

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: November 7, 2023

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

SCHEDULING ORDER

On November 6, 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 Joint Motion to Extend (“Order to Extend”), issued on September 21, 2023. In the JSR, the parties indicate that they participated in a mediation conducted through the Federal Maritime Commission’s (“FMC”) Office of Consumer Affairs and Dispute Resolution Services (“CADRS”) on October 31, 2023, but have reached an impasse. JSR at 1.

The Order to Extend allowed the parties to pursue mediation, but also reminded them that this proceeding was filed on August 8, 2023, and the Commission set the date for *issuance of the Initial Decision* as August 8, 2024. The Order to Extend reiterated what was stated in an earlier Order on Motions denying the parties’ first Motion for Enlargement of Time to pursue mediation, that “a mediation proceeding does not stay or delay the procedural time requirements set forth by rule of order of the presiding officer.” 46 C.F.R. § 502.64(c).

On September 5, 2023, Respondents filed an Answer, Affirmative Defenses and Counterclaim (“Answer and Counterclaim”). Based on Commission Rule 141, discovery should be completed by February 2, 2024, 150-days after the filing of the answer. 46 C.F.R. § 502.141(g). On September 21, 2023, Complainant filed its response to the counterclaim made by Respondents in their answer.

Despite the reminders that discovery must be completed by February 2, 2024, and that the initial decision in this matter must issue by August 8, 2024, the parties now propose a schedule that further delays discovery and culminates with briefs being filed less than a month before the initial decision must issue. The parties for the first time indicate that they have not yet exchanged initial disclosures and have stipulated between themselves not to do so for another week.

The schedule the parties have proposed is not reasonable nor efficient and will not be adopted other than as indicated below. The portions of the proposed schedule that have not been adopted or the dates that have been adjusted are necessary for the initial decision to issue within a year of filing of the complaint. Even with the adjustments to the schedule, discovery will now end over a month after the 150-day period allotted by the rules in the schedule below, so any further proposed changes to the schedule must occur within the confines of the completion date below. The parties are urged to review the Commission’s Rules as they go forward, in particular, those cited in the Initial Order and below. Filings that are not in accord with the rules and the information provided below may be rejected.

The Complainant specified that it was not requesting an oral hearing in this matter. Complaint at pg. 5; 46 C.F.R. § 502.62(a)(5) (“[t]he presiding officer will determine whether an oral hearing is necessary.”). Respondents did not request an oral hearing in their answer pursuant to 46 C.F.R. § 502.62(b)(3) (“The answer should designate whether an oral hearing is requested and the desired place for such a hearing.”). At this point in the proceeding, it is not clear that there is reason to conduct an oral hearing, and none was requested in the complaint, or the answer, as set forth in the Rules. Accordingly, the parties’ proposal to include a date in the scheduling order by which a party can request an oral hearing eight (8) days before the Initial Decision is due is **DENIED**.

The parties have offered no reasons for delaying the start of depositions until late January 2024, and doing so may result in more delay. If the parties have a reason to engage in such significant delay, they may move for a revised discovery schedule, but it may not change the close of discovery or the briefing dates.

Dispositive motions after discovery are disfavored as it is more efficient to move to a hearing on the merits. Therefore, the proposed dispositive motions after discovery are not included in the schedule. A briefing schedule that is in accordance with the rules has been included to assist the parties with scheduling.

The parties are hereby **ORDERED** to follow this schedule:

- November 14, 2023 Initial disclosures exchanged (as stipulated by the parties)
- November 14, 2023 Initial written discovery requests must be served
- December 1, 2023 Depositions begin
- December 15, 2023 Responses to initial discovery due, including objections and exchange of privilege logs
- January 5, 2024 Expert Reports, if any, exchanged
- February 2, 2024 Rebuttal Expert Reports, if any, exchanged
- February 5, 2024 Last date to serve supplemental written discovery requests

February 19, 2024	Supplemental written discovery responses and objections exchanged
March 8, 2024	Close of Discovery
April 10, 2024	Complainant's brief, proposed findings of fact, and appendix
May 10, 2024	Respondent's opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix
May 24, 2024	Complainant's reply brief and responses to proposed findings of fact

Motions will not automatically stay other deadlines in the proceeding. If a motion could impact other deadlines, that should be clearly addressed in the motion and any response. All requests for extension of time will be reviewed for good cause, even if the parties agree on the requested extension. Pursuant to the Howard Coble Coast Guard and Maritime Transportation Act of 2014 and Commission Docket No. 15-06, attorney fees may be awarded to any prevailing party in a complaint proceeding. It is therefore in the best interest of the parties to proceed expeditiously.

The parties are reminded that a "scheduling order 'is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.'" *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) (quoting *Gestetner Corp. v. Case Equipment Co.*, 108 F.R.D. 138, 141 (D. Me. 1985)). Moreover, "[p]arties cannot control an agency's docket or procedures through agreement among themselves." *Simmons v. United States*, 698 F.2d 888, 893 (7th Cir. 1983). The authority of courts to control their dockets is well settled. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962); *United States v. Hughey*, 147 F.3d 423, 429 (5th Cir. 1998).

The parties should note that the Commission recently switched to Westlaw. Citations to opinions on Lexis should include a parallel citation to Westlaw, if possible. Citations to Commission decisions may be made to official reporters including F.M.C., F.M.C.2d, Pike & Fischer Shipping Regulation Reports (S.R.R.), Westlaw, or Commission slip opinions. Every citation to a Commission case should include the case name, docket number, level (FMC or ALJ) and exact date of service (month/day/year). Selected FMC cases, including F.M.C. from 1919-1987 and F.M.C.2d from 2018 to present are available at www.fmc.gov/activity-logs. If a document from another source is cited, the decision or ruling must be transmitted via e-mail to judges@fmc.gov.

Any filing submitted without page numbers, including on exhibits, may be rejected. The parties' briefs, proposed findings of fact, responses to proposed findings of fact, and appendices shall be in the following forms:


1. **[Party's] Brief.** The parties should present the legal and factual basis for their claims in their briefs. Each party shall file a brief meeting the requirements of Commission Rule 214, 46 C.F.R. § 502.214, with the exception that the proposed findings of fact and responses to the proposed findings of fact shall not count toward the page limit found in

Rule 214(e). Briefs must include citations to legal support and citations to evidence in their findings of facts or appendix supporting their arguments. Opposition or reply briefs may also include any requests to strike evidence or objections to evidence presented by other parties.

2. **[Party's] Proposed Findings of Fact.** This document shall set forth proposed findings of fact in numbered paragraphs. Each paragraph shall be limited, as nearly as practicable, to a single factual proposition. Each factual proposition shall be followed by an exact citation to evidence that the party contends will support the proposed finding of fact, e.g., a page number in the appendix. The party shall provide to each other party and to the Office of Administrative Law Judges an electronic copy of its proposed findings of fact with the hard copy of its proposed findings of fact. The electronic copy shall be in a word-processing format (e.g., Microsoft Word) and provided by email.
3. **[Party's] Responses to [Party's] Proposed Findings of Fact.** This document shall set forth verbatim each proposed finding of fact in another party's proposed findings of fact, then admit or deny the proposed finding. Each proposed finding of fact that an opposing party denies shall be followed by an exact citation to evidence that the opposing party contends will rebut the evidence the proposing party claims supports the proposed finding of fact. The opposing party shall provide to the party and to the Office of Administrative Law Judges an electronic copy of the response to [Party's] proposed findings of fact with the hard copies of the response to [Party's] proposed findings of fact. The electronic copy shall be in a word-processing format (e.g., Microsoft Word) and provided by email.
4. **[Party's] Appendix.** The evidence on which a party's proposed findings of fact or response to another party's proposed findings of fact is based shall be included in an appendix.
 - a. The cover of the appendix shall identify the party or parties that prepared the appendix;
 - b. The appendix should be in one PDF document, if practicable. The pages of the appendix shall be numbered sequentially, for example CX 1, CX 2 or RX 1, RX 2, etc.;
 - c. The appendix must begin with a table of contents identifying the page at which each individual document begins, and each exhibit should be clearly identified, for example, by a cover sheet or bookmark;
 - d. Each party shall ensure that all documents in its appendix are legible and in English or include a verified translation as required by Rule 7 (*see* 502 C.F.R. § 502.7); and
 - e. The parties are instructed to cite to a document in an appendix already in the record rather than include the same document in its own appendix. For instance, if Respondent contends that a document included in Complainants' appendix rebuts the evidence Complainant claims supports a proposed finding of fact, Respondent shall cite to Complainants' appendix rather than include a second copy of the same document in its own appendix.

f. The parties must review Commission Rules and the requirements in the Initial Order issued in this case if they intend to include any confidential material in briefs of the appendix.

The parties are directed to consult with each other to determine the most practicable way to send electronic copies of documents in a word-processing format to each other. The parties are directed to email the electronic copy in a word-processing format of required documents to the Office of Administrative Law Judges at the following email address: judges@fmc.gov, with opposing counsel copied. Word processing versions should not be submitted to the Office of the Secretary.



Linda S. Harris Crovella
Administrative Law Judge