

**FEDERAL MARITIME COMMISSION**  
**Office of Administrative Law Judges**

BED BATH & BEYOND INC., Complainant

v.

YANG MING MARINE TRANSPORT CORP., Respondent.

**DOCKET NO. 23-10**

Served: January 11, 2024

---

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

---

**ORDER ON MOTIONS**

On December 29, 2023, Complainant filed a consent motion requesting entry of a protective order and attached the proposed protective order. The motion states that it is filed with the consent of Respondent’s counsel,<sup>1</sup> that the parties have agreed to the terms of the protective order, and that it will “enable the parties to fully respond to discovery requests, which may cover information and documents that are confidential, proprietary, and/or commercially sensitive.” Consent Motion at 1.

The initial order issued in this proceeding states that “[t]he parties may agree and stipulate between themselves regarding treatment of confidential documents and information obtained during discovery that is not filed with the Commission.” Initial Order at 5. The proposed protective order is such a stipulation between the parties and is reasonable.

Accordingly, having established good cause to enter the protective order, the consent motion is **GRANTED**, and it is hereby **ORDERED** that the protective order be entered as an order in this proceeding.

The parties also filed a Joint Motion to Extend Deadlines (“Joint Motion”), on December 29, 2023. On October 24, 2023, the undersigned issued a scheduling order adopting the dates proposed by the parties. Scheduling Order at 1-2. The Scheduling Order noted that “[t]he briefing schedule proposed by the parties is significantly longer than typically permitted.”

---

<sup>1</sup> No certificate of service was attached to the consent motion, and no opposition was received. Pursuant to an email inquiry to the parties regarding the missing certificate of service, as well as a missing conformed signature on the joint motion, substitute service and signature pages were filed and are accepted. The parties should include a certificate of service for future filings that are not jointly made. In addition, if known when a consent motion is filed, the other party’s position on whether it will file a response to the motion should be stated.

Despite that, the proposed briefing scheduled was allowed “[i]f the parties meet their discovery deadlines...” *Id.* at 2.

The parties assert in the Joint Motion that while they “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,” they have not yet run any document searches. Joint Motion at 3-4. The number of documents produced is expected to be “very likely in the hundreds of thousands for each party” and those “documents will then need to be reviewed by respective counsel—another time-consuming task—before being produced.” *Id.*

In addition to the volume of documents that will be produced, the parties note as further support of good cause to amend the schedule:

(i) the complexity of the matter; (ii) the need to include Complainant’s bankruptcy counsel in making decisions...; (iii) challenges relating to interrogatories... 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.

Joint Motion at 4.

The parties now request for the above reasons, and others, to extend discovery by 120 days and to “propose a revised briefing schedule shortly before the close of fact discovery.” Joint Motion at 6. The current schedule provides for discovery to close on March 1, 2024, and for briefing to conclude on June 17, 2024. The Commission has set September 12, 2024, as the deadline to resolve this proceeding, and the parties were cautioned in the Scheduling Order that “delays during discovery may result in shortening the briefing period.” Scheduling Order at 2.

In addition, the parties cite to two cases where the administrative law judge granted extensions of the close of discovery of 45 days (75 days less than sought), and 62 days (from August 8, 2022 to October 7, 2022, as sought by the parties), respectively. *Way Interglobal Network, LLC v. Shenzhen Uniflex SCM Limited*, FMC Docket No. 22-28, Revised Scheduling Order, June 8, 2023 (where the parties sought a 120-day extension of the deadlines after the exchange of over 1,000 pages of documents); *One Banana North America Corp. v. Hapag-Lloyd AG and Hapag-Lloyd (America) LLC*, FMC Docket No. 22-03, Revised Scheduling Order, June 22, 2022 (where the parties sought extension due to need to review 20,000 pages of documents and due to delays caused by a cyber-attack). The parties assert that these cases did not involve as many pages of documents as they expect to be produced here and were not as complex. In a case not cited by the parties, the administrative law judge granted a requested 60-day extension of discovery deadlines where the parties were “reviewing databases of millions of documents to locate responsive documents” which they had to “then manually review and prepare... for production.” *Intermodal Motor Carriers Conference, American Trucking Associations, Inc. v. Ocean Carrier Equipment Management Association Inc., et al*, FMC Docket No. 20-14, Amended Scheduling Order, June 9, 2021 at 1.

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 requested extension is unreasonable. Here, the parties request almost nine months from the answer to complete discovery, which the Commission’s rules state must be completed within 150 days of the service of respondent’s answer. 46 C.F.R. § 502.141. In addition, the parties make no proposal to amend the briefing schedule, and instead, request to postpone making their proposal until an unknown date “shortly before the close of fact discovery.” This will further delay the proceeding. The parties need to expeditiously produce documents, schedule depositions, and provide expert reports, and should work diligently to expedite, limit, or eliminate discovery by use of admissions, stipulations, and other techniques. *Id.* Accordingly, the 120-day extension is denied, and an extension of 60 days is granted.


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

March 4, 2024 <sup>2</sup>	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.
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.

---

<sup>2</sup> This date is based on the initial proposal by the parties of January 3, 2024, as the “target for substantial completion of production of documents and ESI in response to initial RFPs” that was not included in the Scheduling Order since it was not quantifiable. Joint Status Report at 2; Scheduling Order at 2.

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.

  
\_\_\_\_\_  
Linda S. Harris Crovella  
Administrative Law Judge