

Before the
FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Docket No. 23-12

20240930-DK-BUTTERFLY-1, INC., F/K/A BED BATH & BEYOND, INC. v.

MSC MEDITERRANEAN SHIPPING COMPANY SA

JOINT STATUS REPORT

Pursuant to 46 C.F.R. § 502.141(h), Complainant 20240930-DK-Butterfly-1, Inc., formerly known as Bed Bath & Beyond Inc¹. (“BBBY”) and Respondent MSC Mediterranean Shipping Company SA (“MSC”) (BBBY, collectively with MSC, the “Parties”), by their respective undersigned counsel, have conferred and submit this joint status report and proposed discovery schedule:

The Parties have already exchanged the initial disclosures required by 46 C.F.R. § 502.141(b). The Parties do not currently anticipate needing depositions or interrogatories in this case in excess of the amounts contemplated by 46 C.F.R. §§ 502.143 (i.e., no more than 20 depositions) and 502.145 (i.e., no more than 50 written interrogatories), respectively. Consistent with Paragraph 19 of the Presiding Officer’s December 4, 2023 Initial Order in this case, the Parties intend to meet and confer (and have already exchanged a draft protocol) concerning a stipulation and proposed order regarding treatment of confidential documents and information exchanged and used in this case. Pursuant to 46 C.F.R. § 502.64(a), the Parties also held a preliminary conference

¹ BBBY 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 20240930-DK-Butterfly-1, Inc.

with the Commission's Office of Consumer Affairs and Dispute Resolution Services ("CADRS") via a videoconference on April 11, 2024.

The Parties propose the below schedule, which provides for a discovery schedule in excess of 150 days. The parties are mindful of the 150-day time period set by 46 C.F.R. § 502.141(g); however, the parties anticipate that documentary discovery will be extensive. As to MSC, the initial search for potentially responsive data from likely custodians has returned 8.2 Terabytes of data, which must be electronically searched for responsive documents. To give some perspective regarding the volume of documents involved in MSC's discovery process, this data base is equivalent to 35 – 50 million pages of documents prior to the electronic application of search terms, de-duplication and email threading. After this initial data base has been electronically searched and narrowed, potentially responsive documents must be manually reviewed before they are prepared for production, a task which will take a significant amount of time. The volume of data which must be searched could grow, depending on the list of custodians agreed upon by the parties.

Complainant's database of potentially responsive documents is 8.35 terabytes of data, similar to that of Respondent, and against which the same required processes described above of searching and conducting manual review must take place. It is Complainant's experience that much of this data also exists as compressed electronic files which, once opened and expanded, yield a significantly higher data volume. .

The Commission's regulations requiring that discovery be completed within 150 days of the service of a respondent's answer may be a reasonable time in a relatively straightforward case; however, it is not realistic for a case of this magnitude in which documentary discovery involves

tens of millions of documents, depositions of approximately twenty witnesses and damages alleged in excess of \$150,000,000.

The parties acknowledge that prompt resolution of claims and disputes arising under the statutes administered by the Commission is a laudable goal, one which the deadlines for issuance of initial and final decisions are intended to achieve, and that scheduling orders are an important part of this process. However, the parties wish to emphasize that it is not unusual for the deadlines for completion of discovery and/or for the issuance of initial and final decisions to be extended by administrative law judges and the Commission. The same rationale should apply at this initial stage, when a discovery schedule is being established.

There are also policy considerations which favor allowing sufficient time for a full development of the evidentiary record before an agency. *Hudson Shipping (Hong Kong) Ltd. d/b/a Hudson Express Lines – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, 29 S.R.R. 1376, 1377 (ALJ 2002)(policy and responsibility of Commission and, by delegation of authority, presiding judge, to inquire into and consider all relevant facts; of even greater importance than the concept of fairness between the parties, as they maneuver to develop a record which fits their positions, is the need to ensure that justice is served and all relevant facts are considered by the Commission).

The parties believe that good cause has been demonstrated to modify the 150-day deadline provided for under 46 C.F.R. §502.141(g) and accordingly propose the following schedule:

EVENT	PROPOSED DEADLINE
Parties to serve initial requests for production (“RFPs”) of documents and electronically stored information (“ESI”) and interrogatories	May 1, 2024
Parties to serve objections and responses to initial RFPs	June 1, 2024

EVENT	PROPOSED DEADLINE
Parties to serve objections and responses to initial interrogatories	June 1, 2024
Submission of any unresolved disputes concerning initial RFPs and interrogatories and objections and responses thereto (after counsel confer directly)	June 14, 2024
Substantial completion of productions of documents and ESI in response to initial RFPs	July 31, 2024
Complete depositions of fact witnesses	September 30, 2024
Last day to serve interrogatories, requests for admission, and RFPs	September 30, 2024
Disclosure of initial expert reports, if any	October 31, 2024
Disclosure of rebuttal expert reports, if any	November 22, 2024
Complete expert depositions	December 20, 2024
Close of discovery	December 20, 2024
Complainant's initial brief, proposed findings of fact, and appendix	February 15, 2025
Respondent's opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix	March 31, 2025
Complainant's reply and responses to proposed findings of fact	April 30, 2025

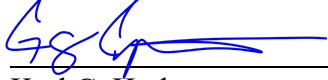
Given the considerable amount of work that is required in this case, the parties propose to file a status report with the Presiding Officer on August 1, 2024 to report on the status of discovery.

[SIGNATURE PAGE FOLLOWS]

Dated: April 12, 2024

Respectfully submitted,

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