

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.

**RESPONDENTS V&S BROTHERS, INC. AND V&S CARGO, INC.'S
MOTION TO COMPEL AND FOR LIMITED EXTENSION OF TIME**

Respondents, V&S BROTHERS, INC. (“VBI”) and V&S CARGO, INC. (“VCI”) (together, “V&S”), by and through their undersigned counsel and pursuant to 46 C.F.R. §§ 502.150 and 502.241, hereby move to compel Complainant, TIR AUTO TRANSPORT LLC (“TIR”) to properly respond to written discovery requests and produce documents, and further move for clarification and/or extension of the January 5, 2024 expert report deadline in light of V&S’ inability to retain and prepare an expert witness without the benefit of missing discovery and documents.

BACKGROUND

In its Verified Complaint, TIR asserts a claim relating to certain containers that were alleged to have been diverted and/or withheld from delivery by V&S in Romania and Georgia. TIR also pleads additional allegations regarding the pricing of shipments and problems with the shipment of two vehicles. TIR asserts that it is entitled to \$500,000 in damages, consisting primarily of lost business and lost

customers. Since the inception of this action, V&S has sought information regarding the nature of the claims and TIR's alleged losses and has been largely unable to secure relevant information and documents from TIR. At this stage of the lawsuit, V&S lacks sufficient information to evaluate the substance of the claims asserted or the basis for the majority of TIR's damages claim. Moreover, TIR has improperly asserted identical claims against both Respondents and V&S has been unable to secure information regarding the nature of the specific claims against each entity.

TIR and V&S exchanged written discovery requests on November 14, 2023; VBI and VCI each served separate Initial Sets of Interrogatories, Requests for Production, and Requests for Admissions. ("V&S' Initial Discovery"). *See attached Composite Exhibit A, "V&S' Initial Discovery."*

On December 14, 2023, TIR responded to V&S' Initial Discovery. *See attached Composite Exhibit B, "TIR's Initial Responses."* TIR also produced a small number of documents. TIR's responses and production were insufficient, as detailed further below, in the following material ways:

- Many of TIR's discovery responses cite solely to a single item of post-dispute correspondence as the factual and/or documentary support for its allegations, without providing the actual underlying factual or documentary support;
- Reliance on the allegations in its Verified Complaint as factual and documentary support when V&S requests information and documents supporting those very same allegations;
- Failure to identify allegedly lost customers and failure to provide sufficient information regarding the two customers that TIR identified;
- Refusal to provide any information or documentary support regarding an alleged \$190,000 loan that constitutes much of the damages claim;

- Failure to identify the persons or entities with facts about the allegations in the dispute or that TIR expects to use as witnesses;
- The use of “examples” when requests ask for *all* factual or documentary support

See generally Composite Exhibit B. There are additional deficiencies addressed herein as well.

On December 19, 2023, V&S sent a comprehensive letter identifying each deficient response, why the response was deficient, and the information or documents needed from TIR to correct the deficiencies. *See Exhibit C.* TIR’s counsel responded on December 26, 2023 in writing. *See Exhibit D.* TIR’s responsive letter stated that the “responses stand” as to each of the dozens of requests addressed in V&S’ letter. TIR’s letter also stated that V&S could ask for further information during a deposition of TIR. Counsel for the parties conferred over the phone on December 26 to discuss the discovery dispute. TIR’s counsel expressed on the call that he had produced all the responsive documents and factual support he had received from his client and that V&S could ask its questions at a deposition to get more information.¹

The written conferral and telephone conference did not resolve the discovery disputes between the parties. Written discovery is essential, as is a fulsome document production, in order for V&S to prepare to take a deposition of TIR and its owner. V&S will be prejudiced by TIR’s discovery deficiencies and failure to provide responsive factual and documentary support to V&S’ requests. The scheduling order

¹ The parties also used the telephone call to tentatively schedule dates for depositions. However, V&S is concerned that it will not have received sufficient factual and documentary support from TIR by the time of the depositions of TIR’s corporate representative and Iurii Chriyanov, TIR’s principal.

also contains approaching expert disclosure deadlines on January 5, 2024 and February 2, 2024. Thus, it is vital that TIR be compelled to produce the relevant factual and documentary support.

V&S seeks an Order requiring that TIR correct the deficiencies in TIR's discovery responses no later than January 20, 2024. Further, V&S seeks an Order clarifying that January 5, 2024 is the deadline for exchange of expert reports in support of affirmative claims for relief and that February 2, 2024 is the deadline for expert reports that will be used to defend those affirmative claims. In the alternative, given the deficiencies in TIR's discovery responses, V&S requests a short extension of time, to February 2, 2024, to produce its defensive expert report(s), if any.

MOTION TO COMPEL

I. Legal Standard

Pursuant to 46 C.F.R. § 502.150, “a party may file a motion . . . for an order compelling compliance... with its discovery requests.” Parties are entitled to discovery “regarding any nonprivileged matter that is relevant to any party’s claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.” 46 C.F.R. § 502.141(e)(1). The discovery requests V&S seeks to compel responses to satisfy these criteria.

Under 46 C.F.R. § 502.12, “for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed.” The practice of providing an incomplete response “leaves the requesting Party uncertain as to

whether the question has actually been fully answered or whether only a portion of the question has been answered,” especially when the incomplete answer follows an objection. *Consumer Elecs. Ass’n v. Compras and Buy Magazine, Inc.*, No. 08-21085-CIV, 2008 WL 4327253, at *3 (S.D. Fla. Sept. 18, 2008) (citations and internal punctuation omitted).

“Producing only those documents that are deemed helpful to the producing party's litigation position—parsing out the bad from the good—is, of course, impermissible.” *Novelty, Inc. v. Mountain View Mktg.*, 265 F.R.D. 370, 378 (S.D. Ind. 2009). Indeed, “[a] litigant cannot limit its discovery so as to ascribe unto itself the role of judge and jury.” *Id.* See also, *Johnson v. Kraft Foods N. Am., Inc.*, 236 F.R.D. 535, 541 (D. Kan. 2006) (“a party may not unilaterally withhold information or documents that are responsive to a discovery request by stating that ‘all relevant, non-privileged’ responsive information or documents have been, or will be, produced.”). Furthermore, boilerplate and formulaic objections are improper in response to legitimate written discovery requests. See, e.g., *Guzman v. Irmadan, Inc.*, 249 F.R.D. 399 (S.D. Fla. 2008) (“nonspecific, boilerplate objections,” and “formulaic objection[s] followed by an answer to the request” are improper).

As explained below, TIR’s responses to the various written discovery requests served by V&S are problematic for these very reasons.

II. TIR Cannot Avoid Discovery Obligations By Citing to a Future Deposition.

In TIR’s Response to Respondents’ Notice of Deficiencies, TIR states that “Turii Chirianov is available to testify on this point,” or “Turii Chirianov is being produced

for the deposition on behalf of TIR” as to many of the issues that V&S raised. *See, e.g., Exhibit D, generally.* This turns the discovery process on its head. V&S is entitled to factual and documentary support for the claims it is defending. TIR cannot unilaterally determine which evidence it will provide in written form or produce as documents, and which will be provided via deposition testimony. *Johnson*, 236 F.R.D. at 541. TIR’s method would require that V&S blindly attend the TIR deposition and then simply take the witness at their word without the ability to determine the underlying facts. All relevant factual and documentary evidence should be produced.

III. Specific Deficiencies in TIR’s Written Responses.

A. Witnesses With Knowledge, Lost Customers, and Third Parties.

VBI Interrogatory #2 asks for the identity of any person or entity believed or known by TIR to have knowledge of the matters at issue. VBI Interrogatory #4 asks for the identity of any witnesses TIR plans to call in this action. VBI Interrogatory #9 asks for the identity of any customers of TIR that threatened to or did end their relationship with TIR. And Request for Production #36 requested all documents and communications exchanged between TIR and third parties, specifically TIR’s customers, related to the issues in this action.

TIR’s responses to these requests were as follows: a) Response to VBI Interrogatory #2: “See Initial Disclosures and the Verified Complaint,” b) Response to VBI Interrogatory #4: “No hearing has been requested or scheduled in this case, therefore, this request is premature,” c) Response to VBI Interrogatory #9: “See Certifications of Denis Vuico and Girlea Simion being provided with this response.

TIR is in the process of obtaining similar statements from similar clients and will supplement this response,” and d) Response to Request for Production #36: “Communications with third parties are being provided with this response via the folder entitled ‘Communications with third parties about the subject containers.’ Complainants reserve the right to supplement this response as discovery is ongoing.”

TIR provided no material information in response to Interrogatories #2, #4, and #9 or Request #36 and actually contradicts itself. It points to TIR’s principal, Iurii Chirianov, and VBI’s principal, Samuel Grigorian, as the only two persons or entities with information about the matter, but then provides certifications of several alleged TIR customers, showing that at minimum these are additional persons with knowledge. Further, TIR’s Response to Respondents’ Notice of Deficiencies attempts to incorporate “the documents produced on December 14, 2023,” as an answer to individuals with knowledge; this is insufficient, as V&S is under no obligation to try to pinpoint which individuals referenced in the produced documents do and do not have knowledge about the matters in this action.

Moreover, TIR’s citation to the certifications provided by its alleged customers and production of a single email communication with a third party is insufficient, even if it does state that it intends to supplement. All customers of TIR who have threatened to or did end relations with TIR should be named. Lost business/customers is alleged to constitute much of the alleged damages. TIR surely knew what information was responsive to this request before it asserted claims.

Moreover, the finality of anticipated “certifications” has nothing to do with TIR’s failure to provide responsive information.

B. Specificity of Damages

VBI Interrogatory #6 asks TIR to identify with specificity all categories of damage TIR is seeking to recover from VBI. VBI Interrogatory #15 asks TIR to provide the specific damages related to the “Georgian Containers.” VBI Interrogatory #16 asks TIR to provide the specific damages related to the “Romanian Containers.” VCI Interrogatory #3 asks TIR to identify with specificity all categories of damage TIR is seeking to recover from VCI. Requests for Production #11-13 asks TIR to produce all documents and communications supporting its damages claims in Paragraph 4 of the Verified Complaint. And Requests for Production #40-43 ask for various categories of damages related to the Georgian containers.

All these responses cited to TIR’s response to VBI Interrogatory Number 6. None of TIR’s responses identify how the damages alleged are attributable as between VBI and VCI. Moreover, numerous categories of documents related to the damages alleged in response to Interrogatory No. 6 have not been produced, including:

- Damages relating to alleged vehicle damage and payments for trucking services identified in response 6(d);
- Damages relating to the lost income cited in 6(e); and
- Damages relating to the lost income cited in 6(f).

TIR mentions in Interrogatory Response 6(f) that the “full extent of its damages is not yet known,” which is a difficult position to take during the middle of a lawsuit when the discovery period is elapsing. TIR should either be required to provide answers and documents, or it should be limited solely to what has been identified and disclosed at this time.

C. Reliance on Single Email to Support TIR’s Allegations

VBI Interrogatories #11-14 ask TIR to “[e]xplain with particularity” or “[s]tate in detail the entire factual and documentary support” for allegations throughout the Verified Complaint, specifically paragraphs 1 through 5. Requests for Production #5, #9, #10, #15, #21, #25, and #30 request “Documents and Communications supporting or relating to” allegations in Paragraphs 1-5 and 7-10 of the Verified Complaint.

TIR’s responses to these requests were as follows: a) Response to VBI Interrogatories #11 and #13-14: “The email exchange provided as part of initial disclosures, namely May 2, 2023. Complainant reserves the right to supplement or amend this response as discovery is ongoing,” b) Response to VBI Interrogatory #12: “Complainant reserves the right to supplement or amend this response, however, the subject Georgian and Romanian containers are evidence on this point as pleaded in the Verified Complaint. Also see response to #11 above,” c) Response to Request for Production #5: “See response to VBI’s Interrogatories 11 to 14,” d) Response to Requests for Production #9-10, #15, and #21: “May 2, 2023 communication, which was provided via the Initial Disclosures,” e) Response to Request for Production #25: “See response to #24 above and the May 2, 2023 communication, which was provided via

the Initial Disclosures,” and f) Response to Request for Production #30: “May 2, 2023 communication, which was provided via the Initial Disclosures. Additionally, see amended Bills of Lading concerning the Romanian containers, where the Respondents changes the consignee from Complainant to one of their entities...”

In sum, TIR’s response to the various interrogatories and requests above regarding the specific allegations made in the Verified Complaint all rely on a single email dated May 2, 2023. The email is essentially an informal version of the Verified Complaint, laying out the various disputes TIR has with V&S. It is an after-the-fact recitation of the parties’ dispute, not factual or documentary evidence of the allegations by TIR. Further problematic is that in TIR’s Response to TIR’s Respondents’ Notice of Deficiencies, specifically as to Interrogatories #11-14, TIR mentions “this early stage,” as if it need not produce factual and documentary support for its allegations at this point but anticipates doing so at a “later stage.” Yet, based on representations by TIR’s counsel, it has produced all responsive documents. TIR either does or does not have additional support for its allegations. Thus, TIR must be compelled to produce all documents responsive to these interrogatories or provide a confirmation that the only support it has is the May 2023 email.

D. TIR’s Failure to Produce All Responsive Facts and Documents

VBI Interrogatories #17-18 ask TIR to “[d]escribe in detail the factual and documentary support for the allegations regarding transport of the” two vehicles identified in Paragraphs 7 and 8 of the Verified Complaint, the Kia Optima and Toyota Highlander. VBI Interrogatory #21 asks TIR to “[i]dentify the factual support

for each and every affirmative defense pled by TIR in the Counterclaim.” Requests for Production #7, #18-20, #22-26, #29, and #32-35 request “Documents and Communications supporting or relating to” various allegations made throughout the Verified Complaint.

TIR’s responses to these requests were as follows: a) Response to VBI Interrogatories #17-18: “See paragraph [7/8] of the Verified Complaint. Also see the documents that are being produced as part of this response under Vin number ending in #410122,” b) Response to VBI Interrogatory #21: “Factual support for each affirmative defense is found in the Verified Complaint and all of the documents produced thus far. TIR reserves the right to supplement this category as discovery is ongoing, including the pendency of Complainant’s first request for documents, which is also aimed at Respondents’ counterclaim,” c) Response to Request for Production #7: “Documents provided via the Initial Disclosures and with these responses,” d) Response to Requests for Production #18-20 and #22-26 point to documents produced in production folders “VIN#023963” and “VIN#410122,” e) Response to Request for Production #29: “See response to #28 above [cites to a folder with four documents that provide no context],” and f) Response to Requests for Production #32-35: “Discovery is ongoing, however, all documents provided via the Initial Disclosures and that accompany these responses and responses to interrogatories. This response is as to both: VBI and VCI.”

TIR responded to the various interrogatories and requests cited above by pointing back to the allegations in its Verified Complaint, its Initial Disclosures, and

a small production of documents that seems to be incomplete. Upon follow-up, TIR confirmed its responses to each request stand, including the portion about discovery being ongoing. TIR cannot be the unilateral decision-maker regarding whether certain facts or documents should be provided and arbitrarily determine relevance by limiting its responses. *See Novelty, Inc.*, 265 F.R.D. at 378. V&S is entitled to know that it has all the factual and documentary support TIR intends to rely on and that TIR is not withholding any facts or documents based on its arbitrary determination of relevancy. *See Elecs. Ass'n*, 2008 WL 4327253, at *3. TIR's counsel admits that, based on his client's representations, TIR has no other documents to produce, yet TIR also conditions many of its responses on having the ability to be supplemented. TIR should be compelled to produce any responsive information it is withholding or be barred from relying on any other information going forward that it had access to but failed to produce.

E. Unidentified Charges

VBI Interrogatory #19 asks that TIR “[s]tate with specificity what TIR is referring to as the ‘unidentified charges’ mentioned in paragraph 9 of the Verified Complaint.” TIR's response to VBI Interrogatory #19: “An example of such charges is being produced as part of this response under the folder entitled ‘Unidentified Invoice Fees.’”

In TIR's Response to Respondents' Notice of Deficiencies, TIR avoids the Interrogatory once again saying “[t]his is a good question of ‘what the charge is’ and will be posed to VBI during the deposition.” TIR has refused to answer the

interrogatory, which was directed to the support for one of TIR's own allegations. Moreover, providing an "example" is insufficient and implies there are other responsive documents to the interrogatory, which should be produced in their entirety.

F. Alleged "Loan" Information

VBI Interrogatory #20 asks TIR to provide specific information about the alleged \$190,000 loan that TIR contends it was required to take in order to cover losses sustained because of V&S' actions. Request for Production #44 asks for all responsive documents relating to the alleged loan, identifying various examples of related documents V&S is asking for.

TIR's responses to these requests were as follows: a) Response to VBI Interrogatory #20: "For a complete picture of what happened, you need to understand that TIR has never had any relationship with Georgia, either at work or personally, and for TIR it was a nightmare situation. The transit of cars in Georgia was overdue, fines and storage charges were dripping, plus customers refused cars. TIR found itself in a terrible situation necessitating taking out a loan from the bank in the amount of \$190,000 to be able to return money to people and pay all the costs for staying in Georgia and so on, which TIR cannot repay and pays 1% per month of this amount to date," and b) Response to Request for Production #44: "Responsive documents as to this loan are being produced with this response."

In its response to VBI Interrogatory #20, TIR provided none of the answers to VBI's specific questions. Upon follow-up by V&S, TIR reiterated its response. *See*

Exhibit D. And the documents it produced to support Request #44 provide no further context to the alleged loan; in total, TIR produced just four pages of credit statements allegedly related to the mystery loan. V&S has no material information as to the alleged loan and no way to prepare to defend against it. TIR has never produced any information detailing the process of taking out a loan, proof of payment from a lender to TIR, proof of use of any funds from a loan to cover losses, or correspondence with any lender. TIR must be compelled to produce the factual and documentary support requested by V&S about the loan, to the extent it exists.

G. Differing Shipping Rates

In Request for Production #14, V&S seeks documents and communications that support TIR's allegation regarding the difference in shipping costs to Moldova from Romania and from Georgia. TIR's Response to Request for Production #14 was: "Respondents are in possession of such information. Additionally, such information is publicly available." Subsequently, the only additional information or documents TIR has offered to provide on this topic has been future deposition testimony.

The difference in shipping rates should be an objective, verifiable value and V&S is entitled to whatever information TIR is relying on to calculate that difference. V&S is not required to theorize as to how TIR got to this number. TIR cannot reject providing responsive documents because it is public or because of an allegation that V&S has it. Further, TIR's testimony cannot replace what should be a quantifiable value. TIR must be compelled to produce the documents that support its allegation about the difference in shipping cost.

H. Abusive Objections

Request for Production #37 asks TIR for “[a]ll internal TIR Documents and Communications relating to VBI, the invoices, shipments, and/or containers at issue.” Request for Production #38 asks TIR for “[a]ll non-privileged internal and external communications relating to V&S.” TIR’s Response to Requests for Production #37-38 was: “Objection is being made on the ground of confidentiality, attorney-client privilege, and vagueness. All responsive documents have been provided via the Initial Disclosures and documents as part of this response and responses to interrogatories. This response is as to both: VBI and VCI.”

Undoubtedly, TIR’s objections fail on their face as being contradicted by the plain language of Requests #37 and #38. V&S specifies that it seeks only non-privileged communication in Request #38. And V&S specifically requests information related directly to the dispute and V&S itself. Finally, TIR has failed to explain its confidentiality assertion. The objections TIR makes to Requests #37 and #38 are nothing but boilerplate and inappropriate objections. *See Guzman*, 249 F.R.D. 399. TIR should be compelled to produce documents responsive to this request and a privilege log for any relevant documents withheld for privilege or confirm that there are no other responsive documents being withheld.

For all the foregoing reasons, V&S hereby moves for an Order compelling TIR to promptly produce all requested documents and to respond completely to the requests and interrogatories disputed before January 20, 2024.

MOTION FOR CLARIFICATION OR EXTENSION

As explained in the *Background* section, *supra*, per the Scheduling Order dated November 7, 2023, the deadline for an exchange of “Expert Reports” is January 5, 2024 and the deadline for an exchange of “Rebuttal Expert Reports” is February 2, 2024. V&S reads the term “Expert Reports” to mean those expert reports that support the affirmative claims of each party—the Verified Complaint and Counterclaim—and the “Rebuttal Expert Reports” mean those expert reports that rebut the affirmative claims and support the defenses of each party. However, inasmuch as the term “Rebuttal” may not have been sufficiently clear and in an abundance of caution, V&S moves for an extension of time to produce an expert report in defense of TIR’s affirmative claim for relief. V&S asks for such extension because it will be prejudiced if it is not allowed more time to evaluate the need for and find an expert to support its case. Because of the discovery deficiencies outlined above, V&S is still struggling to understand exactly what it is defending itself against. V&S respectfully requests that the FMC clarify (or extend) that the existing February 2, 2024 Rebuttal Expert deadline includes expert reports in defense of affirmative claims for relief.

CERTIFICATION OF SATISFYING MEET AND CONFER OBLIGATION

Pursuant to 46 C.F.R. § 502.71(a), the undersigned met and conferred with TIR’s counsel through letter correspondence dated December 19, 2023 and December 26, 2023, and via teleconference on December 26, 2023 about the discovery deficiencies in TIR’s Response to Respondents’ Notice of Deficiencies. The undersigned informed TIR’s counsel that V&S would be moving to compel because

TIR did not agree to address any of the raised discovery insufficiencies. TIR's counsel does not agree there are deficiencies in its responses and opposes this motion.

CONCLUSION

WHEREFORE, V&S respectfully requests that the FMC enter an Order:

1. Compelling TIR to provide all factual and documentary support and produce all relevant documents on or before January 20, 2024;
2. Confirm that the "Rebuttal Expert Report" deadline is the deadline for filing expert reports in defense of affirmative claims; and
3. Such further relief as the FMC finds proper.

DATED: December 29, 2023

Respectfully submitted,

/s/Andrew J. Steif

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CERTIFICATE OF SERVICE

I certify that, on December 29, 2023, a true and correct copy of the foregoing was filed via electronic mail with the Secretary of the Federal Maritime Commission at secretary@fmc.gov and a copy was served via electronic mail on the following counsel of record:

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