ¶ 39). This claim establishes a clear allegation that Third-Party Respondents violated the Shipping Act, firmly sitting the third-party claim within the purview of 46 C.F.R. § 502.62(b)(4).

On August 18, 2023, Hapag filed a Motion for Leave to File Third-Party Complaints. On August 24, 2023, the Federal Maritime Commission (FMC) denied that motion, without prejudice, and acknowledged that “[s]ince it is still very early in the proceeding, the pleading can be combined into one third-party complaint if Respondent Hapag-Lloyd does so expeditiously.” (FMC Doc. 21). Hapag files this second motion for leave within one day of the FMC’s order and 24 days of the filing of Hapag’s Answer, which was filed on August 1, 2023. While the Federal Rules of Civil Procedure, which allow Hapag to file its Third-Party Complaint as a matter of right because it is submitted within 14 days of its Answer filing, do not formally apply, they are instructive in affirming that Hapag has moved expeditiously in pursuing its Third-Party Complaint against the Third-Party Respondents.

The Commission’s rules expressly provide for the filing of Third-Party Complaints if they allege a violation of the Shipping Act. Hapag’s Third-Party Complaint alleges that the Third-Party Respondents violated 46 U.S.C. § 41102(c) of the Shipping Act by failing to permit Complainant to access the containers at issue and charging demurrage. (*See generally* **Exhibit “1”**). Further,

this Motion and the accompanying Third-Party Complaint is being submitted on an expeditious basis—within twenty-four days after Hapag filed its Answer. Hapag’s Motion for Leave to File Third-Party Complaint should be granted, and Hapag should be allowed to file its Third-Party Complaint.

IV. Meet and Confer Obligation.

Pursuant to 46 C.F.R. § 502.71(a), counsel for Respondents has conferred with counsel for Complainant, and Complainant does not oppose this motion in principle. (FMC Doc. 20).

V. Conclusion.

Respondents’ Motion for Leave to File a Third-Party Complaint is timely filed. Leave to file such complaint is to be granted liberally, and Respondents’ motion complies with all applicable legal standards. Granting this motion will also facilitate resolution of this dispute in an efficient manner. Accordingly, Respondents respectfully request that this motion be granted.

DATE: August 25, 2023

Respectfully Submitted,

/s/ Jake Evans

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CERTIFICATE OF SERVICE

I, certify that, on August 25, 2023, a true copy of the motion 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:

William M. Fennell, Esq.
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Counsel for Rahal International, Inc.

DATE: August 25, 2023

/s/ Jake Evans
Jake Evans
Shareholder, Greenberg Traurig