

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

SAMSUNG ELECTRONICS AMERICA, INC., *Complainant*

v.

ZIM INTEGRATED SHIPPING SERVICES LTD., *Respondent*.

DOCKET NO. 22-30

Served: June 9, 2023

ORDER OF: Erin M. WIRTH, *Chief Administrative Law Judge*.

ORDER DENYING MOTION TO COMPEL DEPOSITION

On June 1, 2023, Complainant Samsung Electronics America, Inc. (“Samsung” or “SEA”) filed a motion to compel (“Motion”) the deposition of Xavier Destriau, the Chief Financial Officer of Respondent ZIM Integrated Shipping Services Ltd. (“ZIM”). On June 8, 2023, Respondent filed an opposition to the motion to compel (“Opposition”). Both parties also filed requests for confidential treatment.

On September 28, 2012, the Commission issued revised rules of practice and procedure which sought to “modernize and more closely conform them to the current version of the [Federal Rules of Civil Procedure] and to encourage focused and expeditious use and completion of discovery.” 77 Fed. Reg. 61519-61535 (FMC Docket 11-05). The 2012 revision of the Commission’s Rules imposed limitations on discovery and required initial disclosures and disclosures of expert reports. In Commission proceedings, parties “may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense” and for good cause, “the presiding officer may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” 46 C.F.R. § 502.141(e)(1).

The Commission Rules allow the presiding officer to “limit the frequency or extent of discovery otherwise allowed by these rules.” 46 C.F.R. § 502.141(e)(2). “The Commission or presiding officer may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” 46 C.F.R. § 502.141(j)(1). “It is fundamental that the scope of discovery is not limitless and is restricted by the concepts of relevancy.” *American President Lines, Ltd. v. Cyprus Mines Corp.*, Docket No. 91-27, 26 S.R.R. 1227, 1234 (FMC Jan. 31, 1994). In addition, pursuant to Commission Rules, “[a]fter making every reasonable effort to resolve discovery disputes, a party may request a conference or rulings from the presiding officer on such disputes.” 46 C.F.R. § 502.141(i)(2).

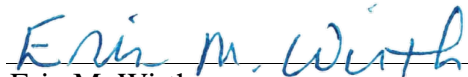
Complainant asserts that the deposition testimony of Mr. Destriau is plainly relevant and is necessary to the prosecution of SEA's claims; and any burden on Mr. Destriau is proportional to, and clearly outweighed by, SEA's needs to obtain discovery central to its claims. Motion at 6-10. Respondent contends that the testimony sought is not reasonably calculated to lead to the discovery of admissible evidence; ZIM's Haifa headquarters and Mr. Destriau play no role with respect to the issues in this proceeding; ZIM's overall financial results are irrelevant; and the deposition of Mr. Destriau constitutes improper harassment of ZIM and its employee. Opposition at 2-9.

The exhibits show that Mr. Destriau has given interviews about ZIM's revenue; he executes ZIM's financial disclosures; and in the 86,007 pages of discovery produced by ZIM, Mr. Destriau did not generate a single email, received ten emails, and is copied on one email. Motion at 6-9. The record does not show that Mr. Destriau has knowledge relevant to shipments, charges, or decisions made in connection with SEA. Moreover, it is not clear that corporate profits or requests to reduce "overdues," especially with regard to overseas trends, would be relevant to this proceeding. Making a profit or increasing income, without more, would not violate the Shipping Act.

The parties request confidential treatment, including for deposition testimony regarding specific dollar amounts paid to ZIM by SEA and other customers which constitutes competitively sensitive information; and ZIM's internal U.S. collections policy, a document that ZIM keeps confidential and which reflects ZIM's negotiating strategy with its customers, arguing that disclosure of this strategy would be commercially damaging to ZIM. ZIM Motion for Confidential Treatment at 3. The requests for confidential treatment are limited and reasonable. Accordingly, the requests for confidential treatment are granted.

As the parties prepare their briefs and appendices, they are encouraged to review the Initial Order, Scheduling Order, and Commission rules regarding confidential documents. The parties should submit individual depositions as one exhibit, rather than submitting each page as a separate exhibit, and should include deposition pages that identify the deponent's name and title. It is also recommended that a confidential request table be submitted. In addition, citations to Westlaw are preferred.

For the reasons stated above, it is hereby **ORDERED** that the motion to compel be **DENIED** and that the motions for confidential treatment be **GRANTED**.


Erin M. Wirth
Chief Administrative Law Judge