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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PMA COMPANIES,

Plaintiff,

v.

GENOX TRANSPORTATION, INC.;
APPLIED LNG TECHNOLOGIES, LLC;
LAIRD TRANSPORTATION, LLC; and
DOES 1 to 20, inclusive,

Defendants.

Case No.: 20-CV-2540 JLS (RBM)

**ORDER GRANTING CLEANCOR
LNG, LLC’S MOTION FOR LEAVE
TO FILE THIRD-PARTY
COMPLAINT**

(ECF No. 39)

Presently before the Court is Third-Party Defendant Cleancor LNG, LLC’s (“Cleancor”) Motion for Leave to File Third-Party Complaint (“Mot.,” ECF No. 39). No Party filed an opposition to the Motion. *See generally* Docket. Cleancor seeks leave to file a third-party complaint against Phillips Cattle Company (“Phillips”), which is a cattle and feed company insured by Plaintiff PMA Companies (“PMA”). *See generally* Mot.

BACKGROUND

This is a subrogation action by PMA, an insurer of Phillips, to recover insurance benefits paid for damages to Phillips’s property as a result of a fire that occurred on Phillips’s premises on or about May 15, 2019. *See* ECF No. 1-2 (“Compl.”) ¶ 1. PMA

1 alleges that Phillips contracted with Applied LNG Technologies, LLC (“Applied”) to
2 deliver liquid natural gas to Phillips’s grain milling facility. *Id.* ¶ 9. Applied allegedly
3 subcontracted with GenOx Transportation, Inc. (“GenOx”) and Laird Transportation, LLC,
4 (“Laird”) to complete the delivery. *Id.* ¶ 3. PMA claims that Defendants were negligent
5 during the unloading process of the liquid natural gas, which caused a fire and damaged
6 Phillips’s property. *Id.* ¶¶ 14, 16. PMA asserts claims for negligence, negligence per se,
7 and strict liability against Applied, GenOx, and Laird. *See generally id.*

8 On December 31, 2020, GenOx filed for removal of PMA’s action to this Court. *See*
9 ECF No. 1. On January 29, 2021, Applied filed a third-party action against Cleancor for
10 contractual indemnity and declaratory relief. *See* ECF No. 9. Pursuant to Federal Rule of
11 Civil Procedure 14(a)(1), Cleancor moves for leave to file a third-party complaint against
12 Phillips for contractual indemnity, breach of contract, and declaratory judgment pursuant
13 to the parties’ contract. *See generally Mot.*

14 **LEGAL STANDARD**

15 Rule 14(a)(1) provides, in pertinent part, that with the court’s leave, “a defending
16 party may, as third-party plaintiff, serve summons and complaint on a non party who is or
17 may be liable to it for all or part of the claim against it.” Accordingly, a third-party claim
18 may be asserted under Rule 14(a)(1) only when the third-party’s liability is in some way
19 dependent on the outcome of the main claim, or when the third-party is secondarily liable
20 to the defending party. *See Stewart v. Am. Int’l Oil and Gas Co.*, 845 F.2d 196, 199–200
21 (9th Cir. 1988). In other words, a defendant bringing a third-party claim must be attempting
22 to transfer to the third-party a liability asserted by the original plaintiff against that
23 defendant. *Id.* at 200; C. Wright, et al., 6 Federal Practice and Procedure § 1446 (3d ed.
24 2018).

25 Whether to grant a Rule 14(a)(1) impleader motion rests in the sound discretion of
26 the trial court. *United States v. One Mercedes Benz*, 708 F.2d 444, 452 (9th Cir. 1983).
27 “In a non-exhaustive list of considerations, the court will seek to balance the benefits
28 afforded by liberal federal third-party practice against the possible prejudice to the plaintiff

1 and the third-party defendant, complexity of the issues, likelihood of delay, and timeliness
2 of the motion to implead.” *Three Rivers Provider Network, Inc. v. Jett Integration*, No.
3 14cv1092 JM (KSC), 2015 WL 859448, at *7 (S.D. Cal. Feb. 27, 2015) (citing *Irwin v.*
4 *Mascott*, 94 F. Supp. 2d 1052, 1056 (N.D. Cal. 2000)).

5 ANALYSIS

6 Here, Cleancor satisfies the requirements for impleader. With respect to Rule 14’s
7 derivative liability requirement, the basis for Cleancor’s proposed complaint is that
8 Cleancor leased a liquid natural gas tank trailer to Phillips, and that the lease agreement
9 included an indemnity clause. *See* Ex. A ¶¶ 7, 9, ECF No. 39-2. Cleancor alleges the
10 agreement requires Phillips to defend or indemnify Cleancor “for any claims arising from
11 or relating to injury to any personal property, from whatever the cause, by reason of any
12 spill or leak.” *Id.* ¶ 9. In its third-party complaint against Cleancor, Applied alleges
13 Cleancor is at least partially liable for the fire at issue in this action because of Cleancor’s
14 failure to comply with safety procedures related to the tank trailer. *See* ECF No. 9, ¶ 6.
15 The allegations set forth in Cleancor’s proposed third-party complaint could possibly
16 impose liability on Phillips. Accordingly, without addressing the merits or ultimate
17 viability of the third-party complaint, this threshold requirement is satisfied.

18 With regard to timeliness and prejudice, the Court finds that the other Parties to this
19 action and Phillips will not be prejudiced. The Court set June 21, 2021, as the deadline to
20 join other parties, amend pleading, or file additional pleading, *see* ECF No. 37, and
21 Cleancor timely filed the present Motion. The Court also finds that Phillips’s joinder will
22 not substantially complicate the action, and the impact on the timely resolution of this case
23 will not be seriously compromised. The Court concludes that the judicial economy benefits
24 of allowing Cleancor to implead Phillips outweigh any prejudice.

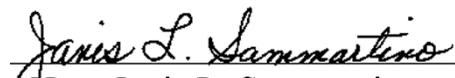
25 CONCLUSION

26 Accordingly, the Court **GRANTS** Defendants’ Motion (ECF No. 39). Therefore,
27 the Court **VACATES** the hearing date set for July 22, 2021, at 1:30 p.m. Cleancor **SHALL**
28 **///**

1 file the third-party complaint attached to its Motion within seven (7) days of the electronic
2 docketing of this Order.

3 **IT IS SO ORDERED.**

4 Dated: July 19, 2021


5 Hon. Janis L. Sammartino
6 United States District Judge

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