

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

20230930-DK-BUTTERFLY-1, INC., *Complainant*

v.

MSC MEDITERRANEAN SHIPPING CO. SA, *Respondent*.

DOCKET NO. 23-12

Served: May 9, 2024

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

SCHEDULING ORDER

On November 28, 2023, the Commission issued a Notice of Filing of Complaint and Assignment, noting that Complainant 20230930-DK-Butterfly-1, Inc.'s ("BBBY" or "Complainant"), had filed a complaint alleging that Respondent MSC Mediterranean Shipping Co. SA ("MSC" or "Respondent"), violated 46 U.S.C. §§ 41102(c), 41102(d), 41104(a)(2), 41104(a)(10) and the Commission's Regulations at 46 C.F.R. § 545.5 in connection with the receiving, handling, storing and delivery of goods pursuant to a service contract.

On December 20, 2023, the parties jointly moved to extend time to respond to the Complaint, and that request was granted on December 21, 2023.

On January 5, 2024, MSC filed Respondent's Partial Motion to Dismiss and Memorandum (jointly, "Motion"), seeking to dismiss Complainant BBBY's allegation of retaliation in violation of 46 U.S.C. § 41104(a)(3) because it failed to state a claim for relief. On March 25, 2024, Respondent's partial motion to dismiss was granted.

On April 12, 2024, the parties filed a Joint Status Report ("JSR") and proposed a schedule for discovery that far exceeds the 150-days set forth in Rule 141 and the Initial Order. 46 C.F.R. § 502.141. Currently, discovery should end on September 2, 2024. The parties seek to extend discovery to December 20, 2024, after which they propose to further extend the schedule with Complainant's initial brief submission 57 days after the close of discovery, followed by the Respondent's brief 44 days later, and Complainant's reply a month after that. JSR at 3-4. The proposed schedule results in briefing ending six months after the Initial Decision is due.

Complainant requests an oral hearing in this matter. 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, MSRF, Inc.'s request for oral hearing is **DENIED**.

Complainant 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”).

In the JSR, the parties assert as good cause for the extended period of discovery that they each must electronically search through 35-50 million pages of documents and narrow down “potentially responsive documents [that then] must be manually reviewed before they are prepared for production, a task which will take a significant amount of time.” JSR at 2-3. They further maintain that the 150-day rule “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.” *Id.*

While the extension of time to respond to the complaint, followed by the partial motion to dismiss, resulted in delay early in the proceeding, there is one less allegation on which the parties must focus their discovery, and it is unclear if this was taken into consideration in the parties’ motion. However, based on the volume of records the parties assert must be manually reviewed after they are electronically searched, some adjustment to the typical discovery schedule must be made.

Based on the parties’ assertions regarding the extent of discovery, the proposed schedule is reasonable, and adopted.¹ However, due to the extension of discovery, the proposed briefing schedule, which is significantly longer than usually allowed, is not reasonable. Should the parties find that they can accomplish discovery in a shorter period—for example, if they do not require the use of experts—discovery could close earlier, allowing more time for briefing before the holiday season. Two joint status report deadlines have been added to the schedule. Moreover, the parties are strongly encouraged to resolve discovery disputes between themselves, and to try to narrow the issues and stipulate to facts when possible. Accordingly, the parties are **ORDERED** to follow the schedule set forth below:

May 1, 2024	Parties to serve initial requests for production of documents (“RFPs”), electronically stored information (“ESI”), and interrogatories
June 3, 2024	Parties to serve objections and responses to initial RFPs and interrogatories
June 14, 2024	Submission of any unresolved disputes concerning initial RFPs, interrogatories, and objections and responses thereto after conferral
July 31, 2024	Substantial completion of documents and ESI pursuant to initial RFPs

¹ Proposed days that fall on a weekend are moved to the nearest weekday.

August 30, 2024	Joint status report due describing status of discovery
September 30, 2024	Complete depositions of fact witnesses
September 30, 2024	Last day to serve interrogatories, requests for admission, and RFPs
October 31, 2024	Disclosure of initial expert reports, if any
November 22, 2024	Disclosure of rebuttal expert reports, if any
November 25, 2024	Joint status report identifying expert witnesses and summarizing the purpose of their testimony
December 20, 2024	Complete expert depositions
December 20, 2024	Close of discovery
January 17, 2025	Complainant's initial brief, proposed findings of fact, and appendix
February 14, 2025	Respondent's opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix
February 28, 2025	Complainant's reply brief and responses to proposed findings of fact



Linda S. Harris Crovella
Administrative Law Judge