

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 23-05

RAHAL INTERNATIONAL, INC.,
Complainant,

v.

HAPAG-LLOYD AG,
HAPAG-LLOYD (AMERICA) LLC, HAPAG-LLOYD USA, LLC
Respondents.

VERIFIED ANSWER

Respondents Hapag-Lloyd AG (“HLAG”) Hapag-Lloyd (America) LLC (“HLA”) (together, “Hapag”) hereby answer the Complaint of Complainant Rahal International, Inc. (“Rahal”).

1. Paragraph 1 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies the allegations in Paragraph 1.

I. COMPLAINANT

2. Hapag lacks sufficient information to admit or deny the information in Paragraph 2.

II. RESPONDENTS

3. Admitted.
4. Admitted.

5. Admit that HLAG is and was at all times pertinent to the Complaint a party to Consolidated Chassis Management Pool Agreement, FMC Agreement No. 011962.
6. Denied.
7. The first sentence is admitted. The second sentence is denied.
8. Admitted.
9. Admitted.
10. Admit that HLA is and was an agent of HLAG in the United States. Deny that HLA is subject to regulation by the Federal Maritime Commission.
11. Denied.
12. Denied.
13. Paragraph 13 contains no factual allegations with respect to HLAG or HLA and thus requires no response.
14. Denied.
15. Admit that HLUSA is subject to regulation by the Federal Maritime Commission, but deny it is an agent of HLAG.
16. Admitted.
17. Paragraph 17 contains no factual allegations with respect to HLAG or HLA and thus requires no response.

18. Paragraph 18 contains no factual allegations with respect to HLAG or HLA and thus requires no response.

19. Paragraph 19 contains no factual allegations with respect to HLAG or HLA and thus requires no response.

20. Paragraph 20 contains no factual allegations with respect to HLAG or HLA and thus requires no response.

III. JURISDICTION & LEGAL AUTHORITY

21. Paragraph 21 contains no factual allegations with respect to Hapag and thus requires no response.

22. Admitted, except to the extent otherwise set forth in Affirmative Defense #6 below.

23. Admitted.

24. Admitted.

25. Admitted.

26. Paragraph 26 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies the allegations in paragraph 26.

27. Paragraph 27 states a legal conclusion to which no response is required. To the extent a response is required, Hapag denies that HLUSA and HLA did not extend free time associated with the containers, and that HLUSA and HLA were unable to tender delivery to Rahal. Admitted as to the allegation that HLAG did not extend free time before

Rahal's containers were tendered for delivery, but denies that the lack of extension was a "failure."

28. Paragraph 28 states a legal conclusion to which no response is required. To the extent a response is required, denied as to the allegation that HLA and HLUSA assessed charges against Rahal for Rahal's property transported by Hapag to the Port of New York and New Jersey during the period of time when Rahal was unable to remove its cargo, and denied as to the allegation that HLAG assessed charges that were excessive.

29. Paragraph 29 states a legal conclusion to which no response is required. To the extent a response is required, denied as to the allegation that HLA and HLUSA assessed charges against Rahal for Rahal's property transported by Hapag to the Port of New York and New Jersey, and denied as to the allegation that HLAG assessed charges that were inconsistent and/or did not comply with all applicable provisions and regulations.

30. Paragraph 30 states a legal conclusion to which no response is required. To the extent a response is required, denied as to the allegation that HLA and HLUSA invoiced Rahal for demurrage and detention charges, denied as to the allegation that the detention and demurrage charges assessed by HLAG failed to comply with the Shipping Act.

31. Paragraph 31 states a legal conclusion to which no response is required. To the extent a response is required, denied as to the allegation that HLA and HLUSA invoiced Rahal for demurrage and detention charges, and denied as to the allegation that HLAG invoiced Rahal for detention and demurrage charges that failed to comply with all provisions of part 545 of title 46, Code of Federal Regulations, and applicable provisions and

regulations, including the Commission's Interpretive Rule on Demurrage and Detention Under the Shipping Act.

IV. (A) FACTUAL STATEMENT

32. Admitted as to HLAG, denied as to HLA and HLUSA.

33. Admitted as to HLAG, denied as to HLA and HLUSA.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied as to the allegation that Hapag had knowledge that it lacked sufficient practices and facilities to handle Hapag's empty containers at the Port of New York and New Jersey. Denied as to the allegation that HLA and HLUSA continued to accept inbound shipments of property to the port. Admitted that HLAG continued to accept inbound shipments of property to the port.

39. Denied as to the allegation that Hapag failed to provide adequate practices and facilities to handle and store Hapag's empty containers at the Port of New York and New Jersey. Admitted that HLAG sent at least eight vessels between March and May 2021 to the port to collect, remove, and "sweep up" empty containers. Denied as to HLA and HLUSA.

40. Denied as to the allegation that the additional facilities acquired/leased by HLAG for handling and storing containers was a result of Hapag's failure to provide adequate practices and facilities to handle and store empty containers. Denied as to the allegation that HLA and HLUSA acquired/leased additional facilities.
41. Paragraph 41 contains no factual allegations with respect to Hapag and thus does not require a response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in paragraph 41.
42. Admitted as HLAG, denied as to HLA and HLUSA.
43. Paragraph 43 contains no factual allegations with respect to Hapag. To the extent it requires an answer, Hapag lacks sufficient information to admit or deny the information in paragraph 43.
44. Denied.
45. Denied as to the allegation that Hapag had knowledge of, or that it failed to establish, reasonable practices regarding the return of empty containers. Denied as to the allegation that Hapag failed to provide adequate facilities at the Port of New York and New Jersey for its customers to return empty containers. Denied as to the allegation that HLA and HLUSA continued to accept Rahal goods. Admitted as to the allegation that HLAG accepted Rahal's goods for ocean common carriage and for receipt, handling, storage, and/or delivery into and/or through the Port of New York and New Jersey.
46. Denied.

47. Denied.

48. Denied as to the allegation that Hapag failed to establish reasonable practices and provide adequate facilities at and about the Port of New York and New Jersey for its customers to return empty containers. Admit that HLAG did not offer to change the destination of Rahal's goods that HLAG was carrying to the Port of New York and New Jersey. Deny that HLA or HLUSA transported any Rahal goods.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Hapag lacks sufficient information to admit or deny the allegations in paragraph 53.

54. Hapag lacks sufficient information to admit or deny the allegations in paragraph 54.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Hapag lacks sufficient information to admit or deny the allegations in paragraph 59.

60. Hapag lacks sufficient information to admit or deny the allegations in paragraph 60.

61. Hapag lacks sufficient information to admit or deny the allegations in paragraph 61.
62. Hapag lacks sufficient information to admit or deny the allegations in paragraph 62.
63. Denied.
64. Denied as to the allegation that Hapag created “logistical paralysis” at the Port of New York and New Jersey or that it failed to establish reasonable practices regarding the return of empty containers. Denied as to the allegation that Rahal incurred storage, late fees, additional drayage, detention and demurrage, and other charges, due to Hapag’s unwillingness to accept empty containers upon return. Hapag lacks sufficient information to admit or deny the content of Exhibit 1, which Exhibit was not included in the version of the Complaint served on Hapag.
65. Denied as to the allegation that Hapag lacked reasonable practice to return empty containers to the Port of New York and New Jersey. Denied as to the allegation that HLA and HLUSA continued to deliver into the port containers loaded with Rahal’s fruit products for which Hapag charged detention and/or demurrage. Admitted as to the allegation that HLAG delivered Rahal’s containers into the Port.
66. Denied as to the allegation that HLA and HLUSA charged detention and/or demurrage on the newly arrived containers. Denied as to the allegation that HLAG charged unjust and unreasonable detention and demurrage charges on the newly arrived containers. Denied that Hapag created logistical paralysis at the Port of New York and New Jersey and that said paralysis precluded retrieval of loaded Hapag containers.

67. Denied as to HLA and HLUSA. Admitted as to the allegation that HLAG did not extend free time, denied as to the allegation that such a lack of extension was a “failure.”
68. Denied.
69. Hapag lacks sufficient information to admit or deny the allegations in paragraph 69. To the extent that an answer is required, Hapag denies the allegations in paragraph 69.
70. Admitted as to the allegation that the containers at issue were seven full container loads of organic apple juice HLAG carried under bills of lading numbered HLCUEUR2203EZGC0 and HLCUIZ12202BJZR5. Denied as to the allegations that HLA and HLUSA carried or delivered Rahal’s containers under bills of lading HLCUEUR2203EZGC0 and HLCUIZ12202BJZR5. Denied as to the allegation that Hapag created logistical paralysis at the Port of New York and New Jersey.
71. Admitted as to the allegation that the containers were received on May 15-16, 2022, and were available for pick up on June 8, 9, 14, 15, 2022, but denied as to the allegation that pick up was unavailable on other dates after May 15-16 and before June 8, and denied as to the allegation that pick up was unavailable due to logistical paralysis caused by Hapag.
72. Paragraph 72 contains no factual allegations with respect to Hapag and thus does not require a response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in paragraph 72.
73. Paragraph 73 contains no factual allegations with respect to Hapag and thus does not require a response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in paragraph 73.

74. Paragraph 74 contains no factual allegations with respect to Hapag and thus does not require a response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in paragraph 74.

75. Paragraph 75 contains no factual allegations with respect to Hapag and thus does not require a response. To the extent that a response is required, Hapag lacks sufficient information to admit or deny the allegations in paragraph 75.

IV(B). VIOLATIONS OF THE SHIPPING ACT

76. Paragraph 76 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies the allegations in paragraph 76.

77. Paragraph 77 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies the allegations in paragraph 77.

78. Paragraph 78 states a legal conclusion to which no response is required. To the extent that a response is required, denied as to HLA and HLUSA. Admitted as to the allegation that HLAG did not extend free time, but denied as to the allegation that such a lack of extension was a “failure.”

79. Paragraph 78 states a legal conclusion to which no response is required. To the extent that a response is required, denied as to HLA and HLUSA. Hapag lacks sufficient information to admit or deny whether Rahal was unable to remove property from the Port due to factors beyond Rahal’s control. Admitted as to the allegation that HLAG assessed charges that were in excess of its terminal costs against Rahal for property transported to the Port of New York and New Jersey.

80. Paragraph 80 states a legal conclusion to which no response is required. To the extent that a response is required, denied as to HLA and HLUSA. Admitted that Hapag-Lloyd (AG) assessed charges against Rahal, but denied as to the allegation that such charges were inconsistent and/or did not comply with all applicable provisions or regulations.

81. Paragraph 81 states a legal conclusion to which no response is required. To the extent that a response is required, denied that Hapag invoiced Rahal for detention and demurrage, and denied as to the allegation that charges assessed to Rahal failed to comply with the Shipping Act.

82. Paragraph 82 states a legal conclusion to which no response is required. To the extent that a response is required, denied as to HLA and HLUSA. Admitted that HLAG invoiced Rahal for detention and demurrage, but denied as to the allegation that such charges failed to comply with part 545 of the Code of Federal Regulations and applicable provisions and regulations, including the Interpretive Rule on Demurrage and Detention Under the Shipping Act.

83. Denied.

V. CAUSATION

84. Paragraph 84 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies the allegations in paragraph 84.

VI. DAMAGES

85. Paragraph 85 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies the allegations in paragraph 85.

86. Paragraph 86 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies the allegations in paragraph 86.

87. Paragraph 87 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies the allegations in paragraph 87.

88. Paragraph 88 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies the allegations in paragraph 88.

Paragraph 89 states a legal conclusion to which no response is required. To the extent that a response is required, Hapag denies the allegations in paragraph 89.

VII. AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted in that the conduct which is subject to the complaint was not performed by HLA or HLUSA.
2. The Complaint fails to state a claim upon which relief may be granted in that any failure to permit the return of empty containers and/or to allow for the pick up of Complainant's loaded containers was due to the act(s) or omission(s) of the relevant marine terminal operator(s).

3. The Complaint fails to state a claim upon which relief may be granted to the extent that demurrage charges were assessed, collected and/or retained by a marine terminal operator.
4. The Complaint fails to join necessary parties, i.e., the relevant marine terminal operators.
5. The Commission lacks personal jurisdiction over HLA.
6. The Commission lacks subject matter jurisdiction over Complainant's claim for cargo loss or damage.
7. Complainant failed to mitigate its damages.
8. Complainant caused, contributed to, and/or knowing and willfully assumed the risk of, delays and charges by engaging Hapag to transport cargo to a port Complainant knew to be congested.

VIII. PRAYER FOR RELIEF

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed with prejudice.



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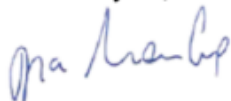
VERIFICATION

VERIFICATION OF RESPONDENT HAPAG-LLOYD AG

Thomas Mansfeld hereby verifies as follows:

1. I am General Counsel of Hapag-Lloyd AG.
2. I am authorized to make this verification on behalf of Hapag-Lloyd AG.
3. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.

Dated: July 31, 2023



Name: Thomas Mansfeld

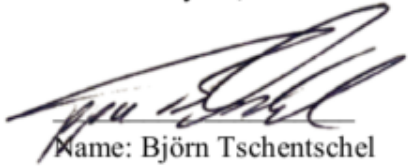
Title: General Counsel

VERIFICATION OF RESPONDENT HAPAG-LLOYD AG

Björn Tschentschel hereby verifies as follows:

1. I am Senior Director Tax of Hapag-Lloyd AG.
2. I am authorized to make this verification on behalf of Hapag-Lloyd AG.
3. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.

Dated: July 31, 2023



Name: Björn Tschentschel
Title: Senior Director Tax

VERIFICATION OF RESPONDENT HAPAG-LLOYD (AMERICA) LLC

Andreas Brauch, hereby verifies as follows:

1. I am SVP Business Admin. & Finance of Hapag-Lloyd (America) LLC.
2. I am authorized to make this verification on behalf of Hapag-Lloyd (America) LLC.
3. I hereby verify that the facts contained in the foregoing answer and affirmative defenses are true and correct to the best of my knowledge, information, and belief.
4. I verify the foregoing under penalty of perjury under the laws of the United States.

Dated: August 1, 2023

A handwritten signature in blue ink, appearing to read 'A. Brauch', is written over a horizontal line.

Name: Andreas Brauch

Title: SVP Business Admin. & Finance

CERTIFICATE OF SERVICE

I certify that, on August 1, 2023, a true and current copy of the foregoing Answer 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. (WFennell@GMPLawfirm.com)

Counsel for Rahal International, Inc.

/s/ Wayne Rohde

Wayne Rohde

Dated: August 1, 2023