

BEFORE THE  
FEDERAL MARITIME COMMISSION

TIR AUTO TRANSPORT LLC,

*Complainant,*

v.

DOCKET NO. 23-07

V&S BROTHERS, INC. and  
V&S CARGO, Inc.,

*Respondents.*

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**DEFENDANTS, V&S BROTHERS, INC. AND V&S CARGO, INC.'S  
MOTION FOR ENLARGEMENT OF TIME**

Respondents, V&S BROTHERS, INC. and V&S CARGO, INC. (together, “V&S”), by and through their undersigned counsel and under Rule 67 of the Federal Maritime Commission’s (“FMC”) Rules of Practice and Procedure (46 C.F.R. § 502.67), respectfully move for entry of an Order enlarging the deadline for V&S’ response to Complainant, TIR AUTO TRANSPORT LLC (“TIR”)’s Complaint. As detailed herein, the parties have entered into an agreement regarding a portion of the pending claims and have agreed that once certain sums have been paid for the release of particular containers (subject to later resolution between the parties), this action should be stayed to allow the parties to continue negotiations. This Motion is filed in order to ensure that there is sufficient time for V&S to effectuate the parties’ agreement and for the parties to formally request a stay.

**Background**

This action arises from a dispute between the parties regarding: (1) amounts

that the parties contend are owed for past cargo shipments; and (2) the release or disposition of certain containers. Prior to the filing of the Complaint, V&S and TIR had been engaged in discussions directed to achieving an informal settlement of this dispute with the aid of the FMC's Office of Consumer Affairs & Dispute Resolution Services. The parties continued discussions directed to resolving the dispute after TIR filed its Complaint on August 8, 2023.

The parties reached an understanding as to certain cargo containers which includes an agreement that this action should be stayed pending further discussions between the parties. Part of this agreement requires that V&S pay certain sums to secure the release of 5 containers referenced in the Complaint (with the paid sums being subject to future allocation / dispute). V&S has made substantial payments sufficient to secure the release of 3 of the 5 containers and is working to secure the release of the final 2, but this process remains ongoing.

This Motion is filed in order to seek sufficient time for V&S to effectuate the payments mentioned herein. It is anticipated that as soon as the final containers are released, the parties will file a joint request for a stay pursuant to their agreement so that the parties can discuss the resolution of any remaining issues.

**Argument for an Extension of the Deadline to Respond**

V&S seeks a 21 day extension of each of the following deadlines: (1) the August 23, 2023 deadline for Motions for More Definite Statement (until September 13); and (2) the September 5, 2023 deadline for Motions to Dismiss / Answers to the Complaint (until September 26). This extension is necessary to aid in the Parties' ongoing

resolution of portions of the Complaint and is in advance of an anticipated Joint Motion for a Stay, which will be filed as soon as the final 2 containers are released.

There is good cause for this extension because the ongoing discussions and performance of the parties' agreement materially affect the existing Complaint. It would be inefficient and prejudicial for V&S to be required to respond to claims that are in the process of being discussed and would be a waste of the parties and the FMC's resources to litigate claims that are actively changing.

Additionally, V&S is attempting to gather documents and information needed to defend this action but has concentrated its efforts to date on the agreement and anticipated request for a stay. The extension of time will also allow the undersigned time to prepare its defense should the parties' negotiations reach an impasse and to translate and review the underlying communications and documents between the parties, all of which are written in languages other than English.

A brief extension of the current deadline will not disrupt the progression of this action and will not prejudice either of the parties.

**Good-Faith Conferral Pursuant to 46 C.F.R. § 502.71(a)**

On August 22 and 23, 2023, the undersigned conferred with Garry Pogil, attorney for TIR, in four email communications, and advised him that more time was needed to respond to the Complaint for the reasons stated herein. Three of those email communications attached drafts of this Motion. Mr. Pogil stated that he was checking with his client regarding the release of the 5 containers. Counsel's email stated that TIR was determining whether all 5 containers had been released, which

was the condition of a stay of this action. Counsel for TIR seemed to be conflating this request for an extension with the parties' agreement as to a stay. Counsel for TIR further stated that he did not have "consent at this point." V&S files this Motion as if the request herein is opposed by TIR, but will supplement this section should TIR provide a further response before the date TIR's response to this Motion is due. Moreover, when the parties' agreement regarding a stay is effectuated, the parties will replace this Motion with a Joint Request for a Stay.

For all of the foregoing reasons, V&S respectfully requests that the Commission enter an Order granting a 21 day extension of each of the following deadlines: (1) the deadline for Motions for More Definite Statement (until September 13); and (2) the deadline for Motions to Dismiss, Answers and Defenses, and/or Counter-Petitions to the Complaint (until September 26).

Respectfully submitted,

/s/ Andrew J. Steif

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**CERTIFICATE OF SERVICE**

I certify that, on August 23, 2023, a true and correct copy of the foregoing Notice of Appearance was filed via electronic mail with the Secretary of the Federal Maritime Commission at [secretary@fmc.gov](mailto:secretary@fmc.gov), and a copy was served via electronic mail on the following counsel:

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*/s/ Andrew J. Steif* \_\_\_\_\_  
Andrew J. Steif