

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

MAPFRE TEPEYAC, SA,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-05-1908
	§	
ROBBINS MOTOR TRANSPORTATION, INC., <i>et al.</i> ,	§	
<i>Defendants.</i>	§	

**MEMORANDUM AND RECOMMENDATION**

The district court has referred this case to this court for pre-trial management. Plaintiff Mapfre Tepeyac, S.A. (Mapfre) has filed a motion (Dkt. 11) to dismiss its claims against defendant Louisiana Transportation, Inc.(Louisiana Transportation) without prejudice. Co-defendant Robbins Motor Transportation, Inc. (Robbins) has filed a cross-claim against Louisiana Transportation and for that reason opposes the motion to dismiss.

Rule 13(g) of the Federal Rules of Civil Procedure permits the filing of a cross-claim against a co-party that arises out of the same transaction or occurrence as the main claim. Robbins fled its Rule 13(g) cross-claim prior to dismissal of Louisiana Transportation as a co-defendant. Therefore, dismissal of Mapfre’s claims against Louisiana Transportation does not require dismissal of Robbins’s cross-claim. *Molett v. Penrod Drilling Co.*, 919 F.2d 1000, 1004 (5th Cir. 1990); 6 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE CIVIL 3D § 1431 (1990); FED. R. CIV. PRO. 13(g). This is particularly true where, as here, there is an independent grounds for federal jurisdiction over the cross-claim.<sup>1</sup> *See McLaughlin v. Mississippi Power*, 376 F.3d 344, 355 (5th Cir. 2004) (denying dismissal of counterclaim after

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<sup>1</sup> Robbins alleges that there is diversity jurisdiction over its cross-claim. No party has contested that allegation.

dismissal of original claim). Of course, Louisiana Transport may pursue any appropriate motion to dismiss the cross-claim.

Therefore, the court recommends that Mapfre's claims against Louisiana Transportation be dismissed without prejudice to refile within one year from the date of this Order, and that Robbins's cross-claim against Louisiana Transportation remain pending.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. PRO. 72.

Signed at Houston, Texas on September 27, 2005.

  
Stephen Wm Smith  
United States Magistrate Judge