

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

TIR AUTO TRANSPORT LLC, *Complainant*

v.

V&S BROTHERS INC. AND V&S CARGO INC., *Respondents.*

DOCKET NO. 23-07

Served: September 21, 2023

ORDER OF: Linda S. Harris CROVELLA, *Administrative Law Judge.*

ORDER ON JOINT MOTION TO EXTEND

On September 20, 2023, Complainant TIR Auto Transport LLC (“Complainant”), and Respondents V&S Brothers Inc., and V&S Cargo Inc. (collectively, “Respondents” or “V&S”), filed a Joint Status Report (“JSR”), as required by the Order on Motions issued on September 6, 2023. In the JSR, the parties indicated that they have contacted the Federal Maritime Commission’s (“FMC”) Office of Consumer Affairs and Dispute Resolution Services (“CADRS”), as required by the Initial Order, and have agreed to pursue an “evaluative” mediation, but no start date for mediation has been scheduled. JSR at 2.

In addition to providing the parties’ status, the JSR includes a renewal of the Parties’ Joint Request for a Stay of Proceedings.¹ In their renewed request the parties seek “an initial stay of forty-five (45) days” to pursue mediation. *Id.* The Joint Motion to Extend continues:

The Parties further request that upon the expiration of the stay period and at each following thirty-day interval, the Parties be allowed to provide joint status reports. Should the parties’ negotiations reach an impasse, the proposed stay could immediately end and the parties could then proceed to seek a resolution on the merits. Each thirty-day extension would be conditioned on the Parties showing good cause to the Commission for extending the stay in light of pending discussions.

Id.

For the reasons discussed more fully below, the Joint Motion to Extend is **GRANTED IN PART**, and **DENIED IN PART**.

¹ The JSR will be considered as a Joint Motion to Extend, but the parties are reminded that future motions, if any, should be made in accordance with 46 C.F.R. 502.69(a) and should be clearly labeled as motions.

On August 8, 2023, the Commission issued a Notice of Filing of Complaint and Assignment (“Notice”) for this proceeding, setting the date for issuance of the Initial Decision on August 8, 2024. On August 11, 2023, the Initial Order issued, reiterating that “The Commission’s Notice requires the initial decision in this case to be issued within one year.” Initial Order at 1. In addition, the Initial Order states, “Pursuant to Rule 141, discovery must be completed within 150 days of the service of a respondent’s answer....” On September 5, 2023, Respondents filed an Answer, Affirmative Defenses and Counterclaim (“Answer and Counterclaim”). Based on Rule 141, discovery should be completed by February 2, 2024.

The Joint Motion to Extend essentially requests an extension of time to propose a schedule and begin discovery, although it is phrased as a request to stay the proceeding while the parties pursue mediation. In addition, while the request says it is not for an indefinite period, it does not offer a date by which the parties will propose a discovery schedule or initiate discovery.

The Commission has a strong and consistent policy of encouraging settlements, and mediation could help resolve some or all the issues between the parties. However, as the undersigned stated in the previous Order, 46 C.F.R. § 502.64(c) states: “*Proceeding not stayed during dispute resolution process.* Unless otherwise ordered by the presiding officer, a mediation proceeding does not stay or delay the procedural time requirements set forth by rule or order of the presiding officer.”

While a short period is reasonable for the parties to attend to the briefing that they assert is part of the mediation protocol, repeated extensions of the sort proposed in the Joint Motion to Extend results in another open-ended request that could significantly delay this case. In addition, engaging in discovery could provide evidence that assists the parties in resolving their differences, and excessive delay in starting the process could hinder the parties’ efforts. Therefore, if the parties have not resolved the proceeding by November 6, 2023, they will be required to begin discovery.

Good cause has been established to extend the deadline for the parties to submit their proposed schedule to November 6, 2023, but good cause has not been established to allow further delay beyond that date.

Accordingly, it is hereby:

ORDERED that the Joint Motion to Extend is **GRANTED IN PART**, and **DENIED IN PART**. It is

FURTHER ORDERED that the parties must submit a joint status report on October 21, 2023, indicating if the parties are still engaged in mediation, but not revealing their respective positions on settlement. A second joint status report and proposed schedule of discovery allowing for the completion of the case within one year from filing must be submitted by November 6, 2023.

If a settlement is reached, the parties must file a motion requesting approval of it along with a copy of the settlement. *See* 46 C.F.R. § 502.72(a)(3).

If the parties resolve some, but not all the issues raised in the Complaint, the parties may file a motion under 46 C.F.R. § 502.69(g), moving to dismiss part of the proceeding. If the parties have procedural questions after reviewing the FMC rules, they should direct them to Secretary@FMC.gov.



Linda S. Harris Crovella
Administrative Law Judge