

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: October 6, 2023

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

ORDER ON MOTION TO EXTEND TIME TO RESPOND TO MOTION TO STRIKE

As required by the most recent briefing schedule, on September 26, 2023, Respondent filed its opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix. In addition, on September 26, 2023, Respondent filed a separate motion to strike the expert report of John McCown, which had been submitted by Complainant as part of its initial brief and appendix.

On September 29, 2023, Complainant filed a letter motion arguing that the motion to strike violated the scheduling order and that counsel failed to confer in violation of Rule 71(a). Complainant requests that “in the event the Presiding Officer allows such a filing to stand procedurally, that SEA be permitted to submit its opposition after the October 10, 2023 date when SEA’s reply to Zim’s opposition brief is due.” Motion to Extend Time at 1.

On October 5, 2023, Respondent filed a response to the motion to extend time asserting that the motion to strike was timely filed and because it was not a “discovery issue on which there might be potential room for discussion, compromise, and resolution,” that Respondent did not need to meet and confer. Response at 2-3.

Complainant is reminded that the initial order issued in this proceeding states that any “request for action by the Commission or presiding officer must be made by motion, not by letter or email request.” Initial Order at 3. In the future, letter motions may be summarily rejected.

The expert deposition was submitted as part of Complainant’s brief. The appropriate time to make arguments contesting the expert deposition was when filing Respondent’s opposition. Therefore, the timing of arguments objecting to the expert report was not inappropriate. However, the arguments objecting to Complainant’s expert should have been included in Respondent’s opposition brief, not as a separate motion. While parties have been instructed not to bury requests to strike in footnotes, they also do not need to be separate motions. They can be

included in the opposition brief but clearly identified, for example with a heading. As part of their opposition brief, no duty to confer would attach as there would not be a separate motion.

Therefore, the request to strike was not untimely or improper and will be considered when all of the briefing is complete as part of reviewing the merits of the proceeding. Filing of the separate motion to strike did create additional motions practice that took time away from the short deadline to prepare Complainant's reply brief. Therefore, Complainant will be given two additional days to file its response to the motion to strike the expert report.

For the reasons discussed above, Complainant's motion to extend time is **GRANTED IN PART AND DENIED IN PART**. Complainant will submit its response to the motion to strike the expert report by October 12, 2023. This does not change the October 10, 2023, deadline for Complainant to file its reply brief and responses to proposed findings of fact.


Erin M. Wirth
Chief Administrative Law Judge