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BEFORE THE
SURFACE TRANSPORTATION BOARD



DHX, INC.,

Complainant,

v.

STB Docket No. WCC-105

MATSON NAVIGATION COMPANY
AND
SL SERVICES, INC.,
a.k.a.
SEA-LAND SERVICE, INC.,

ENTERED
Office of the Secretary
MAR 12 2002
Part of
Public Record

Defendants.

MOTION TO STRIKE

COMES NOW, Complainant, DHX, Inc., by and through its counsel, and submits this motion to strike a portion of the pleading filed by Defendants on or about March 6, 2002 and identified as "Reply of Matson Navigation Company, Inc. and Sea-Land Service, Inc., To Complainant DHX, Inc.'s Motion To Establish A procedural Schedule". Complainant moves to strike matter contained in footnote 1 of page 3 of the Reply as well as the first sentence contained in the second full paragraph stated on page 6, footnote 4 and the "attached" draft protective order.

The Board, pursuant to Rule 1104.8, 49 CFR, may strike any impertinent and scandalous matters. Defendants' have patently mis-represented (footnote 1 of page 3) that counsel for Complainant is seeking a protracted discovery schedule in order to force defendants to a "settlement". This represents an allegation of misconduct by defendants as against Complainant's

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counsel. It is interesting to note that defendants have not supported such an allegation. The reference to "DHX Motion at 2, n.1" does not support their allegation. A review of the Board's records in STB Docket WCC-102, which is referenced in Complainant's Motion, will note that Complainant is of the believe that "the parties and the issues are quite contentious" and that "The instant proceeding is not anticipated to be any different". Further, the Board's records also reflect that on February 2000 the parties to STB Docket WCC-102 jointly moved to dismiss that proceeding based upon a "full and final settlement". See, STB Docket WCC-102, Ocean Logistics Management, Inc. v. NPR, Inc. et al., decided February 11, 2000, served February 14, 2000. Attached herto is a copy of the Scheduling Order served September 20, 1999 which needs no further discussion. Defendants have blatantly and intentionally mis-represented the contents of Complainant's motion and have further mis-represented the record in STB Docket WCC-102. The allegations of misconduct are unfounded and required to be stricken from this record in this proceeding.

An additional example of what can only be described as procedural abuse is the defendants use of a "Reply" as a vehicle in which to propose that the Board enter a Protective Order. Such an issue was not raised in the Complainant's Motion To Establish Procedural Schedule as filed on March 7th. The Commission's Rules of Practice and Procedure prohibit a "Reply to a Reply". 49 CFR 1104.13(c). The intentional use

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of a Reply pleading to insert a new issue much less a protective order is improper. In addition to the mis-use of the defendants' pleading regarding a "Scheduling Order", the request for the entry of a protective order violated Rule 1114.21(c). That Rule notes that a protective order

"...may only be sought after, or in conjunction with, an effort by any party to obtain relief under §§1114.24(a), 1114.26(a), or 1114.31".

Defendants patent violation of Rule 1114.21(c) involves just the type of litigation tactics which Complainant predicted this case would involve. Complainant noted to the Board that it was of the belief that the instant proceeding, like all others in the domestic offshore trades, would be "contentious". Defendants' 'back-door' tactics have more than proven the point.

Wherefore, it is hereby respectfully requested that the instant motion be granted and that the above identified matter, including the proposed protective order, be stricken.

Dated - 12 March 2002

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of this document has been served, by hand delivery thereof upon the below listed counsel of record for defendants.

Dated this 12th day of March 2002.

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Case
Docket No.
WCC 102 0

Title
OCEAN LOGISTICS MANAGEMENT, INC. V. NPR, INC., AND HOLT CARGO SYSTEMS, INC.

Decision Summary

(1) ADOPTED THE PARTIES JOINT PROPOSED PROCEDURAL SCHEDULE SUBMITTED AUGUST 27, 1999; AND (2) PORTIONS OF THE SCHEDULE REFERRING TO THE ORAL HEARING WILL NOT BE ADOPTED BUT WILL BE HANDLED UNDER MODIFIED PROCEDURES.

Docket No.

Title

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WP Envoy (requires viewer)

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- 30507.envy



- 30507.wpd

Full Text of Decision

30507

SERVICE DATE - SEPTEMBER 20, 1999

SEC

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-102

OCEAN LOGISTICS MANAGEMENT, INC.

v.

NPR, INC., AND HOLT CARGO SYSTEMS, INC.

Decided: September 17, 1999

By complaint filed October 6, 1998, under 49 U.S.C. 13701(c), Ocean Logistics Management, Inc. (OLMI or complainant), a non-vessel operating common carrier, seeks a finding that NPR, Inc., doing business as NPR, Navieras and Navieras Puerto Rico (NPR), a vessel operating common carrier providing transportation between the United States and Puerto Rico, has engaged in certain unreasonable practices in violation of 49 U.S.C. 13701(a)(1)(B), as a result of which complainant has suffered damages of \$4 million. NPR filed an answer to the complaint on May 17, 1999.⁽¹⁾

Pursuant to a decision served July 27, 1999, in this proceeding and our General Rules of Practice at 49 CFR 1111.10, the parties submitted a joint report and proposed procedural schedule on August 27, 1999. That schedule proposes, in part, the following dates:

<http://www.stb.dot.gov/decisions/ReadingRoom.nsf/7994bc68d2d1176d85256559007bc33f/...> 2/1/2002

February 29, 2000 Complainant identifies all deponents

March 31, 2000 Defendant identifies all deponents

May 4, 2000 Deadline for service of written interrogatories and requests for production

May 19, 2000 Discovery completed

These dates establish an unusual 6 month hiatus before the parties commence processing the case. The schedule is jointly proposed, however, and will be adopted.

The parties' proposed procedural schedule contemplates an eventual oral hearing. It appears, however, that all of the material issues of fact can be decided on the basis of written statements, and that the proceeding can be processed efficiently without oral testimony. As such, those portions of the parties' proposed schedule referring to such a hearing will not be adopted and this proceeding will be handled under the modified procedures. See 49 CFR 1112.1. The parties are directed to file verified statements according to the following schedule:

June 19, 2000 Complainant's opening statement

July 10, 2000 Defendant's reply

July 31, 2000 Complainant's rebuttal

It is ordered:

1. Complainant shall identify all persons to be deposed by February 29, 2000.
2. Defendant shall identify all persons to be deposed by March 31, 2000.
3. All written interrogatories and requests for production shall be served by May 4, 2000.
4. Discovery shall be completed by May 19, 2000.
5. Complainant shall file an opening statement by June 19, 2000.
6. Defendant shall file a reply by July 10, 2000.
7. Complainant may file rebuttal by July 31, 2000.
8. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams

Secretary

1. Holt Cargo Systems, Inc., which complainant has also named as a defendant, filed its answer on August 16, 1999.