

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

HUBBELL INCORPORATED AND HUBS, INC., *Complainants*

v.

DSV AIR & SEA, INC. AND DSV OCEAN TRANSPORT A/S,
Respondents.

DOCKET NO. 23-09

Served: October 5, 2023

ORDER OF: Erin M. WIRTH, *Chief Administrative Law Judge.*

ORDER DENYING MOTION TO STAY

On September 22, 2023, Respondents DSV Air & Sea, Inc. and DSV Ocean Transport A/S (collectively “DSV”) filed a motion for a stay of this proceeding and a brief in support of the motion (“Motion”), requesting that this FMC proceeding be stayed in favor of a Delaware federal court’s determination of whether two Price and Freight Capacity Agreements between the parties are separate and distinct, enforceable ocean transportation agreements that were not terminated upon Hubbell’s termination of the parties’ Non-Vessel Operating Common Carrier Service Arrangement. Motion at 1.

On, September 29, 2023, Complainants Hubbell Incorporated and HUBS, Inc. (collectively “Hubbell”) filed an opposition asserting that the motion to stay should be denied, arguing that the complaint alleges Shipping Act violations that the FMC has an obligation to adjudicate and Respondents improperly apply the balance of interest factors. Opposition at 5-9.

The Commission may grant a request to stay a proceeding, however, the party seeking a stay has the burden to demonstrate the need for the stay. The test for evaluating a motion to stay was articulated by Justice Cardozo, who wrote that “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). The Commission has stated that:

Rule 201(i), on its face, grants a presiding officer complete discretion in deciding motions pertaining to discovery. Thus, the question of whether to grant a motion for stay of discovery is discretionary, and requires only a balancing of various competing interests. In this regard, the movant must first “make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.”

Exclusive Tug Arrangements in Port Canaveral, Florida, 29 S.R.R. 1020, 1022, 2002 WL 31556298, at *2 (FMC Nov. 15, 2002) (citing Rule 201, now 46 C.F.R. § 502.141(j) and quoting *Landis v. North American Co.*, 299 U.S. at 254-55); *see also Carolina Marine Handling, Inc v. South Carolina State Ports Authority*, 28 S.R.R. 1595, 1598-99, 2000 WL 1072102, at *6-7 (ALJ July 12, 2000). In *Exclusive Tug Arrangements*, the Commission denied a motion to stay discovery pending a Commission decision in a companion case, stating “the costs of participating in this proceeding are considerable and increase each time a deadline is extended.” *Exclusive Tug Arrangements*, 29 S.R.R. at 1022, 2002 WL 31556298, at *4.

The Supreme Court addressed the factors to consider when deciding whether to stay a federal proceeding pending the outcome of a related state court matter in *Moses H. Cone Memorial Hosp. v. Mercury Construction Corp.*, 460 U.S. 1, 14-18 (1983). These factors include “which court first assumed jurisdiction, the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, whether state or federal law provides the rule of decision on the merits, the adequacy of the state court to protect the parties’ rights, and whether one of the actions has a vexations or reactive nature.” *Profile Manufacturing, Inc. v. Ronald Kress*, 1994 U.S. App. LEXIS 6048, at *7 (Fed. Cir. 1994).

DSV argues that the FMC action should be stayed because the U.S. District Court for the District of Delaware first assumed jurisdiction; the inconvenience of the federal forum factor is neutral; a desire to avoid piecemeal litigation weighs heavily in favor of staying this action; federal law weighs in favor of staying the FMC action; the parties’ rights are protected by the Delaware federal court; and the reactive nature of Hubbell’s FMC complaint justifies staying the FMC action. Motion at 6-10. Hubbell contends that the FMC action should not be stayed because the U.S. District Court for the District of Delaware does not have jurisdiction over the Shipping Act violations; the FMC is a convenient forum; the FMC action avoids piecemeal litigation; the Shipping Act provides the rule of decision on the merits; and the FMC action is not vexatious or reactive. Opposition at 7-9.

DSV filed suit against Hubbell on June 29, 2023, in the U.S. District Court for the District of Delaware seeking a declaratory judgment and alleging breach of contract. Respondents explain the dispute:

The Parties disagree whether two Price and Freight Capacity Agreements (the “Capacity Agreements”) between the Parties are separate and distinct, enforceable ocean transportation agreements that were not terminated upon Hubbell’s termination of the Parties’ Non-Vessel Operating Common Carrier Service Arrangement (the “Service Agreement”). The Parties disagree about Hubbell’s obligations under the Capacity Agreements. Hubbell contends that any responsibilities it may have owed DSV were terminated when Hubbell terminated the Service Agreement. DSV maintains that the Capacity Agreements are not contingent on the Service Agreement and that the Capacity Agreements do not have a reciprocal termination provision.

Motion at 1. DSV asserts that this proceeding should be stayed to allow the Delaware court to determine the “preliminary, threshold, and independent claim of DSV against Hubbell for breach of contractual obligations.”

According to the parties, this proceeding was filed approximately two months after the Delaware case, in which no initial conference has been held, no scheduling order issued, and a motion to stay is pending. Motion at 6; Opposition at 7. So, although the Delaware case was filed shortly before this proceeding, both proceedings are at similar stages. Therefore, the factor of which court first assumed jurisdiction does not weigh in favor of a stay.

DSV acknowledges that “DSV and Hubbell are both sophisticated commercial entities represented by capable counsel who can litigate in this forum” and Hubbell asserts that this “is plainly a convenient forum.” Motion at 7; Opposition at 7. Therefore, there is no dispute and the inconvenience of the forum does not weigh in favor of a stay.

DSV asserts that the Delaware court is poised to decide the threshold legal issue of whether the capacity agreements are NRAs or NSAs. Motion at 7. Hubbell contends that the “FMC is the only forum that can resolve the Shipping Act claims, and the FMC certainly can and should address the Shipping Act questions concerning regulation agreements.” Opposition at 8. The complaint alleges three violations, including service not in accordance with the agreement; unjust and unreasonable practices in handling property; and retaliation or any other unfair or unjustly discriminatory action for any other reason. The Delaware court does not have jurisdiction over Shipping Act claims and would not be deciding the ultimate issues in dispute here. While certain findings that may be made by the Delaware court might be relevant to this proceeding, at most the desirability of avoiding piecemeal litigation would weigh slightly in favor of a stay.

DSV admits that “the FMC has jurisdiction to decide the claims Hubbell brings in this action” but argues that the “threshold issues necessary to full adjudication of the FMC Action are to be determined by the federal court.” Motion at 9. Hubbell contends that the “Shipping Act plainly provides the rule of decision with respect to Shipping Act matters, including the alleged ‘threshold’ matter of law and regulation pertaining to NSAs and NRAs.” Opposition at 9. Because the Delaware court cannot adjudicate violations of the Shipping Act, the factor of which court provides the rule of decision on the merits does not weigh in favor of a stay.

DSV alleges that the Delaware court will protect the rights of the parties while Hubbell contends that “the Delaware court does not have the means of adequately protecting parties’ rights because it cannot adjudicate these Shipping Act violations.” Motion at 9; Opposition at 9. Because the Delaware court cannot adjudicate violations of the Shipping Act, the factor of the adequacy of the federal court to protect the parties’ rights does not weigh in favor of a stay.

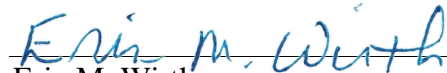
DSV describes Hubbell’s actions as “reactive” and argues that a stay would allow this proceeding to “have the benefit of the federal court’s review of the contractual obligations of the Parties as a backdrop for review of DSV’s regulatory compliance.” Motion at 10. Hubbell denies that this action is reactive. Opposition at 9. While the federal court’s review of the contractual obligations may be relevant to this proceeding, it would not determine whether or not the Shipping Act was violated. Moreover, it does not appear that this action is vexatious or reactive and this factor does not weigh in favor of a stay.

In considering all of the factors, they do not weigh in favor of a stay. The Commission has an obligation to determine whether Shipping Act violations are impacting the shipping public and the Commission has provided a one-year deadline for the initial decision to be issued. It does not appear that there would be sufficient benefits from consecutive, as opposed to concurrent actions, to support a stay. Accordingly, the request for a stay is denied. However, to increase efficiency, any discovery conducted in the Delaware case may be utilized in this proceeding and if the court in Delaware makes any relevant findings, they may be shared in this proceeding. The parties should agree on a joint proposed schedule and may make agreements to limit discovery.

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

ORDERED that DSV's motion to stay the proceedings be **DENIED**. It is

FURTHER ORDERED that as required by the initial order, the parties shall contact CADRS and shall submit a joint status report with proposed schedule. The deadline for this joint status report is October 16, 2023.


Erin M. Wirth
Chief Administrative Law Judge