

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: October 24, 2023

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

SCHEDULING ORDER

On October 19, 2023, Complainant Bed Bath & Beyond, Inc. (“BBBY”), and Respondent Yang Ming Marine Transport Corp. (“Yang Ming”), filed a joint status report and proposed discovery schedule (“JSR”). The parties state that they have contacted the Commission’s Office of Consumer Affairs and Dispute Resolution Services (“CADRS”) and are weighing the feasibility of mediation. Additionally, the parties certify that they made their initial disclosures prior to filing the JSR.

Complainant BBBY requests an oral hearing in this matter in Washington, DC. Pursuant to 46 C.F.R. Section 502.62 (a)(5), “[t]he presiding officer will determine whether an oral hearing is necessary.” At this point in the proceeding, it is not clear that there is reason to conduct an oral hearing. Accordingly, the Complainant’s request for oral hearing is **DENIED**.

Complainant BBBY further requests an investigation of alleged violations of the Shipping Act. A request for investigation should be directed to the appropriate Area Representative and is not a proper remedy under the Commission’s Rules of Practice and Procedure at 46 C.F.R. § 502.62(a)(4)(iv). For further information, see <https://www.fmc.gov/resources-services/filing-a-shipping-act-complaint> (scroll to “resources”, “related links”, and click on “Exploring Commission Processes: The differences between contacting CADRS, filing a complaint and reporting violations”).

The discovery schedule proposed by the parties is reasonable and adopted. The parties state that they are meeting to confer on a confidentiality stipulation and proposed protective order. In addition, the parties state that they do not anticipate depositions or interrogatories “in excess of the amounts contemplated by 46 C.F.R. §§ 502.143...and 502.145” and have reached other understandings regarding contention interrogatories. JSR at 1. The parties are also encouraged to meet and confer regarding stipulations of fact and other discovery limitations that will make the discovery process more efficient.

The briefing schedule proposed by the parties is significantly longer than typically permitted. If the parties meet their discovery deadlines, the briefing schedule will be allowed. To that end, proposed dates identified as “targets” in the JSR are converted to dates by which a discovery item must be completed in the schedule below. Moreover, the parties should note that due to the Commission’s deadline of September 12, 2024, to resolve this proceeding, delays during discovery may result in shortening the briefing period. Accordingly, the parties are hereby **ORDERED** to follow this schedule:

- | | |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 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. |
| 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. |

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).

Any filing submitted without page numbers, including on exhibits, may be rejected. Parties must follow the instructions in the Initial Order, including the requirements for submitting confidential information. Parties may be required to refile any documents that do not follow the requirements below or in the Initial Order.

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.** 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). The brief should cite to evidence in the appendix using the required sequential numbers (see below).
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.

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