

Before the
FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Docket No. 23-10

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

JOINT MOTION TO EXTEND DEADLINES

Complainant 20230930-DK-Butterfly-1, Inc., formerly known as Bed Bath & Beyond Inc.¹ (“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 October 24, 2023, the Presiding Officer entered a Scheduling Order (“Schedule”) with the following deadlines relevant to this Motion:

- October 30, 2023 Parties exchange initial requests for production of documents (“RFPs”) and electronically stored information (“ESI”) and interrogatories.
- November 7, 2023 Parties submit objections and responses to initial RFPs.
- November 21, 2023 Submission of any unresolved disputes concerning initial RFPs and objections and responses thereto.
- November 30, 2023 Parties serve objections and responses to initial interrogatories.
- December 11, 2023 Submission of any unresolved disputes concerning initial interrogatories and objections and responses thereto.

¹ 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.

- January 3, 2024 Completion of production of documents and ESI in response to initial RFPs.
- January 10, 2024 Parties exchange privilege logs.
- February 1, 2024 Parties complete depositions of fact witnesses.
- February 1, 2024 Last day to serve interrogatories, requests for admission, and RFPs.
- February 7, 2024 Disclosure of Complainant's initial expert reports, if any.
- February 14, 2024 Disclosure of Respondent's initial expert reports, if any.
- February 19, 2024 Disclosure of Respondent's rebuttal expert reports, if any.
- February 26, 2024 Disclosure of Complainant's rebuttal expert reports, if any.
- March 1, 2024 Complete expert depositions.
- March 1, 2024 Close of discovery.
- April 15, 2024 Complainant's brief, proposed findings of fact, and appendix.
- May 27, 2024 Respondent's opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix.
- June 17, 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, and to date have worked together diligently and collaboratively to structure (and agree on, to the extent possible at this early stage) both the overall scope and the particulars of fact discovery in this action, as reflected by the Parties' contemporaneously filed Consent Motion for Entry of Protective Order and the detailed ESI Protocol.²

3. 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 150 days set forth in the current Schedule.

² In addition to regular email communication sharing drafts and redlines of the documents discussed above, the Parties met and conferred regarding discovery via videoconference on October 16, 2023 and December 20, 2023.

4. 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.

5. No actual document searches have begun as yet, as the Parties have been negotiating the Protective Order and the pre-requisite ESI Protocol filed herewith, which the Parties intend to govern the collection, review, and production of documents and ESI in response to the Parties' respective discovery requests, including proposed date ranges, custodians, and search terms. The ESI Protocol anticipates collection and review of documents from approximately 30 custodians for a period dating back to at least January 2020. 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.

6. Although, as reflected in the ESI Protocol, the Parties have successfully negotiated narrowed terms for the electronic searches, the prospect going forward will remain time consuming and subject to uncertainty.

- a. First, the Parties need to run the agreed searches. If, however, the number of hits is unduly large, the Parties will have to agree on further narrowing measures, then repeat the new searches.
- b. No matter how many times the searches are narrowed, the resulting number of documents will be quite large, very likely in the hundreds of thousands for each

party. Such documents will then need to be reviewed by respective counsel – another time-consuming task – before being produced.

7. 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.

8. As noted above, the Parties have exchanged written discovery requests, including interrogatories, requests for admission, and requests for the production of documents and electronically stored information (“ESI”), as well as objections and responses to such requests. These responses were necessarily somewhat limited due to the need for a negotiated Protective Order (as contemporaneously submitted to the Presiding Officer). The Parties expect to meet and confer regarding their respective objections and responses, in an effort to avoid embroiling the Presiding Officer in discovery disputes, but it would not be surprising if either or both of the Parties were to file discovery motions.

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, as well as the fact that

documentary discovery has not yet begun to be exchanged, 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 Parties are still working diligently to finalize the scope of collection and review of documents and negotiate their respective objections to discovery requests, and must still collect, review, and produce documents in preparation for what will likely be at least two dozen fact depositions, the Parties respectfully and jointly request a 120-day extension of the current discovery deadlines in this action. The Parties believe such an extension would allow for the orderly collection, review, and production of documents to be substantially completed by April 2, 2024, resulting in the following new discovery deadlines (moved approximately 90 to 120 days from the original deadline in the Scheduling Order, accounting for weekends and holidays):

- April 2, 2024 Completion of production of documents and ESI in response to initial RFPs.
- May 9, 2024 Parties exchange privilege logs.
- May 15, 2024 Parties complete depositions of fact witnesses.
- May 15, 2024 Last day to serve interrogatories, requests for admission, and RFPs.
- May 24, 2024 Disclosure of Complainant's initial expert reports, if any.
- May 29, 2024 Disclosure of Respondent's initial expert reports, if any.
- June 14, 2024 Disclosure of Respondent's rebuttal expert reports, if any.
- June 19, 2024 Disclosure of Complainant's rebuttal expert reports, if any.
- July 1, 2024 Complete expert depositions.
- July 1, 2024 Close of discovery.

13. The Parties are aware of the Chief Administrative Law Judge's recent Order in *Way Interglobal Network LLC v. Shenzheng SCM Limited*, FMC Dkt. No. 22-28, Dk. No. 18, denying a request for 120 additional days and instead granting a 45-day extension. 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.

14. 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.

15. Further, with respect to the submission of (i) Complainant's initial brief, proposed findings of fact, and appendix; (ii) Respondent's opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix; and (iii) Complainant's reply brief and responses to proposed findings of fact, the Parties respectfully request an opportunity to propose a revised briefing schedule shortly before the close of fact discovery.

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.”

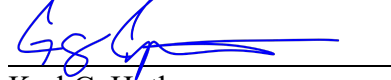
17. The Parties anticipate a significantly higher volume of documents than the 20,000 pages cited by the parties in *One Banana North America Corp. v Hapag-Lloyd AG et al.*, FMC Dkt. No. 22-03, in which the Presiding Officer granted an approximate 75-day extension from the originally ordered production and deposition deadlines. (*See id.* Docs. 17–18.) Indeed, initial estimates from Complainant’s e-discovery vendor have revealed ***more than 65,000*** likely relevant ***documents*** (with significantly more pages) related to Complainant and Respondent’s communications.

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.

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

Dated: December 29, 2023

HUTH REYNOLDS LLP



Karl C. Huth
(212) 731-9333
huth@huthreynolds.com
Matthew J. Reynolds
(646) 872-9353
reynolds@huthreynolds.com
Gregory A. Crapanzano II
(917) 575-3440
gcrapanzano@huthreynolds.com
41 Cannon Court
Huntington, NY 11743

*Counsel for Complainant 20230930-DK-
Butterfly-1, Inc., formerly known as Bed Bath
& Beyond Inc.*

Respectfully submitted,

MAHONEY & KEANE, LLP

/s/ _____

Edward A Keane
Garth S. Wolfson
40 Worth Street, Suite 602
New York, New York 10013
Telephone: (212) 385-1422
ekeane@mahoneykeane.com
gwolfson@mahoneykeane.com

*Counsel for Respondent Yang Ming Marine
Transport Corp.*