

Before the  
FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Docket No. 23-10

BED BATH & BEYOND INC. v.  
YANG MING MARINE TRANSPORT CORP.

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**JOINT MOTION TO EXTEND DEADLINES**

Complainant 20230930-DK-Butterfly-1, Inc., formerly known as Bed Bath & Beyond Inc.<sup>1</sup> (“BBBY”), and Respondent Yang Ming Marine Transport Corp. (“Yang Ming”) (BBBY, collectively with Yang Ming, the “Parties”), by their respective undersigned counsel, and, pursuant to 46 C.F.R. Sections 502.69 and 502.102, hereby file this Joint Motion to Extend Deadlines (“Motion”) and in support thereof state that good cause for the requested extension exists, as follows:

1. On January 11, 2024, in response to the Parties’ first Joint Motion to Extend Deadlines, the Presiding Officer entered an Order on Motions containing the Schedule as follows:

- March 4, 2024 Completion of production of documents and ESI in response to initial RFP’s
- March 11, 2024 Parties exchange privilege logs
- April 1, 2024 Parties complete depositions of fact witnesses.
- April 1, 2024 Last day to serve interrogatories, requests for admission, and RFPs.
- April 8, 2024 Disclosure of Complainant’s initial expert reports, if any.
- April 15, 2024 Disclosure of Respondent’s initial expert reports, if any.
- April 19, 2024 Disclosure of Respondent’s rebuttal expert reports, if any.
- April 26, 2024 Disclosure of Complainant’s rebuttal expert reports, if any.

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<sup>1</sup> Bed Bath & Beyond Inc. filed a change of name certificate with the New York State Division of Corporations, State Records, and Uniform Commercial Code on September 21, 2023 by and through which Bed Bath & Beyond Inc. changed its corporate name to 20230930-DK-Butterfly-1, Inc.

- May 1, 2024 Complete expert depositions.
- May 1, 2024 Close of discovery.
- June 12, 2024 Complainant’s brief, proposed findings of fact, and appendix.
- July 24, 2024 Respondent’s opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix.
- August 14, 2024 Complainant’s reply brief and responses to proposed findings of fact.

2. The Parties remain respectful of the deadlines set forth in the Schedule. This proceeding, however, involves a significant claim for reparations – over \$7.5 million including interest plus additional damages sought in the form of lost profits -- so accordingly requires and deserves discovery commensurate with the demand. The Parties have exchanged extensive requests for production of documents (as well as other discovery requests) and further engaged in responses and objections to those requests, and it has become clear to the Parties that such discovery cannot reasonably be accomplished within the Schedule.

3. The document requests here are especially expansive because they include not just relations between Complainant and Respondent, but also between each of them and a substantial number of third parties.

**DISCOVERY EFFORTS TO DATE**

4. **Complainant’s Collection, Review, and Production to Date.** As of the date of this Motion, Complainant collected documents from approximately 25 custodians as agreed to in the Parties’ Protocol Regarding Electronically Stored Information, and, following review, has substantially completed its document productions in this case, producing 17,721 pages of documents on February 21, 2024 and an additional 330,046 pages of documents on March 4, 2024. This second production consisted of emails, attachments, and documents from shared drive folders, and also included weekly reports from Complainant’s logistics provider Berman Blake and other financial data, consisting of 3 terabytes of data not accounted for in the page numbers previously

stated. As required by the Schedule, Complainant served its Privilege Log on Respondent on March 11, 2024. Through the process of creating its Privilege Log, Complainant identified a small number of documents that should have been produced previously in full, and will make a small supplemental production consisting of fewer than 50 documents.

5. **Respondent's Collection, Review, and Production to Date.** As of the date of this Motion, Respondent has collected documents from 5 custodians and, following review, has made the following productions. On March 4, 2024, respondent produced 1,051 pages of documents. On March 11, 2024, Respondent produced an additional 5,690 pages of documents. Between March 11, 2024 and March 15, 2024, Respondent uploaded an additional 128,302 documents (page numbers unknown as they were produced as native files rather than bates stamped files, but Respondent has promised to cure that omission promptly) to a shared drive system, and provided a password to such files on March 15, 2024 following an email from Complainant's counsel's regarding the status of production. Respondent produced another 20,288 documents on March 18, 2024 and 73,165 documents from then to date. Respondent's review and productions of all original Custodians shall be completed by 3/21/24 with an additional approximate 50,000 documents being provided. Respondent anticipates that its privilege log will be completed within 4 days of its final production.

6. **Depositions.** Complainant has asked Respondent's counsel for deposition dates for Respondent's custodians, and Respondent's counsel has responded that depositions should be scheduled after it has completed its productions.

### **RELIEF REQUESTED**

7. As a result of the necessarily large number of custodians and the significant time-period implicated by the Parties' claims and defenses in this action, and despite efforts by the Parties

to limit the scope of discovery and their respective burdens through negotiated search terms, the Parties nonetheless anticipate a large volume of documents to be reviewed for relevance, attorney-client privilege, and confidentiality prior to production and prior to analysis for the purpose of taking depositions. The Parties also anticipate requesting further custodians for additional documents following the first review of documents produced.

8. As previously stated, apart from the normal difficulties of getting from here to there, this case is subject to particular difficulties. These include: (i) the complexity of the matter; (ii) the need to include Complainant's bankruptcy counsel in making decisions, and other challenges presented by Complainant's bankruptcy status; and (iii) challenges relating to interrogatories (discussed further below), both with respect to issues concerning depositions of Respondent's foreign personnel, and with respect to potential difficulties deposing former employees of Complainant, who will need to be personally served with subpoenas and perhaps requiring enforcement of such subpoenas. The current schedule would preclude the Parties from taking meaningful discovery in the context of this proceeding, so they would not be able to present their claims and defenses adequately in their respective briefs.

9. The Parties also have conferred extensively to arrive at the proposed schedule.

10. Due to the nature of Complainant's claims regarding Respondent's internal policies and practices, including with respect to shippers other than Complainant, and the fact that Complainant did not have access to the vast majority of as-yet produced documents until March 15, 2024, Complainant's ability at this time to identify appropriate candidates for deposition among Respondent's employees (including in particular employees based overseas) is limited.

11. Given the scope of the Complaint, and the challenges posed by the likely large number of third-party depositions, the Parties believe it would be most effective and efficient to

conduct fact depositions on the basis of a substantially complete documentary record, and not to be forced to take deposition testimony without the benefit of first having received and reviewed relevant documents and ESI for potential use in such depositions.

12. Given that the enormous volume of documents produced to date subject to the parties ESI Protocol, the ongoing nature of Respondent's document review and production, and what will likely be at least two dozen fact depositions, the Parties respectfully and jointly request an extended discovery schedule as follows to permit completion of document review, allow for review and preparation of documents by both sides for depositions, and appropriate expert reports which will be detailed, significant, and necessarily depend on the facts of the case as brought out in discovery:

- April 15, 2024 Completion of production of documents and ESI in response to initial RFPs.
- May 9, 2024 Parties exchange privilege logs.
- June 15, 2024 Parties complete depositions of fact witnesses.
- June 15, 2024 Last day to serve interrogatories, requests for admission, and RFPs.
- June 29, 2024 Disclosure of Complainant's initial expert reports, if any.
- June 29, 2024 Disclosure of Respondent's initial expert reports, if any.
- August 19, 2024 Disclosure of Respondent's rebuttal expert reports, if any.
- August 19, 2024 Disclosure of Complainant's rebuttal expert reports, if any.
- September 15, 2024 Complete expert depositions.
- September 15, 2024 Close of discovery.

13. The parties believe that the most comparable precedent regarding the propriety of the relief sought is an ongoing action in which Complainant has brought similar claims against another Respondent, *Bed Bath & Beyond Inc. v. Orient Overseas Container Line Limited and OOCL (Europe) Limited* (Docket No. 23-02). In that case, involving similar legal claims and a similar volume of discovery, Chief Administrative Law Judge Wirth has granted an extension from the original close of discovery of October 19, 2023 to a presently-ordered close of discovery of July 29, 2024—an extensions of 284 days, or slightly greater than 9 months. Further, today, on

March 21, 2024, Chief Administrative Law Judge Wirth entered a Briefing Schedule in that case providing for a possible additional 60-day extension of discovery. The Parties in the present action originally proposed an initial discovery deadline within the 150-day time period set by 46 C.F.R. § 502.141(g), with an initial close of discovery of March 1, 2024. The presently-requested extension would extent this initial deadline by 198 days—86 days fewer than that granted by Chief Administrative Law Judge Wirth in her November 17, 2023 Second Revised Scheduling Order in *Bed Bath & Beyond Inc. v. Orient Overseas Container Line Limited and OOCL (Europe) Limited*.

14. In making this joint Motion, the Parties here have limited their request to the smallest amount of time in which they believe they can feasibly conduct discovery in this large, complex litigation, with the understanding that they will also continue to work to stipulate to facts, limit depositions, and expeditiously resolve discovery disputes and produce documents promptly and to the extent possible. Further, the parties have decompressed post-production discovery, including deposition dates and expert reports and depositions, to allow for a realistic period to review the large volumes of produced material, negotiate further stipulations of fact, where appropriate, and conduct depositions and expert discovery.

15. The Parties will endeavor to prevent any further requests for additional time, but limited extensions may become necessary if, for example, issues related to the collection and production of documents located abroad or in the custody of non-parties, or to the need for testimony from non-parties (including Complainant's former employees) or individuals located abroad (including employees of Respondent). The Parties will work to limit such extension requests, including by working to facilitate consent for email service of subpoenas and provision of contact information, where available, but in the interest of full transparency, the parties wish to note such possible issues for the Presiding Officer now.

16. Rule 102(a) of the Federal Maritime Commission's Rules of Practice and Procedure, 46 C.F.R. Section 502.102(a), provides in relevant part: "Motions for enlargement or reduction of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, may be granted upon a showing of good cause."

17. The present volume of production material, which includes multiple hundreds of thousands of documents and terabytes of data, is in line with the productions within the *Bed Bath & Beyond Inc. v. Orient Overseas Container Line Limited and OOCL (Europe) Limited* and the Parties believe merits similar treatment.

18. Pursuant to 46 CFR § 502.71(a), counsel for Complainant and counsel for Respondent have discussed this Motion with each other in a good faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement. The Parties each agree to the relief requested in this Motion.

**ALTERNATIVE RELIEF RESERVED**

19. Each party urges the relief requested be granted for the reasons outlined. In the event that relief is denied in whole or in part each party reserves the right to seek alternative relief considered available to it and this application is without prejudice to either parties' rights.

WHEREFORE, Complainant Bed Bath & Beyond Inc. and Respondent Yang Ming Marine Transport Corp., pray that their Joint Motion to Extend Deadlines be granted.

Dated: March 21, 2024

Respectfully submitted,

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*Certificate of Service*

I hereby certify that I have this day served the foregoing document upon Respondent Yang Ming Marine Transport Corp. by emailing a copy of the document to its counsel of record listed below:

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Dated: March 21, 2024

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