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Attorneys for Plaintiff

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION)	
)	
)	SUPERIOR COURT OF NEW JERSEY
<i>Plaintiff,</i>)	LAW DIVISION
v.)	ESSEX COUNTY
)	
HAPAG-LLOYD AG, and)	
UNITED STATES MARITIME)	DOCKET NO. _____
ALLIANCE, Ltd.,)	
<i>Defendants</i>)	COMPLAINT AND JURY DEMAND
)	
)	
)	

Plaintiff International Longshoremen's Association, 5000 West Side Avenue, North Bergen, Hudson County, New Jersey by and through its undersigned attorneys, Marrinan & Mazzola Mardon, P.C., and Critchley, Kinum & Luria, LLC, by and for its Complaint, respectfully alleges as follows:

PARTIES

1. Plaintiff International Longshoremen's Association ("ILA" or "Plaintiff") is an unincorporated association and an international labor union, with its principal office located at 5000 West Side Avenue, North Bergen, Hudson County, New Jersey. The ILA represents longshore workers and related crafts in ports on the Atlantic and Gulf Coasts of the United States, including the Ports of Newark, Elizabeth and Bayonne in New Jersey. The ILA, on behalf of its constituent locals, negotiates and administers with Defendant United States Maritime Alliance, Ltd., ("USMX") on behalf of its employer-members, a collective bargaining agreement known as the "Master Contract," which prescribes the key terms and conditions of employment for longshore workers employed in container and ro/ro operations in ports on the Atlantic and Gulf Coasts of the United States, including the Ports of Newark, Elizabeth, and Bayonne in New Jersey. The ILA is a "labor organization" within the meaning of Section 2(5) of the Labor Management Relations Act (LMRA), 29 U.S.C. § 152(5).

2. Defendant Hapag-Lloyd AG ("Hapag-Lloyd") is a company organized and existing under and by virtue of the laws of Germany. Hapag-Lloyd is represented in the United States by Hapag-Lloyd (America), Inc., which is a corporation organized and existing under and by virtue of the laws of the State of Delaware and has its principal place of business at 399 Hoes Lane, Piscataway, County of Middlesex, New Jersey 08854. Hapag-Lloyd is engaged in the business of transporting cargo by sea in international trade and commerce. Its ships call at ports in the United States, including ports on the Atlantic and Gulf coasts of the United States where marine terminals are staffed by members of the ILA, including Newark, Elizabeth, and Bayonne in New Jersey. Hapag-Lloyd is a member of USMX and is bound by the Master Contract negotiated by USMX with the ILA. Hapag-Lloyd is an employer within the meaning of Section 2(2) of the LMRA, 29 U.S.C.

§ 152(2).

3. Defendant USMX is a non-profit membership corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office located at 125 Chubb Avenue, Suite 350NC, Lyndhurst, Bergen County, New Jersey 07071. USMX is a multiemployer collective-bargaining representative for its members, which consist of shipping companies or lines (also known as carriers), marine terminal operators and stevedoring companies, and port associations that represent employers of longshore labor engaged in container and roll on/roll off (ro/ro) operations in ports on the East and Gulf Coasts of the United States, including on marine terminals in Newark, Elizabeth, and Bayonne, in New Jersey. USMX on behalf of its members negotiates and administers with the ILA on behalf of its constituent locals of the Master Contract. USMX is an employer within the meaning of Section 2(2) of the LMRA, 29 U.S.C. § 152(2).

FACTUAL BACKGROUND

4. Article 1, Section 3 of the Master Contract states as follows:

This Master Contract is a full and complete agreement on all Master Contract issues relating to the employment of longshore employees on container and ro-ro vessels and container and ro-ro terminals in all ports from Maine to Texas at which ships of USMX carriers and carriers that are subscribers to this Master Contract may call.

5. The Master Contract contains provisions that describe and define the ILA's work jurisdiction. These provisions grant the ILA jurisdiction over all work that employees covered by the Master Contract have historically performed on a multi-employer and coastwise basis.

6. Specifically, the Master Contract specifies that employees covered by it have jurisdiction over longshore, checker, maintenance, and other craft work conferred on such workers by the "Containerization Agreement," a copy of which is appended to this Master Contract as

“Appendix A.”

7. The Containerization Agreement defines the work jurisdiction of USMX-ILA employees and prohibits the subcontracting out of any of the work covered under the agreement.

8. Section 1 of the Containerization Agreement affirms the ILA’s broad jurisdiction over all container and ro/ro work traditionally performed on a coastwise basis. The Section provides that:

Management and the Carriers recognize the existing work jurisdiction of ILA employees covered by their agreements with the ILA over all container work which historically has been performed by longshoremen and all other ILA crafts at container waterfront facilities. Carriers, direct employers and their agents covered by such agreements agree to employ employees covered by their agreements to perform such work which includes, but which is not limited to:

- (a) the loading and discharging of containers on and off ships
- (b) the receipt of cargo
- (c) the delivery of cargo
- (d) the loading and discharging of cargo into and out of containers
- (e) the maintenance and repair of containers
- (f) the inspection of containers at waterfront facilities (TIR men).

9. Section 2 of the “Containerization Agreement” provides: “Management, the Carriers, the direct employers and their agents shall not contract out any work covered by this agreement. Any violations of this provision shall be considered a breach of this agreement.”

10. Under Section 4 of the “Containerization Agreement,” the ILA has the right to seek money damages for violations of the Agreement. The Section provides: “It is understood that the provisions of this Agreement are to be rigidly enforced in order to protect against the further reduction of the work force. Management believes that there may have been violation of work

jurisdiction, of subcontracting clauses, and of this Agreement, by steamship carriers and direct employers. The parties agree that the enforcement of these provisions is especially important and that any violation of such other provisions is of the essence of the Agreement. The Union shall have the right to insist that any such violations be remedied by money damages to compensate employees who have lost their work. Because of the difficulty of proving specific damages in such cases, it is agreed that, in place of any other damages, liquidated damages of \$1,000.00 for each violation shall be paid to the appropriate Welfare and Pension Funds. Liquidated damages shall be imposed by the Emergency Hearing Panel described below.”

11. The Containerization Agreement was entered into in order to preserve work traditionally performed by ILA employees on a coast wise basis, including the work currently performed by ILA members at marine terminals in Newark, Elizabeth and Bayonne, New Jersey. Due to the loss of work threatened by containerization, this agreement was an effort by the parties to preserve work that would have been lost due to containerization.

12. The Containerization Agreement requires Hapag-Lloyd and other signatory carriers to use longshore employees covered by the Master Contract to load and discharge containers on and off Hapag-Lloyd ships, and perform all other container work for Hapag-Lloyd, at any marine terminal at which Hapag-Lloyd ships call on the Atlantic and Gulf Coasts of the United States.

13. Hapag-Lloyd and any other carrier bound by the Master Contract are free at any time to change which marine terminal that they bring their cargo to, so long as when a shipping carrier relocates its operations to another marine terminal on the Atlantic or Gulf Coasts of the United States it must go to a terminal that uses employees covered by the Master Contract to stevedore its vessels and perform container work related thereto.

14. Hapag-Lloyd is on notice of its contractual obligations which were negotiated by its representative USMX.

15. On or around March 30, 2021, the South Carolina Ports Authority opened a new container handling facility, known as the Hugh K. Leatherman Terminal (“Leatherman Terminal”), at Juneau Avenue, in North Charleston, South Carolina.

16. Because this terminal is new, it is not one of the terminals recognized by the Master Contract as one of the container and ro-ro terminals “in all ports from Maine to Texas at which ships of USMX carriers and carriers that are subscribers to this Master Contract may call.”

17. The Leatherman Terminal has been under construction for years, and at various times during the past twenty-four months, the ILA has reached out to USMX for assurances that the terminal would be one where all container and ro/ro work that has been historically performed by the ILA would be performed by the Master Contract bargaining unit consistent with the work jurisdiction provisions of the Master Contract.

18. USMX failed and refused to give the requested assurances to the ILA.

19. On the contrary, the information that the ILA received was that the Leatherman Terminal would have non-bargaining unit workers employed in various positions unloading containers from ships and handling containers in the marine terminal, instead of longshore workers represented by the ILA who are covered by the Master Contract.

20. Both USMX and Hapag-Lloyd were on notice that the Leatherman Terminal employed non-bargaining unit workers who were not covered by the Master Contract unloading containers from ships and handling containers in the marine terminal

21. On April 9, 2021, a ship owned by Hapag-Lloyd docked at Leatherman Terminal to deliver cargo. Non-bargaining unit employees were hired at Leatherman Terminal to perform

various crane and terminal work unloading containers off this ship owned by Hapag-Lloyd. For example, non-bargaining unit employees performed crane work, used forklifts, and moved the containers onto chassis.

22. The Hapag-Lloyd ship intentionally went to Leatherman Terminal even though it knew that non-bargaining unit employees who were not covered by the Master Contract would be hired to unload its containers and to handle its containers on the terminal.

23. Upon information and belief, USMX was aware that Hapag-Lloyd intended to bring its ship to Leatherman Terminal on April 9, 2021. Upon information and belief, USMX did not do anything to dissuade Hapag-Lloyd from utilizing the non-bargaining unit labor and, indeed, may have encouraged them to do so.

24. Both Hapag-Lloyd and USMX were well aware that the work in question would have been handled by ILA members who are covered by the Master Contract if the ship had gone to other the East and Gulf Coasts of the United States, including all the marine terminals in New Jersey.

25. Hapag-Lloyd and other shipping carriers have discretion as to which marine terminal they will bring ocean-borne cargo.

26. Upon information and belief, USMX and Hapag Lloyd's recent action presages future diversion of discretionary cargo from the Master Contract bargaining unit to workers outside the bargaining unit specifically to avoid the cost of paying Master Contract wages and benefits.

27. In addition, as a result of Hapag-Lloyd's decision to call its ship to Leatherman Terminal where non-ILA employees performed the work within the jurisdiction of the ILA's bargaining unit, the ILA suffered massive damages. ILA members lost out on work opportunities, suffering lost wages and lost benefits, thereby also depriving the ILA of dues income.

28. In addition, these employees lost out of future wages and benefits because of the precedent set for using non-bargaining unit workers at the Leatherman terminal and at other non-contract employees on the East and Gulf Coasts.

29. Because Defendants' conduct was willful and malicious, they are also liable for punitive damages.

COUNT I

TORTIOUS INTERFERENCE WITH CONTRACT

30. Plaintiff hereby restates and realleges all of the paragraphs 1 through 29 above as if fully set forth here.

31. The Master Contract creates a protected interest for the ILA and its members in that it protects work jurisdiction whereby ILA members are able to earn wages and benefits for themselves and their families. The ILA then is able to collect a portion of its members' wages as union dues.

32. Defendants intentionally and maliciously interfered without justification with the ILA's protected interest by interfering with the work jurisdiction of the Master Contract bargaining unit, when Hapag-Lloyd elected to bring its container vessel to the Leatherman Terminal on April 9, 2021 as workers not covered by the Master Contract were hired to perform crane and terminal work unloading containers and handling containers from Hapag-Lloyd's ship, which work historically has been performed by Master Contract unit members on a coastwise basis.

33. Defendants' interference has caused the ILA and its members harm by depriving the ILA of dues and violating the Master Contract bargaining unit's work jurisdiction.

34. The ILA has suffered massive damages as a result of Defendants' interference, and will continue to suffer damages.

COUNT II

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

35. Plaintiff hereby restates and realleges all of the paragraphs 1 through 34 above as if fully set forth here.

36. Defendants' conduct intentionally and maliciously interfered without justification with the ILA's future ability to enter into collective bargaining agreements on behalf of its members, preserve jobs for its members in accordance with the work jurisdiction provisions in the Master Contract, and to enforce the work jurisdiction provisions of the Master Contract.

37. Defendants' interference caused the loss of a prospective gain for Plaintiff.

38. Plaintiff has suffered actual damages resulting from Defendants' interference, including but not limited to depriving ILA of future dues income.

COUNT III

CIVIL CONSPIRACY

39. Plaintiff hereby restates and realleges all of the paragraphs 1 through 38 above as if fully set forth here.

40. Defendants Hapag-Lloyd and USMX acted in concert in order to violate the work jurisdictions of the Master Contract and to interfere with the work jurisdiction of the Master Contract bargaining unit.

41. Defendants Hapag-Lloyd and USMX understood the general objectives of their conspiracy, accepted them and explicitly agreed to do their part to further them.

42. This included when Hapag-Lloyd, with the consent of USMX, elected to bring its container vessel to the Leatherman Terminal on April 9, 2021, knowing that workers not covered

by the Master Contract would be, and were, hired to perform crane and terminal work unloading containers and handling containers from Hapag-Lloyd's ship, which work historically has been performed by Master Contract unit members on a coastwise basis.

43. As a result of Defendants actions, the ILA was harmed and sustained damages.

COUNT III

BREACH OF THE MASTER CONTRACT

44. Plaintiff hereby restates and realleges all of the paragraphs 1 through 43 above as if fully set forth here.

45. Section 301(a) of the LMRA provides that: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

46. Pursuant to the terms of the Containerization Agreement in the Master Contract, Defendants are contractually obligated to use employees covered by the Master Contract to perform the container work which historically has been performed by longshoremen and all other ILA crafts at container waterfront facilities.

47. Defendants willfully violated the work jurisdiction provisions of the Master Contract, when Hapag-Lloyd elected to bring its container vessel to the Leatherman Terminal on April 9, 2021 as workers not covered by the Master Contract were hired to perform crane and terminal work unloading containers and handling containers from Hapag-Lloyd's ship which historically has been performed by longshoremen and all other ILA crafts on a coast wise basis.

48. As a result of Defendants' violation of the Master Contract, Defendants violated

Section 301(a) of the LMRA.

49. The ILA suffered massive damages as a result of Plaintiffs' unlawful actions.

PRAYER FOR RELIEF

Wherefore, Plaintiff demands judgment against Defendants in the form of an Order

(a) Holding defendants USMX and Hapag-Lloyd both individually and jointly and severally liable for tortious interference with compensatory, incidental, consequential, liquidated, and punitive damages; in the total amount of \$200,000,000;

(b) granting Plaintiff attorney's fees, interests, and costs of suit; and

(c) for such further relief as the Court may deem equitable and just.

JURY DEMAND

Plaintiff demands a jury on all issues so triable.

CERTIFICATION OF NO OTHER PENDING ACTION OR ARBITRATION

Pursuant to *R.4-5-1*, we hereby certify that the matter in controversy is not the subject of any other pending or contemplated action or arbitration proceeding. These parties are not aware of any other parties who should be joined in this action at this time.

Dated: April 22, 2021

Respectfully submitted,

/s/ John P. Sheridan
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Civil Case Information Statement

Case Details: ESSEX | Civil Part Docket# L-003231-21

Case Caption: INTERNATIONAL LONGSH OREMEN'S VS
HAPAG-LLOYD, A

Case Initiation Date: 04/22/2021

Attorney Name: JOHN PHILIP SHERIDAN

Firm Name: MARRINAN & MAZZOLA MARDON PC

Address: 26 BROADWAY 17TH FL

NEW YORK NY 10004

Phone: 2124253240

Name of Party: PLAINTIFF : International Longshoremen's A

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: CONTRACT/COMMERCIAL TRANSACTION

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: International Longshoremen's A? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Business

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

04/22/2021

Dated

/s/ JOHN PHILIP SHERIDAN

Signed