

S E R V E D
February 22, 2007
FEDERAL MARITIME COMMISSION

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WASHINGTON, D. C.

DOCKET NO. 02-08

ODYSSEA STEVEDORING OF PUERTO RICO, INC.

v.

PUERTO RICO PORTS AUTHORITY

DOCKET NO. 04-01

INTERNATIONAL SHIPPING AGENCY INC.

v.

PUERTO RICO PORTS AUTHORITY

DOCKET NO. 04-06

SAN ANTONIO MARITIME CORPORATION and ANTILLES CEMENT CORPORATION

v.

PUERTO RICO PORTS AUTHORITY

MEMORANDUM AND ORDER DENYING MOTION TO CONSOLIDATE

On August 18, 2004, respondent Puerto Rico Ports Authority (PRPA) filed Respondent's Motion to Consolidate Proceedings and/or Common Issues and for Stay Pending Final Resolution (Motion to Consolidate) these three cases. PRPA asserted that the three cases have three common legal issues: (1) sovereign immunity and the Eleventh Amendment; (2) the statute of limitations; and (3) the litigation of contract disputes cognizable in Commonwealth courts before the Commission. (Motion to Consolidate at 2). All three complainants opposed the motion to consolidate. "The Commission or the Chief Judge (or designee) may order two or more proceedings which involve substantially the same issues consolidated and heard together." 46 C.F.R. § 502.148.

Events have overtaken PRPA's motion. The cases were stayed while the Commission considered PRPA's sovereign immunity claim. The Commission found PRPA not to be entitled to sovereign immunity. *Odyssea Stevedoring of Puerto Rico, Inc. v. PRPA*, Docket No. 02-08, *International Shipping Agency Inc. v. PRPA*, Docket No. 04-01; *San Antonio Maritime Corp. v. PRPA*, Docket No. 04-06, slip op. at 1, (Nov. 30, 2006) (Order). The Commission did not consolidate the cases, but it did treat the cases "in a similar manner for the purpose of determining whether PRPA is entitled to sovereign immunity as an arm of the Commonwealth of Puerto Rico." *Id.* at 2 n.1. PRPA has petitioned the court of appeals to review the Commission's Order. *Puerto Rico Ports Authority v. Federal Maritime Commission*, No. 06-1407 (D.C. Cir. Dec. 13, 2006) (petition for review filed). The court's decision will be equally applicable to all three cases. Therefore, the sovereign immunity claim is moot as a reason to consolidate these cases at the hearing level. I have denied a stay while the court considers PRPA's petition. *Odyssea Stevedoring of Puerto Rico, Inc. v. PRPA*, Docket No. 02-08, *International Shipping Agency Inc. v. PRPA*, Docket No. 04-01; *San Antonio Maritime Corp. v. PRPA*, Docket No. 04-06, (ALJ Feb. 12, 2007) (Memorandum and Order Reconsidering Denial of Stay, Denying Petition to Stay Proceedings

Pending Appeal on Reconsideration, and Granting Leave to Appeal Denial of Stay to the Commission).

PRPA claims that “[a]ll of these proceedings derive from complaints about the Golden Triangle Project and Regatta 2000,” (Memorandum in Support of Motion to Dismiss at 7) and “challenge the relocation or attempted relocation from [complainants’] former locations along the San Antonio Channel to other port locations.” (*Id.* at 8.) PRPA’s characterizes the allegations in *San Antonio Maritime* (No. 04-06) as being derived “from the supposed conspiracy of the Commonwealth Government to ‘obstruct and impede’ [San Antonio Maritime’s] ‘business operations . . . in a concerted effort to protect Puerto Rican cement producers.’” (*Id.* at 11 (footnote omitted).) PRPA characterizes the allegations in *Intership* (No. 04-01) as a complaint about “the decisions of the Puerto Rico Highway Authority to expand the Kennedy Avenue marginal road and the Commonwealth’s decision on how to spend its funds to develop maritime infrastructure in San Juan harbor.” (*Id.* at 12.) PRPA contends that *San Antonio Marine* and *Intership* “present issues wherein the Respondent has raised the three-year and one-year limitations bars arising from the Shipping Act and the tariff,” (*id.* at 17), and that “the scope of the limitations period that will apply in all three proceedings should be the same so as not to expose Respondent to inconsistent results.” (*Id.*) While PRPA raises a statute of limitations defense in each of these cases, its motion to consolidate describes factually distinct situations that do not warrant consolidation.

PRPA claims that in both *Intership* and *San Antonio Maritime*, the complainant is “improperly attempting to litigate unexceptional contract disputes before the Commission.” (Memorandum in Support of Motion to Dismiss at 18.) It describes *Intership*’s claim as an attempt “to litigate before the Commission the terms of a long term economic development and construction contract for the development, construction, and subsequent repair of Piers N and O in the Port of San Juan,” (*id.*), and claims that *Intership* failed to engage in mandatory arbitration. It alleges that San

Antonio Maritime “duplicates meritless contract litigation that it filed as a counterclaim” in an eviction action. (*Id.*) As described by PRPA, these cases do not “involve substantially the same issue.” 46 C.F.R. § 502.148.

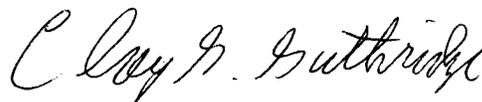
These three proceedings are at different stages of litigation. I note that *Odyssea* (No. 02-08), filed in 2002, had been scheduled for a hearing when it was stayed while the Commission reviewed the sovereign immunity issue. The other two cases, filed in 2004, are earlier in the discovery process. “It does not appear that consolidating the cases would be more efficient, preventing duplicate litigation, delay, and different outcomes.” *Canaveral Port Authority – Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate*, 29 S.R.R. 1001, 1003 (Oct. 8, 2002). While there may be occasions on which in the interest of efficiency, conferences involving counsel for two or all three cases may be appropriate, and there may be specifically identified information learned in discovery in one case that is applicable to another case, PRPA has not demonstrated that these three cases should be consolidated.

O R D E R

Upon consideration of the Puerto Rico Ports Authority’s Motion to Consolidate Proceedings and/or Common Issues and for Stay Pending Final Resolution and complainants’ oppositions thereto, for the reasons stated above, it is hereby

ORDERED that Puerto Rico Ports Authority’s Motion to Consolidate Proceedings and/or Common Issues and for Stay Pending Final Resolution be **DENIED**.

I will be scheduling status conferences in these three cases.



Clay G. Guthridge
Administrative Law Judge