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January 5, 2016					
FEDERAL MARITIME COMMISSION					

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DOCKET NO. 15-08

GENERAL MOTORS LLC

v.

**NIPPON YUSEN KABUSHIKI KAISA; WALLENIUS WILHELMSSEN LOGISTICS AS;
and EUKOR CAR CARRIERS INC.**

ORDER GRANTING JOINT MOTION TO STAY PROCEEDINGS

I.

On September 3, 2015, a Notice of Filing of Complaint and Assignment was issued indicating that Complainant, General Motors LLC, filed a complaint against the Respondents, Nippon Yusen Kabushiki Kaisha, Wallenius Wilhelmsen Logistics AS, and Eukor Car Carriers Inc. General Motors alleges that the Respondents violated the Shipping Act of 1984 (“Shipping Act”), including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 C.F.R. § 535.401, *et seq.*, in connection with General Motors’s purchase of vehicle carrier services from the Respondents. Respondents entered a special appearance for the limited purpose of requesting a stay of proceedings and to contest the sufficiency of service of process.

On September 21, 2015, General Motors and the specially appearing Respondents filed a joint motion to stay this proceeding pending resolution of a complaint filed by General Motors against Respondents which was transferred into multi-district antitrust litigation in the United States District Court for the District of New Jersey. The parties state that “GM filed its complaint before this Commission as a protective action to preserve all applicable statute of limitations and other deadlines and to obtain relief.” Motion at 2. The parties maintain that a stay is warranted in the interest of judicial economy and “allows the parties to concentrate on resolving the first-filed matter in the U.S. District Court.” Motion at 3.

On October 21, 2015, an Order to File Supplemental Memorandum Regarding Joint Motion to Stay Proceedings was issued in this proceeding, directing the parties “to file a joint supplemental memorandum fully addressing all factors to be considered in deciding the motion to stay, including whether any parties or the public interest will be harmed by a stay and the Commission’s interest in resolving controversies efficiently.” Order at 3. The parties were also directed to discuss the current status of the federal multi-district litigation identified in their joint motion for a stay. Order at 2-3.

On November 12, 2015, in response to the Order, the parties filed a Joint Supplemental Memorandum Regarding Joint Motion to Stay Proceedings (“Memorandum”), asserting that “all of the factors relevant to an application for a stay support granting the parties’ joint motion.” Memorandum at 1. The parties clarified that their federal case was filed on June 15, 2015, and is currently pending in the District Court for the District of New Jersey. Related claims were dismissed but were appealed and the appeal was stayed pending a motion for reconsideration. Memorandum at 4. There has not been a ruling yet on whether the dismissal of the related claims will be applicable to General Motors’s complaint. Memorandum at 4. The parties submit additional relevant factors for consideration, including the stage of the litigation, whether the non-moving party will be unduly prejudiced or tactically disadvantaged by a stay, and whether a stay will simplify the issues. Memorandum at 5. The parties contend that each of the relevant factors favors the stay requested in this proceeding. Memorandum at 5.

II.

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, 2002 FMC LEXIS 29, *5 (FMC 2002) (citing 46 C.F.R. § 502.201(i) and quoting *Landis v. North American Co.*, 299 U.S. at 254-255); see also *Carolina Marine Handling, Inc v. South Carolina State Ports Authority*, 2000 FMC LEXIS 1, at *16 (ALJ 2000). In *Exclusive Tug Arrangements*, the Commission denied a motion to stay discovery pending a Commission decision in a companion case, concerned that for another party, “the costs of participating in this proceeding are considerable and increase each time a deadline is extended.” *Exclusive Tug Arrangements*, 2002 FMC LEXIS 29, at *9.

The Supreme Court addressed the factors to consider when staying a federal proceeding pending the outcome of a related state court matter. *Moses H. Cone Memorial Hospital 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).

III.

As explained by the parties in their joint motion, the district court proceeding was the first filed, the parties have already engaged in dispositive motion practice in the district court, and issues that have been briefed in that proceeding will clarify fundamental questions. Memorandum at 5-6, 8. The parties contend that New Jersey is a more convenient forum for witnesses and that they wish to avoid piecemeal and duplicative litigation. Memorandum at 6. According to the parties, a stay may simplify the issues, the district court should determine whether it has jurisdiction over the claims, and neither action is vexatious. Memorandum at 7-8. These factors weigh in favor of granting the stay.

General Motors asserts that the district court is better able to apply certain laws that are part of General Motors’s claim while Respondents are of the view that both the district court and the FMC would protect the parties’ rights. Memorandum at 7. The district court and the FMC have jurisdiction over different claims and this factor does not weigh significantly in either direction.

The parties filed a joint motion requesting the stay and there is no non-moving party that would be prejudiced or disadvantaged by a stay. As the parties explain, they “will benefit from a stay by avoiding costly and time-consuming duplicative litigation; that is why the parties jointly have moved for a stay. The public interest likewise will benefit from a stay because the time and resources of the district court and the FMC will not be consumed by duplicative litigation. Ultimately, only one of the cases will proceed; nothing is gained, and much is lost, by having the two cases proceed simultaneously.” Memorandum at 7. This factor weighs in favor of a stay.

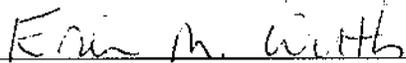
The parties contend that the Commission’s interest in resolving controversies efficiently is best met by staying these proceedings until it is determined in which forum General Motors will go forward with its complaint and that it would be “inefficient and wasteful to consume the time and resources of the Commission in this action” while the other proceeding is pending. Memorandum at 8. This factor does not weigh significantly either for or against the requested stay.

Given all of the factors to be considered in determining whether to stay a proceeding, the parties have established that the factors weigh in favor of a stay in this particular situation. The parties’ motion to stay this proceeding is, therefore, granted, subject to the submission of joint status reports. Joint status reports should be filed every three months and within thirty days of any dispositive decision, in which case the status report should attach a copy of the dispositive decision.

IV.

For the reasons set forth above, it is hereby

ORDERED, that the parties' Joint Motion to Stay Proceedings be granted. The parties shall file a status report every three months, beginning on February 1, 2016, and shall file a status report within thirty days of any dispositive decision.



Erin M. Wirth
Administrative Law Judge