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U.S. DEPARTMENT OF TRANSPORTATION
SURFACE TRANSPORTATION BOARD

DHX, INC.,

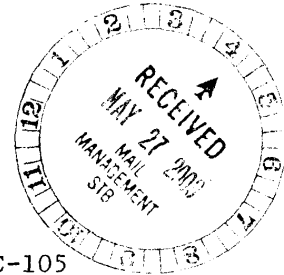
Complainant,

v.

STB Docket No. WCC-105

MATSON NAVIGATION COMPANY
and SL SERVICE, INC.
f/k/a SEA-LAND SERVICE,
INC., t/a CSX LINES, LLC,

Defendants.



ENTERED
Office of Proceedings

MAY 27 2003

Part of
Public Record

MOTION FOR EXTENSION OF DISCOVERY SCHEDULE

COMES NOW, DHX, Inc., by and through its counsel, and submits this Motion For Extension of the Discovery Schedule in this proceeding. On June 6, 2002, the Board issued a stay of discovery pending disposition of a motion for partial dismissal of the Amended Complaint. At the time of issuance of the stay, the parties had exchanged interrogatories and document production requests as well as notices for depositions. Defendant SL Service, Inc. provided proposed pro forma answers to Complainant interrogatories but has not provided any formal response to discovery. Defendant Matson Navigation provided answers and objections to Complainant's interrogatories and document production requests. Complainant likewise provided answers to Defendant's interrogatories and agreed to make documents available for inspection/review.

The Board, by decision served May 19, 2003, granted the involved motion for partial dismissal. However, substantial claims and fact issues remain. This includes many defenses

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raised by defendants as well as objections to the majority of the information sought by Complainant in its discovery requests.

The Board, in its order served May 19, 2003 set a date of June 30, 2003 for the completion of discovery in this proceeding. Complainant in support of this request to extend the involved discovery period states as follows -

- 1) on May 22, 2003 counsel for the parties held a telephone conference in which to discuss the scheduling in this proceeding.
- 2) on May 22, 2003 counsel for Complainant advised counsel for defendants of conflicts in his schedule which precluded him for completing the conduct of Complainant's discovery by the involved June 30th date.
- 3) that counsel for Matson noted his objection to any change in the involved schedule but that counsel for Sea-Land took no position on the matter.
- 4) that counsel for Complainant DHX, Inc. is presently involved in a proceeding before the Federal Maritime Commission which is identified as Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority, Docket No. 02-08 as counsel for Odyssea Stevedoring.
- 5) that on May 7, 2003 the Presiding Officer in Docket 02-08 issued a Report and Order regarding discovery in Docket 02-08 which requires counsel for Complaint to take deposition in San Juan, Puerto Rico the week of June 2-7, 2003, provide discovery responses on June 20, 2003 and take depositions

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in Mobile, Alabama and Orlando, Florida the week of June 24th.

6) the depositions the week of June 2nd have been the subject of 4 previous continuances due to various conflicts of witnesses and Respondent's counsel and can not be changed nor can the subsequent depositions be changed.

7) that counsel for Matson has expressed the need to take the deposition of the President of DHX, Inc..

8) the President of Complainant has a long established trip to Asia scheduled for June 16-28, 2003 which also can not be rescheduled.

9) that counsel for Matson did indicate that if the present schedule for completion of discovery were extended that the month of July 2003 was not available as a 'good' month for that counsel.

Argument

The Board's Rules of Practice, Rule 1104.7(b), permit an extension of time upon a showing of 'good cause'. Attached hereto is a copy of the Report of Conference and Rulings in FMC Docket No. 02-08. The conflicts of counsel are appropriate grounds to adjust the involved schedule. Secondly, the fact that the President of Complaint must be out of the country also supports the involved extension. As noted above, Respondents have either not responded to discovery or have raised numerous objections to the discovery sought. These objections must be treated by way of motions to compel by Complainant which motions Complain-

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ant intends to file as soon as possible.

This proceeding is a water carrier complaint proceeding and involves the issue of unreasonable practices related to the failure to file rates and charges in conformance with the requirements of Section 13702 and the Board's regulations. The Amended Complaint, aside and part from the dismissed Count III, summarizes the primary issues at pages 15-16. The information for final proof of the issues is within the possession of the defendants and to which defendants have objected to discovery and response.

In consideration of the above and foregoing, it is hereby respectfully requested that the Board issue an order extending the discovery schedule in this proceeding to August 30, 2003. Such a period should be sufficient to enable the parties to take the depositions previously scheduled and to enable the Board to address the Defendants' objections to Complainant's interrogatories and document production requests.

Dated-27 May 2003

Respectfully submitted,



RICK A. RUDE, Esq.

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Counsel For Complainant
DHX, INC.

Certificate Of Service

I hereby certify that a copy of this document has been served by telefax and by first class mail, postage prepaid, upon the below listed counsel for Defendants this 27th day of May 2003.

Dated at Falls Church, VA. 22046

A handwritten signature in dark ink, appearing to read "C. Benner", is written over a horizontal line.

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(S E R V E D)
(May 7, 2003)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

May 7, 2003

DOCKET NO. 02-08

ODYSSEA STEVEDORING OF PUERTO RICO, INC.

v.

PUERTO RICO PORTS AUTHORITY

REPORT OF CONFERENCE AND RULINGS

A discovery conference was held by telephone on May 7, 2003, pursuant to 46 C.F.R. §§ 502.201 (f) and (g), in order to address the issues raised by Odyssea Stevedoring of Puerto Rico, Inc. (Odyssea) in two letters, both dated May 6, 2003, regarding the Puerto Rico Ports Authority's (PRPA) letter of May 5, 2003 regarding *Deficiencies in Complainant's Supplemental Response to Discovery Order*, with attached *Third Amended Notice of Deposition of Augusto C. Rios*, and *Respondent's Fourth Set of Interrogatories and Document Requests*. After an initial discussion, it was agreed that the discussion would consist of three topics: PRPA's desire to depose Augusto C.

Rios during the week of June 2, 2003; Odyssey's request for additional time to respond to PRPA Fourth Set of Interrogatories and Document Requests; and PRPA's desire to move for sanctions due to Odyssey's alleged failure to provide supplemental discovery in accordance with my order of April 1, 2003.

The issue of a further deposition of Mr. Rios by PRPA was intertwined with the issue of when and where Jose Baquero was to be produced for a deposition, since I have ruled that Odyssey will be afforded the opportunity of conducting all depositions of PRPA witnesses before PRPA is permitted to conduct any further depositions of Odyssey's witnesses. In my *Report of Conference and Rulings*, served April 11, 2003, I noted that depositions of PRPA witnesses "were rescheduled for the week of June 2, 2003. However, this schedule is contingent on PRPA receiving authorization from Mr. Baquero allowing it to accept a subpoena or notice of deposition on his behalf, in the event that he leaves the employ of PRPA prior to the deposition date." *Id.* at 2.

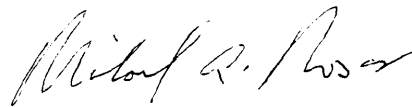
It is PRPA's position that it received authorization to accept service on behalf of Mr. Baquero, but the deposition must be conducted at his new place of employment in Florida and, therefore, his deposition cannot be conducted during the week of June 2. Odyssey disagreed and contends that Mr. Baquero should be required to appear for a deposition in Puerto Rico during that week. I noted that there appeared to be an ambiguity in my April 11 order as to the location that Mr. Baquero would be required to appear for a deposition. I also noted that it would not be practical to issue an order compelling him to appear in Puerto Rico and then have Odyssey go to U.S. District Court for an order enforcing my order.

After further discussion, it was agreed that the parties would defer Mr. Baquero's deposition in Florida until the week of June 24 or as soon as possible thereafter. Furthermore, it was agreed that

Mr. Rios' deposition would be conducted in Alabama within a day or two after the deposition of Mr. Baquero and the subject of a possible deposition of Miguel Castellanos would be discussed in a telephone conference and, if necessary, scheduled after the completion of such depositions.

The issue over PRPA's fourth set of interrogatories was also resolved. Odyssea wanted an extension of time to respond until June 30, 2003. PRPA wanted a response prior to the deposition of Mr. Rios. However, since the deposition of Mr. Rios will not be conducted until the week of June 24 at the earliest, it was agreed that Odyssea will respond by June 20.

The last issue, PRPA's intention to file a motion for sanctions due to Odyssea's alleged failure to provide supplemental discovery, was not very productive. While Odyssea, after clarification at the conference, agreed to produce some of the requested information, it is clear that the parties have significant views as to the adequacy of Odyssea's responses and that a motion will be necessary.

A handwritten signature in cursive script, appearing to read "Michael A. Rosas".

Michael A. Rosas
Administrative Law Judge