

**FEDERAL MARITIME COMMISSION**

---

**DOCKET NO. 13-04**

---

**STREAK PRODUCTS, INC., and SYX DISTRIBUTION, INC.**

**v.**

**UTi, UNITED STATES, INC.**

---

**MEMORANDUM AND ORDER ON COMPLAINANTS' MOTION TO COMPEL**

---

**I. BACKGROUND.**

Complainant Streak Products, Inc. (Streak) is a Delaware corporation that manufactures computer storage devices. Respondent UTi, United States, Inc. (UTi) is a non-vessel-operating common carrier (NVOCC) licensed by the Commission, License No. 001792. The Complaint alleges that UTi has provided transportation services for cargo owned by Streak since at least 2003, transporting full container load (FCL) and less-than-container load (LCL) shipments by water between United States ports and foreign ports.

Streak alleges that due to concerns about the rates UTi charged for transportation services, Streak retained an expert to review freight invoices Streak paid to UTi during the period 2009 through 2011 and learned that on FCL shipments, UTi charged Streak rates in excess of the amounts set forth in UTi's tariff. Streak also learned that UTi did not have tariffs on file for LCL shipments. Streak claims that it only learned that UTi was charging rates other than that set forth in published UTi tariffs when it retained the expert. Streak contends that prior to the expert's review, it neither knew nor could have known that UTi was charging the allegedly excessive amount.

On April 12, 2013, Streak filed a Complaint with the Secretary alleging that UTi violated three sections of the Shipping Act of 1984: (1) 46 U.S.C. § 41104(2) by charging Streak rates greater than those stated in its published tariff; (2) 46 U.S.C. § 41104(4) by charging Streak rates greater than those it charged other shippers; and (3) 46 U.S.C. § 40501 by failing to keep open to public inspection in its tariff system tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and any through transportation route that has

been established. Streak contends that it has suffered actual injury as a result of UTi's violations. On April 18, 2013, the Secretary served the Complaint and Notice of Filing of Complaint and Assignment on UTi.

On May 27, 2013, UTi filed a motion to dismiss in lieu of an answer. The motion was denied on October 23, 2013. *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04 (ALJ Oct. 23, 2013) (Order Denying Respondent's Motion to Dismiss).

Streak served interrogatories and requests for production of documents on UTi. On May 28, 2013, UTi served responses to the interrogatories and a set of documents in response to the discovery requests. In response to a letter from counsel for Streak, on December 13, 2013, UTi's counsel supplemented the responses by letter. Because Streak was dissatisfied with the responses and the results of its attempts to obtain additional responses, it served a second set of interrogatories and requests for production of documents to which UTi responded on January 6, 2014.

Streak was still dissatisfied with UTi's responses. After conferring with UTi in an attempt to obtain additional responses as required by Commission Rule 71, 46 C.F.R. § 502.71 (*see* Streak Motion to Compel at 2 n.1), on January 14, 2014, Streak served the motion to compel addressed by this order. UTi filed its opposition on January 27, 2014. On March 6, 2014, at the request of the undersigned, the parties filed shipping documents related to some of the shipments at issue.

On December 23, 2013, Streak filed a motion for leave to file an Amended Complaint adding its distribution or shipping agent, SYX Distribution, Inc. (SYX Distribution, sometimes referred to as Systemax Distribution) as a complainant. UTi filed an opposition to the motion arguing that the statute of limitations bars some of the claims and asking that the motion be denied, but only "to the extent SYX . . . seeks reparations for alleged violations of the Shipping Act . . . that are barred by the statute of limitations." (Respondent UTi, United States, Inc.'s Opposition to Complainant's Motion for Leave to File an Amended Complaint at 8.) The motion to amend was granted, deferring the statute of limitations issue to a later stage in the proceeding. *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04 (ALJ Jan. 23, 2014) (Order Granting Motion for Leave to File Amended Complaint).

Apparent inconsistencies between UTi's discovery responses and an affidavit submitted by UTi with its motion to dismiss resulted in an order issued March 25, 2014, requiring UTi to respond to several question intended to clarify the record. *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04 (ALJ Mar. 25, 2014) (Order for Respondent to Supplement the Record). On April 3, 2014, UTi filed its responses to the questions.

When Streak served its discovery, SYX Distribution had not yet been added as a party. In its April 3, 2014, responses to the questions, UTi noted that "inexplicably, Complainants still not requested any discovery related to SYX Distribution, despite having ample opportunity to do so following Your Honor's January 23, 2014 decision [adding SYX Distribution as a complainant]." The parties have not stated whether UTi has revised its responses to reflect the addition of SYX

Distribution as a complainant. In the interest of efficiency, rather than require Streak and SYX Distribution to serve additional discovery including SYX Distribution as a complainant, I will treat Streak's original discovery as if it asked for the same information for SYX Distribution and assume that UTi would make the same objections.

## **II. CONTROLLING AUTHORITY.**

Commission Rule 201 provides:

*Scope of examination.* Persons and parties may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the hearing if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

46 C.F.R. § 502.201(h). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401.

## **III. RULINGS ON CLAIMS.**

### **A. Rulings Applicable to All Discovery Responses.**

#### **1. Protective order.**

In many of its responses, UTi objects to the extent the discovery request seeks confidential and proprietary business information and that it will respond after entry of a protective order. The information that Streak/SYX Distribution seek would come from ordinary business records and the newest information relevant to the Streak/SYX Distribution claims is nearly three years old. Therefore, it is likely not entitled to protection pursuant to Commission Rule 201. *See DNB Exports LLC v. Barsan Global Lojistiks Ve Gumruk Musavirligi A.S.*, FMC No. 11-07, Order at 1-5 (ALJ Jan. 24, 2014) (Order on Motions for Confidential Treatment of Merits Briefs and Materials Filed with Merits Briefs) (ordinary business records more than three years old not entitled to protection under Commission Rule 201).

The Initial Order in this proceeding states that “[t]he parties may agree and stipulate between themselves regarding treatment of confidential documents and information obtained during discovery that is not filed with the Commission. The parties may, but are not required to, file a courtesy copy of the agreement with the Commission.” *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04, Order ¶ 17 (ALJ Apr. 22, 2013) (Initial Order). *See also Streak Products, Inc. v. UTi, United*

*States, Inc.*, FMC No. 13-04 (ALJ Dec. 5, 2013) (Order Denying Consent Motion for Entry of Protective Order). Unless and until the information is used in the proceeding, the parties may stipulate to any protection on which they can agree on regarding information claimed to be confidential, including restricting the information for attorneys' eyes only.

## **2. Attorney-client privilege and work product protection.**

In responses to several of the discovery requests, UTi states that it "will produce nonprivileged documents responsive to this request after a protective order has been entered in this case," that it "has not identified any non-privileged documents related to rates to be assessed to Streak," or claims that the information is protected by the attorney-client privilege or as attorney work product. The Initial Order states: "A party withholding documents because of an asserted privilege must serve a privilege log that complies with the requirements of Federal Rule of Civil Procedure 26(b)(5)(A)." *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04, Order at 7-8 (ALJ Apr. 22, 2013) (Initial Order). UTi must produce a privilege log that complies with the requirements of Federal Rule of Civil Procedure 26(b)(5)(A) in its supplemental responses to discovery required below for any information that it claims to be protected by the attorney-client privilege or attorney work product.

### **B. Rulings on Specific Discovery Requests.**

#### **1. Streak's First Set of Interrogatories<sup>1</sup>**

*Interrogatory No. 4: Identify all shipments transported by UTi on behalf of Streak from 2003 to the present.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. The information sought is equally available to the Complainant, as UTi did not transport any shipments on behalf of Streak without Streak's knowledge. Subject to and without waiving these objections, UTi states that non-privileged documents identifying these shipments will be produced in response to Document Request No. 1.*

*UTI's SUPPLEMENTAL RESPONSE: Subject to and without waiving its objections, UTi respectfully responds that, after undertaking a thorough review of its shipment records, UTi has identified one (1) shipment transported by UTi between 2003 to the present for which Streak appears as a party (consignee). The bill of lading for this shipment is 5860644358. A copy of the bill of lading was produced to Streak on December 3, 2013 (BATES No. UTi00000119). UTi has sought through discovery*

---

<sup>1</sup> Text in *italics* is from Appendix A attached to UTi's opposition to Streak's motion to compel.

*requests from Streak any shipments that UTi allegedly transported on Streak's behalf.*

*Streak's Argument: Thus, UTi continues to insist that it has only provided one shipment on behalf of Streak since 2003. That assertion is clearly incorrect. Indeed, UTi previously produced in discovery hundreds of pages of invoices reflecting transportation provided by UTi "by order and on account of STREAK PRODUCTS." See sample invoice attached as Exhibit D.*

*UTi's Response: UTi incorporates its prior objections herein, and further notes that the invoices produced were not issued by UTi. The invoice in Streak Exhibit D, and the other invoices produced by UTi, were issued by Rici International Co., Ltd., which, to the best of UTi's knowledge is a Taiwanese electronics manufacturer or distributor. These invoices are for goods, not transportation services. The goods in the Rici International Co., Ltd. invoice provided by Streak were simply not transported by UTi on Streak's behalf. UTi has identified all shipments (one) it has transported on behalf of Streak. Finally, Streak has equal access to information regarding the shipments allegedly transported by UTi on its behalf. The fact that Streak has chosen to rely upon a third party invoice here suggests that Streak itself has not identified any additional shipments transported by UTi.*

**RULING: Motion to compel granted in part.**

UTi responded that it "has identified one (1) shipment transported by UTi between 2003 to the present for which Streak appears as a party." Although this appears to be inconsistent with the statement in UTi's motion to dismiss that "[t]hroughout the parties' course of dealing, Streak Products and UTi would mutually agree as to the proper rates for the various shipment services rendered by UTi without any reference to published tariffs," (Respondent UTi, United States, Inc.'s Memorandum in Support of Motion to Dismiss the Verified Complaint of Streak Products, Inc. (UTi Motion to Dismiss) at 3), UTi was asked a question about Streak and supplied an answer. The time to determine whether or not the answer is "incorrect" is at the hearing.

Because SYX Distribution was not a complainant at that time discovery was served, UTi was not asked to identify shipments transported on behalf of SYX Distribution. In its responses to the questions filed on April 3, 2014, UTi states that it provided shipment services to SYX Distribution. Therefore, UTi is ordered to supplement its response by identifying shipments transported on behalf of SYX Distribution.

*Interrogatory No. 9: Identify and describe when UTi first learned that it had charged Streak rates different than the rates reflected in its published tariffs.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects on the grounds that this interrogatory as phrased is argumentative. It requires the adoption of an assumption, which is improper. UTi further objects to this interrogatory as vague and ambiguous with respect to "published tariffs." Subject to and without waiving these objections, UTi states that it had no published tariff rate in effect for any of the shipments UTi transmitted on behalf of Streak.*

*Streak objected to the Response as non-responsive on the grounds that it failed to answer when UTi first learned that it had charged Streak rates different than rates reflected in its published tariff.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response, and its objection that this interrogatory as phrased is argumentative. It requires the adoption of an assumption, which is improper. UTi further objects to this interrogatory as vague and ambiguous with respect to "published tariffs." Subject to and without waiving its objections, UTi responds that it is unable to identify any instances of UTi charging Streak for ocean transportation services, or for any other product or service.*

*Streak's Argument: Again, UTi has refused to provide meaningful responses to the discovery propounded.*

*UTi's Response: UTi incorporates its prior objections herein. UTi has, in good faith, conducted a thorough review of its billing records and has identified no records that identify Streak. UTi simply has not charged Streak for any ocean transportation services, or for any other product or service. It would be impossible for UTi to have "learned that it had charged Streak rates different than . . . its published tariffs" because no published tariffs were in effect for the relevant trades. Respectfully, the fact that UTi has provided an answer that Streak does not like, or agree with, does not equate to a refusal to answer.*

**RULING: Motion to compel denied.**

UTi concedes that it did not have a published tariff. (UTi Motion to Dismiss at 3 ("Streak Products correctly alleges that UTi failed to comply with the tariff publishing requirements of the Shipping Act of 1984, 46 U.S.C. § 40501.") UTi could not "learn" that it charged rates different from rates it never published.

*Interrogatory No. 11: Identify all shippers in the relevant trades who UTi has charged rates different than those reflected in its published tariff.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects on the grounds that this interrogatory as phrased is argumentative. It requires the adoption of an assumption, which is improper. UTi further objects to this interrogatory as vague and ambiguous with respect to “published tariff” and “shippers.” Subject to and without waiving these objections, UTi states that it had no published tariff rate in effect for any of the relevant trades.*

*Streak objected to this response on the grounds that having admitted that it had no published tariff, UTi was clearly charging shippers rates different than what was reflected in a published tariff. Streak is entitled to know the identity of those shippers as Streak has asserted a claim alleging that UTi engaged in discriminatory billing practices by charging it rates different than what it charged similarly situated shippers, see Complaint at Paragraph V (B). The information sought is, therefore, clearly relevant and discoverable.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response, and its objection that this interrogatory as phrased is argumentative. It requires the adoption of an assumption, which is improper. UTi further objects to this interrogatory as vague and ambiguous with respect to “published tariff” and “shippers.” This interrogatory is overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.*

*Streak’s Argument: As reflected above, UTi has simply refused to answer the interrogatory.*

*UTi’s Response: UTi incorporates its prior objections herein. UTi had no published tariffs for any of the relevant trades, thus UTi has not charged any shippers rates different from those in its non-existent published tariffs. It would be impossible for UTi to have identified shippers it has “charged rates different than those reflected in its published tariffs” because no published tariffs were in effect for the relevant trades. Respectfully, the fact that UTi has provided an answer that Streak does not like, or agree with, does not equate to a refusal to answer.*

**RULING: Motion to compel granted in part.**

UTi’s contention that the terms “published tariff” and “shippers” are “vague and ambiguous” is without merit. “Shipper” is defined by the Act. 46 U.S.C. § 40102(22). As a common carrier within the meaning of the Act, UTi is required to “keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all

points or ports on its own route and on any through transportation route that has been established.” 46 U.S.C. § 40501(a)(1). In its (verified) Answer, UTi “admits that it has provided service in the liner trade that was not in accordance with a published tariff [and] admits that it is required to publish tariffs.” (UTi Answer ¶ III.) In this proceeding, “published tariff” and “shippers” have the same meanings as in the Act and UTi’s Answer.

The interrogatory asks UTi to “[i]dentify all shippers in the relevant trades,” but does not define what Streak means by relevant trades. Streak argues that the information sought by the interrogatory is relevant to its claim that UTi “engaged in discriminatory billing practices by charging it rates different than what it charged similarly situated shippers.” The Amended Complaint alleges that Streak manufactures “computer storage devices” (Amended Complaint ¶ I.B) and that Streak owned the cargo transported by UTi (Amended Complaint ¶ I.C); therefore, I infer that Streak was shipping computer storage devices. Accordingly, the identity of shippers of computer storage devices or other electronic devices may be relevant the Streak/SYX Distribution claim or UTi’s defenses, or appears reasonably calculated to lead to the discovery of admissible evidence. Identities of shippers of other types of cargo and the rates they paid for those shipments are not relevant to the Streak/SYX Distribution claim as a possible measure of damages. *See Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04, Order at 7-8 (ALJ Jan. 23, 2014) (Order Denying Respondent’s Motion to Dismiss). Regarding UTi’s contention that because it never published a tariff, it could not have charged shippers a rate different from a published tariff, the rates actually charged to shippers of computer storage devices or other electronic devices may be relevant the Streak/SYX Distribution claim or UTi’s defenses, or appears reasonably calculated to lead to the discovery of admissible evidence. According to the summary charts identifying the shipments at issue that Streak filed, the last FCL shipment occurred April 19, 2011, and the last LCL shipment occurred April 26, 2011. Therefore, the identity of shippers computer storage devices or other electronic devices after April 26, 2011, are not relevant to Streak’s claim. Accordingly, UTi is ordered to supplement its response to Interrogatory No. 11 by identifying all shippers of computer storage devices or other electronic devices prior to or on April 26, 2011. *See also* RULING on Interrogatory No. 15, No. 16.

*Interrogatory No.13: Identify and describe how UTi determined what rates it would charge Streak for FCL shipments during the relevant time period, identifying the documents used in making such a determination.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. Subject to and without waiving these objections, UTi states that it adhered to free market supply and demand behavior, i.e., UTi negotiated with its customers until an agreement was reached on prices, such that the customer was willing to (and did) pay the rates, and the rates were sufficient enough not only to cover UTi’s costs of doing business, but also sufficient to result in a profit for UTi. UTi further objects to this request to the extent it seeks confidential and proprietary business information. Subject to and without waiving these objections, UTi states that it will respond to this interrogatory after a protective order has been entered in this case.*

*Streak objected to the response on the grounds that although UTi's response stated that it would supplement its response when a protective order was in effect, UTi failed to do so.*

*SUPPLEMENTAL RESPONSE: In its response to Interrogatory 13, UTi stated in its May 28, 2013 response that it adhered to free market supply and demand behavior, i.e., UTi negotiated with its customers until an agreement was reached on service and related rates for ocean transport, such that the customer was willing to (and did) pay the rates, and the rates were sufficient enough not only to cover UTi's costs of doing business, but also sufficient to result in a profit for UTi. Subject to and without waiving the objections raised in its May 28, 2013 response, UTi supplements its response to Interrogatory 13 to state that UTi did not charge Streak for any FCL shipments during the relevant time period.*

*Streak's Argument: Streak objects to the response on the grounds that it is based upon the patently false assumption that UTi failed to provide transportation services for Streak.*

*UTi's Response: UTi incorporates its prior objections herein. As stated previously, UTi simply has not charged Streak for any transportation services, FCL or otherwise. UTi has never stated that it has "failed to provide transportation services for Streak," in fact, UTi has identified one shipment it transported on Streak's behalf and has produced documentation regarding this shipment. Respectfully, the fact that UTi has provided an answer that Streak does not like, or agree with, does not equate to a refusal to answer.*

**RULING: Motion to compel granted in part.**

The interrogatory, drafted before the Complaint was amended to add SYX Distribution as a complainant, asked how "UTi determined what rates it would charge Streak for FCL shipments." UTi states that it "simply has not charged Streak for any transportation services, FCL or otherwise." UTi has responded to the interrogatory regarding Streak.

In its original response, UTi stated that it "negotiated with its customers until an agreement was reached on prices," a process that presumably applied to Streak, SYX Distribution, and any other customer. In its responses to the questions filed on April 3, 2014, UTi states that it provided shipment services to SYX Distribution. UTi is ordered to supplement its response to Interrogatory No. 13 by identifying specific additional factors, if any, that were considered when negotiating rates for FCL shipments with either Streak or SYX Distribution.

*Interrogatory No. 14: Identify and describe how UTi determined what rates it would charge Streak for LCL shipments during the relevant time period, identifying the documents used in making such a determination.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. Subject to and without waiving these objections, UTi states that it adhered to free market supply and demand behavior, i.e., UTi negotiated with its customers until an agreement was reached on prices, such that the customer was willing to (and did) pay the rates, and the rates were sufficient enough not only to cover UTi's costs of doing business, but also sufficient to result in a profit for UTi. UTi further objects to this request to the extent it seeks confidential and proprietary business information. Subject to and without waiving these objections, UTi states that it will respond to this interrogatory after a protective order has been entered in this case.*

*Streak objected to the response on the grounds that although UTi's response stated that it would supplement its response when a protective order was in effect, UTi failed to do so.*

*SUPPLEMENTAL RESPONSE: In its response to Interrogatory 14, UTi stated in its May 28, 2013 response that it adhered to free market supply and demand behavior, i.e., UTi negotiated with its customers until an agreement was reached on prices, such that the customer was willing to (and did) pay the rates, and the rates were sufficient enough not only to cover UTi's costs of doing business, but also sufficient to result in a profit for UTi. Subject to and without waiving the objections raised in its May 28, 2013 response, UTi supplements its response to Interrogatory 14 to state that UTi did not charge Streak for any LCL shipments during the relevant time period.*

*Streak's Argument: Streak continues to object to the response on the grounds that it is based upon the patently false assumption that UTi failed to provide transportation services for Streak.*

*UTi's Response: UTi incorporates its prior objections herein. As stated previously, UTi simply has not charged Streak for any transportation services, FCL or otherwise. UTi has never stated that it has failed to provide transportation services for Streak, in fact, UTi has identified one shipment it transported on Streak's behalf and has produced documentation regarding this shipment to Streak. Respectfully, the fact that UTi has provided an answer that Streak does not like, or agree with, does not equate to a refusal to answer.*

**RULING: Motion to compel granted in part.**

For the reasons stated in the ruling on Interrogatory No. 13, UTi is ordered to supplement its response to Interrogatory No. 14 by identifying specific additional factors, if any, that were considered when negotiating rates for LCL shipments with either Streak or SYX Distribution.

*Interrogatory No. 15: Identify and describe the rates charged other shippers by UTi for imports of FCL shipments in the relevant trades during the relevant time period.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent it seeks documents that are not relevant to the claims or factual allegations now at issue in this action. UTi further objects to this request to the extent it seeks confidential and proprietary business information of third parties. Subject to and without waiving these objections, UTi states that it will respond to this interrogatory after a protective order has been entered in this case.*

*Streak objected to the response on the grounds that although UTi's response stated that it would supplement its response when a protective order was in effect, UTi failed to do so.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response, and its objections that this request seeks documents that are not relevant to the claims or factual allegations at issue in this action, and seeks confidential and proprietary business information of third parties. UTi does not intend to produce non-relevant, confidential and proprietary business information of its third-party customers.*

*Streak's Argument: As reflected above, UTi has simply refused to answer the interrogatory. Given that Streak seeks recovery against UTi based upon discriminatory billing practices and charging rates different than it has charges similarly situated shippers, see Complaint at Paragraph V (B), the information sought is clearly relevant and discoverable.*

*UTi's Response: UTi incorporates its prior objections herein. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a showing of need. In addition to being overbroad, this Interrogatory seeks the production of non-relevant, confidential and business proprietary information belonging to third parties (UTi customers) not involved in this litigation. If this information were produced, it would jeopardize the competitive interests of UTi and its customers.*

**RULING: Motion to compel granted in part.**

Information about shipments of cargo other than computer storage devices or other electronic devices does not appear to be relevant; therefore, to the extent Interrogatory 15 asks for rates charged for those shipments, it seeks irrelevant information. Rates for shipments of computer storage devices or other electronic devices may be relevant to the Streak/SYX Distribution claim as a possible measure of alleged damages. *See Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04, Order at 7-8 (ALJ Jan. 23, 2014) (Order Denying Respondent's Motion to Dismiss). According to the summary charts identifying the shipments at issue that Streak filed, the last FCL shipment occurred April 19, 2011, and the last LCL shipment occurred April 26, 2011. Therefore, rates charged to other shippers for shipments of computer storage devices or other electronic devices after April 26, 2011, are not relevant to Streak's claim.

Therefore, UTi is ordered to supplement its response to Interrogatory No. 15 by identifying and describing the rates charged other shippers by UTi up to and including April 19, 2011, for imports of FCL shipments of computer storage devices or other electronic devices. *See also RULING, Interrogatory No. 12, No. 16.*

*Interrogatory No. 16: Identify and describe the rates charged other shippers by UTi for imports of LCL shipments in the relevant trades during the relevant time period.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent it seeks documents that are not relevant to the claims or factual allegations now at issue in this action. UTi further objects to this request to the extent it seeks confidential and proprietary business information of third parties. Subject to and without waiving these objections, UTi states that it will respond to this interrogatory after a protective order has been entered in this case.*

*Streak objected to the response on the grounds that although UTi's response stated that it would supplement its response when a protective order was in effect, UTi failed to do so.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response, and its objections that this request seeks documents that are not relevant to the claims or factual allegations at issue in this action, and seeks confidential and proprietary business information of third parties. UTi does not intend to produce non-relevant, confidential and proprietary business information of its third-party customers.*

*Streak's Argument: As reflected above, UTi has simply refused to answer the interrogatory. Given that Streak seeks recovery against UTi based upon discriminatory billing practices and charging rates different than it has charges*

*similarly situated shippers, see Complaint at Paragraph V (B), the information sought is clearly relevant and discoverable.*

*UTi's Response: UTi incorporates its prior objections herein. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a showing of need. In addition to being overbroad, this Interrogatory seeks the production of non-relevant, confidential and business proprietary information belonging to third parties (UTi customers) not involved in this litigation. If this information were produced, it would jeopardize the competitive interests of UTi and its customers.*

**RULING: Motion to compel granted in part.**

For the reasons stated in the ruling on Interrogatory No. 15, UTi is ordered to supplement its response to Interrogatory No. 16 by identifying and describing the rates charged other shippers by UTi up to and including April 26, 2011, for imports of LCL shipments of computer storage devices or other electronic devices. *See also* RULING on Interrogatory No. 12.

**2. Streak's First Set of Document Requests.**

*Document Request No. 1: All invoices for shipments transported by UTi on behalf of Streak.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects on the grounds that the documents sought are equally available to the Complainant. Subject to and without waiving this objections and its General Objections, UTi will produce nonprivileged documents responsive to this request.*

*Streak objected to UTi's failure to produce responsive documents.*

*SUPPLEMENTAL RESPONSE: UTi Response: UTi repeats its General Objections, set forth in its May 28, 2013 response, and its objection that the documents sought are equally available to Streak. UTi further notes that Streak refused to provide this same information to UTi in its December 4, 2013 response to UTi's Discovery Request No. 2, stating that the invoices are already in UTi's possession. Subject to and without waiving these objections, and after undertaking a thorough review of its records, UTi responds that it has not issued any invoices to Streak Products. As stated above in its response to Interrogatory 4, UTi has identified one (1) bill of lading for which Streak was identified as the consignee. A copy of the bill of lading (No. 5860644358) was produced to Streak on December 3, 2013 (BATES No.*

*UTi00000119). UTi has sought through discovery requests from Streak regarding the shipments UTi allegedly transported on Streak's behalf, including invoices.*

*Streak's Argument: Streak continues to refuse to produce responsive document on the grounds that UTi failed to provide transportation services for Streak. This assertion is untrue. See, e.g., Exhibit D.*

*UTi's Response: UTi incorporates its prior objections herein. And, UTi has provided information regarding the one shipment that UTi has identified that it transported on behalf of Streak. Respectfully, the fact that UTi has provided an answer that Streak does not like, or agree with, does not equate to a refusal to answer.*

**RULING: Motion to compel granted in part.**

UTi was asked to produce invoices for shipments transported by UTi on behalf of Streak. UTi states that in response it provided the one bill of lading that it states it issued to Streak.

Because SYX Distribution was not a complainant at that time, UTi was not asked to produce invoices for shipments transported by UTi on behalf of SYX Distribution. In its responses to the questions filed on April 3, 2014, UTi states that it provided shipment services to SYX Distribution. Therefore, UTi is ordered to supplement its response by identifying and producing invoices for shipments transported by UTi on behalf of SYX Distribution.

*Document Request No. 4: All documents submitted to the Federal Maritime Commission by UTi as part of a voluntary disclosure.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi further objects to this request to the extent it seeks documents that are not relevant to the claims or factual allegations now at issue in this action. UTi further objects to this request to the extent it seeks confidential and proprietary business information. Subject to and without waiving these objections and its General Objections, UTi will produce non-privileged documents responsive to this request after a protective order has been entered in this case.*

*Streak objected to UTi's failure to produce responsive documents.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response, as well as its objections that this request seeks documents that are not relevant to the claims or factual allegations now at issue in this action and that the request seeks confidential and proprietary business information. Subject*

*to and without waiving these objections, UTi responds that it has not identified any nonprivileged documents responsive to this request.*

*Streak's Argument: Streak objects to UTi's failure to produce responsive documents. If any documents submitted to the Commission were once attorney-client privileged, such a privilege has been waived by their disclosure to the Commission. Further, given that UTi's Voluntary Disclosure was related to the very Shipping Act violations alleged here, the information disclosed is clearly relevant and probative. Accordingly, there is no legitimate basis for withholding these documents.*

*UTi's Response: As an initial matter, this request must be narrowed because it is overbroad. "All documents" relating to UTi's voluntary disclosures to the Commission includes documentation that is both irrelevant to this action and proprietary. Further, even if narrowed, Streak is not entitled to any of these documents because the voluntary disclosure made to the Commission constitutes confidential and proprietary business information. If this information were released, or shared within the community, it could significantly harm UTi's competitive interests. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a showing of need, which Streak has failed to demonstrate here.*

**RULING: Motion to compel granted in part.**

In its motion to dismiss, UTi conceded it violated the Act in the manner that Streak alleges: "Streak correctly alleges that UTi failed to comply with the tariff publishing requirements of the Shipping Act . . . . During the relevant period from 2009 to 2011, UTi had no published tariff rate in effect for any of the FCL or LCL shipment services it provided to Streak Products." (UTi Motion to Dismiss at 3.) UTi stated:

After a recent top-to-bottom review of its FMC-regulated activities, UTi discovered that the rates it charged to various customers, including Streak Products, over the past five years were not properly published in a tariff or contained in a non-tariff option (e.g., an NVOCC service arrangement or negotiated rate arrangement). UTi also learned that during the same period it did not have a general tariff in place covering commodities and trade lanes in which it provided services. Upon making this discovery, UTi immediately met with FMC officials and submitted an Initial Voluntary Self-Disclosure to the FMC's Bureau of Enforcement ("BOE") on March 11, 2013. Subsequently, on May 3, 2013, UTi submitted a Perfected Voluntary Self-Disclosure detailing the extent of its violations, the reason for its violations, its compliance efforts, its corrective actions, and mitigating circumstances. On May 9, 2013, UTi met again with BOE officials to discuss a final resolution of the matter. As of this filing, UTi and BOE are in final negotiations to reach a compromise

agreement whereby UTi will correct its tariff publishing practices and pay penalties for its violations as a final settlement of the matter.

(*Id.* at 3-4 (citations omitted).)

Streak's request asks for the information submitted to BOE as part of its self-disclosure: "All documents submitted to the Federal Maritime Commission by UTi as part of a voluntary disclosure." UTi objects to the request.

Regarding UTi's contention that the information is not relevant, Streak's Complaint is based on UTi's violation of three sections of the Act. UTi's negotiations with BOE concerned these sections of the Act. Therefore, the information may be relevant the Streak/SYX Distribution claim or UTi's defenses, or appears reasonably calculated to lead to the discovery of admissible evidence.

UTi is ordered to identify and produce documents in response to Document Request No. 4. To the extent UTi seeks to assert privilege or protection, UTi must produce a privilege log. Regarding UTi's contention that "it has not identified any nonprivileged documents responsive to this request," by providing the documents to BOE, it has waived claims of attorney-client privilege or attorney work product. *Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, FMC No. 09-01, Order at 8-12 (ALJ Oct. 23, 2011) (Memorandum and Order Granting in Part and Denying in Part Olympus Respondents' Motion to Compel Compliance with Outstanding Discovery). To the extent that the documents contain confidential and proprietary business information, unless and until the information is used in the proceeding, the parties may stipulate to protect the information, including limiting it to attorneys' eyes only.

*Document Request No. 11: All documents relating to the rates to be assessed to Streak.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent that it seeks confidential and proprietary business information. Subject to and without waiving its General Objections, UTi will produce nonprivileged documents responsive to this request after a protective order has been entered in this case.*

*Streak objected to UTi's failure to produce responsive documents.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response. Subject to and without waiving these objections, UTi has not identified any non-privileged documents related to rates to be assessed to Streak.*

*Streak's Argument: Streak objects to this response on the grounds that it is inconceivable that UTi provided transportation services on behalf of Streak over the*

*course of numerous years and never created a non-privileged document in regard to the rates it was charging. UTi is simply refusing to comply with its discovery obligations.*

*UTi's Response: UTi incorporates its prior objections herein. UTi has, in good faith, conducted a thorough review of its billing records and has identified no records that identify Streak. UTi simply has not charged Streak for any ocean transportation services, or for any other product or service. Respectfully, the fact that UTi has provided an answer that Streak does not like, or agree with, does not equate to a refusal to answer.*

**RULING: Motion to compel granted in part.**

UTi states that it “simply has not charged Streak for any ocean transportation services, or for any other product or service.” UTi has responded to the request for production of documents regarding Streak.

Because SYX Distribution was not a complainant at that time, UTi was not asked to identify and produce documents for shipments transported on behalf of SYX Distribution. In its responses to the questions filed on April 3, 2014, UTi states that it provided shipment services to SYX Distribution. Therefore, UTi is ordered to supplement its response by identifying and producing documents relating to the rates to be assessed to SYX Distribution.

UTi must produce a privilege log that complies with the requirements of Federal Rule of Civil Procedure 26(b)(5)(A) for any information that it contends is protected by attorney-client privilege or as attorney work product.

*Document Request No. 12: All documents used to determine what rates would apply to FCL shipments transported by UTi on behalf of Streak.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent that it seeks confidential and proprietary business information. Subject to and without waiving its General Objections, UTi will produce nonprivileged documents responsive to this request after a protective order has been entered in this case.*

*Streak objected to UTi's failure to produce responsive documents.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response. Subject to and without waiving these objections, UTi has not identified any non-privileged documents related to rates that would apply to FCL shipments transported by UTi on behalf of Streak.*

*Streak's Argument: Again, Streak objects to this response on the grounds that it is inconceivable that UTi provided FCL transportation services on behalf of Streak over the course of numerous years and never created a non-privileged document in regard to the rates it was charging. UTi is simply refusing to comply with its discovery obligations.*

*UTi's Response: UTi incorporates its prior objections herein. UTi has, in good faith, conducted a thorough review of its billing records and has identified no records that identify Streak. UTi simply has not charged Streak for any ocean transportation services, or for any other product or service. Respectfully, the fact that UTi has provided an answer that Streak does not like, or agree with, does not equate to a refusal to answer.*

**RULING: Motion to compel granted in part.**

UTi states that it “simply has not charged Streak for any ocean transportation services, or for any other product or service.” UTi has responded to the request for production of documents regarding Streak.

UTi states that it “will produce nonprivileged documents responsive to this request after a protective order has been entered in this case.” UTi must produce a privilege log that complies with the requirements of Federal Rule of Civil Procedure 26(b)(5)(A) for any information that it contends is protected by attorney-client privilege or as attorney work product.

Because SYX Distribution was not a complainant at that time, UTi was not asked to produce documents used to determine what rates would apply to FCL shipments transported by UTi on behalf of SYX Distribution. In its responses to the questions filed on April 3, 2014, UTi states that it provided shipment services to SYX Distribution. Therefore, UTi is ordered to supplement its response by identifying and producing documents relating to shipments transported on behalf of SYX Distribution.

*Document Request No. 13: All documents used to determine what rates would apply to LCL shipments transported by UTi on behalf of Streak.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent that it seeks confidential and proprietary business information. Subject to and without waiving its General Objections, UTi will produce nonprivileged documents responsive to this request after a protective order has been entered in this case.*

*Streak objected to UTi's failure to produce responsive documents.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response. Subject to and without waiving these objections, UTi has not identified any non-privileged documents related to rates that would apply to LCL shipments transported by UTi on behalf of Streak.*

*Streak's Argument: Again, Streak objects to this response on the grounds that it is inconceivable that UTi provided LCL transportation services on behalf of Streak over the course of numerous years and never created a non-privileged document in regard to the rates it was charging. UTi is simply refusing to comply with its discovery obligations.*

*UTi's Response: UTi incorporates its prior objections herein. UTi has, in good faith, conducted a thorough review of its billing records and has identified no records that identify Streak. UTi simply has not charged Streak for any ocean transportation services, or for any other product or service. Respectfully, the fact that UTi has provided an answer that Streak does not like, or agree with, does not equate to a refusal to answer.*

**RULING: Motion to compel granted in part.**

UTi states that it “simply has not charged Streak for any ocean transportation services, or for any other product or service.” UTi has responded to the request for production of documents regarding Streak.

UTi states that it “will produce nonprivileged documents responsive to this request after a protective order has been entered in this case.” UTi must produce a privilege log that complies with the requirements of Federal Rule of Civil Procedure 26(b)(5)(A) for any information that it contends is protected by attorney-client privilege or as attorney work product.

Because SYX Distribution was not a complainant at that time, UTi was not asked to produce documents used to determine what rates would apply to LCL shipments transported by UTi on behalf of SYX Distribution. In its responses to the questions filed on April 3, 2014, UTi states that it provided shipment services to SYX Distribution. Therefore, UTi is ordered to supplement its response by identifying and producing documents relating to shipments transported on behalf of SYX Distribution.

*Document Request No. 14: Copies of all compliance audits relating to UTi's tariff publications.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi objects that this request is overly broad and burdensome. UTi also objects to this request to the extent it seeks documents that are not relevant to the*

*claims or factual allegations now at issue in this action. UTi further objects to this request to the extent that it seeks confidential and proprietary business information. Subject to and without waiving these objections and its General Objections, UTi will produce non-privileged documents responsive to this request after counsel for the parties have reached agreement related to a narrowing of this request and a protective order has been entered in this case.*

*Streak objected to UTi's failure to produce responsive documents.*

*SUPPLEMENTAL RESPONSE: UTi repeats its General Objections, set forth in its May 28, 2013 response, and its objections that this request is overly broad and burdensome and that this request seeks documents that are not relevant to the claims or factual allegations now at issue in this action. As stated in its May 28, 2013 response, UTi accordingly requests a narrowing of this request. Subject to and without waiving these objections, UTi has not identified any non-privileged documents responsive to this request.*

*Streak's Argument: Streak objects to this response on the grounds that defies belief that UTi would not have conducted a single compliance audit in regard to its tariff publications since 2003. If it has done so, such documents are discoverable.*

*UTi's Response: UTi incorporates its prior objections herein. Streak's argument here rests on a false premise and blatant misrepresentation of the facts. UTi has never stated that it has "not conducted a single compliance audit in regard to its tariff publications." Rather, UTi has stated that it has not identified any non-privileged documents responsive to this request. The potentially responsive documents identified by UTi were drafted by UTi counsel in anticipation of litigation, and, as such, are protected by the attorney work product doctrine and shielded from production.*

**RULING: Motion to compel granted in part.**

UTi states that "potentially responsive documents" were identified by UTi, but that the documents "were drafted by UTi counsel in anticipation of litigation, and, as such, are protected by the attorney work product doctrine and shielded from production." UTi is ordered to identify and produce documents in response to Document Request No. 14. UTi must produce a privilege log that complies with the requirements of Federal Rule of Civil Procedure 26(b)(5)(A) for any information that it contends is protected by attorney-client privilege or as attorney work product.

**3. Streak's Second Set of Interrogatories.**

*Interrogatory No. 1: State the amounts paid to carriers for all shipments transported by UTi on behalf of Streak from 2003 to the present.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request because it seeks confidential and proprietary business information that is not relevant to the claims or factual allegations now at issue in this action. UTi does not intend to provide non-relevant, confidential and proprietary business information*

*Streak's Argument: Streak objects to UTi's refusal to provide responsive information on relevance grounds. As reflected above, binding Commission authority recognizes that to the extent that a carrier had no published tariff, as it contends, reparations could be awarded to a shipper based on that failure and that under those circumstances, damages might be calculated based upon whatever it paid the NVOCC, less whatever payments were made by the NVOCC that the shipper would otherwise have had to pay. Accordingly, the information sought is clearly relevant.*

*UTi's Response: UTi incorporates its prior objections herein. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a showing of need. In addition to being overbroad, this request seeks the production of non-relevant, confidential and business proprietary information belonging to third parties (carriers) not involved in this litigation. If this information were produced, it would jeopardize the competitive interests of UTi and the affected carriers.*

**RULING: Motion to compel granted in part.**

Regarding UTi's contention that the amount it paid to carriers is not relevant, these rates may be relevant the Streak/SYX Distribution claim or UTi's defenses, or appears reasonably calculated to lead to the discovery of admissible evidence. To the extent that the answer contains confidential and proprietary business information, unless and until the information is used in the proceeding, the parties may stipulate what protection they can agree on, including attorneys' eyes only. Because SYX Distribution was not a complainant at that time discovery was served, UTi was not asked to state the amounts paid to carriers for all shipments transported by UTi on behalf of SYX Distribution. In its responses to the questions filed on April 3, 2014, UTi states that it provided shipment services to SYX Distribution. Therefore, UTi is ordered to supplement its response by stating the amounts paid to carriers for all shipments transported by UTi on behalf of Streak and SYX Distribution.

*Interrogatory No. 2: Identify all shipments transported by UTi on behalf of Systemax and/or its affiliates, including but not limited to Global Equipment, from 2003 to the present.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent it seeks documents that are not relevant to the claims or factual allegations now at issue in this action. UTi further objects to this request to the extent it seeks confidential and proprietary business information of third parties. In addition, UTi objects to this request as vague and ambiguous with respect to "Global Equipment," which is not defined herein and identified only as a Systemax affiliate, and Systemax's "affiliates." UTi lacks sufficient knowledge regarding the corporate structure of Systemax to determine the scope or application of this interrogatory. Subject to and without waiving these objections, UTi states that it has already identified shipments transported on behalf of Streak and Systemax.*

*Streak's Argument: Streak objects to UTi's interrogatory response on the grounds that it is flatly contrary to the documented facts. UTi has billed Streak and its affiliates for transportation services provided dating back for numerous years. In its document production, UTi has produced only a limited number of documents and that limited set of documents only dates back to 2010. Thus, its statement that it has already identified all shipments transported on behalf of Streak, Systemax and its affiliates is untrue.*

*UTi's Response: UTi incorporates its prior objections herein. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a showing of need. In addition to being overbroad, this request seeks the production of non-relevant, confidential and business proprietary information belonging to third parties (carriers and UTi customers) not involved in this litigation. If this information were produced, it would jeopardize the competitive interests of UTi and the affected third parties. UTi maintains that this request is: (1) vague and ambiguous with respect to "Global Equipment" and unspecified Systemax affiliates, and (2) seeks information unrelated to Streak's Verified Complaint. UTi simply lacks sufficient knowledge to identify the other "affiliates" that Streak thinks are relevant to this proceeding, and is not familiar with "Global Equipment," which Streak fails to define. It is not UTi's responsibility to speculate as to the information sought by Complainant's discovery requests. If Streak wishes to seek discovery related to a certain affiliate, it is well within Streak's ability to properly identify and define that affiliate.*

*Finally, UTi strongly objects to Streak's characterization that "the statement that [UTi] has already identified all shipments transported on behalf of Streak, Systemax, and its affiliates is untrue." Your Honor will note from the above repeated discourse that UTi clearly did not represent that it has identified all shipments on behalf of Streak affiliates. In fact, UTi has repeatedly stated that it cannot deduce the meaning of Streak's reference to "affiliates."*

**RULING: Motion to compel denied.**

UTi's objection on the ground that the interrogatory is vague and ambiguous is sustained. Streak Products, Inc., and SYX Distribution, Inc., are the complainants in this proceeding. According to the Amended Complaint, SYX Distribution "is sometimes referred to as Systemax Distribution on bills of lading and invoices." (Amended Complaint ¶ I.D.) To the extent Second Interrogatory No. 2 asks UTi to identify shipments of computer storage devices or other electronic devices transported for SYX Distribution, the information will be provided by the supplemental response to First Interrogatory No. 4. To the extent Second Interrogatory No. 2 asks UTi to identify shipments of computer storage devices transported for Systemax or Global Equipment, whether or not affiliated with Complainants, they should be identified in response to First Set of Interrogatories No. 11.

*Interrogatory No. 3: State the amounts paid to carriers for all shipments transported by UTi on behalf of Systemax and/or its affiliates, including but not limited to Global Equipment, from 2003 to the present.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent it seeks documents that are not relevant to the claims or factual allegations now at issue in this action. UTi further objects to this request to the extent it seeks confidential and proprietary business information of third parties. In addition, UTi objects to this request as vague and ambiguous with respect to "Global Equipment," which is not defined herein and identified only as a Systemax affiliate, and Systemax's "affiliates." UTi lacks sufficient knowledge regarding the corporate structure of Systemax to determine the scope or application of this interrogatory. Subject to and without waiving these objections, UTi states that it has already identified shipments transported on behalf of Streak and Systemax.*

*Streak's Argument: Streak objects to UTi's refusal to provide responsive information on relevance grounds. As reflected above, binding Commission authority recognizes that to the extent that a carrier had no published tariff, as it contends, reparations could be awarded to a shipper based on that failure and that under those circumstances, damages might be calculated based upon whatever it paid the NVOCC, less whatever payments were made by the NVOCC that the shipper would otherwise have had to pay. Accordingly, the information sought is clearly relevant.*

*UTi's Response: UTi incorporates its prior objections herein. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a*

*showing of need. In addition to being overbroad, this request seeks the production of non-relevant, confidential and business proprietary information belonging to third parties (carriers and customers) not involved in this litigation. If this information were produced, it would jeopardize the competitive interests of UTi and the affected third parties.*

**RULING: Motion to compel denied.**

UTi's objection on the ground that the interrogatory is vague and ambiguous is sustained. Streak Products, Inc., and SYX Distribution, Inc., are the complainants in this proceeding. Systemax and Global Equipment are not complainants. UTi is not charged with the responsibility of determining whether entities for which it provided transportation are affiliates of Streak or SYX Distribution. If UTi transported computer storage devices or other electronic devices for Systemax or Global Equipment, whether or not affiliated with Complainants, the rates they were charged by UTi should be stated in response to First Set of Interrogatories No. 16.

Complainants articulate three claims against UTi. First, they claim that UTi charged Complainants rates greater than those reflected in its published tariff. Assuming they prevail on this claim, given the fact that UTi did not have a published tariff, it may be that the difference between the rate UTi charged Streak or SYX Distribution for a particular shipment and the rate the downstream carrier charged UTi for that shipment is a measure of damage. The difference between the rate UTi charged shippers other than Complainants for a particular shipment and the rate the downstream carrier charged UTi for that shipment is not a measure of damage to Complainants. Second, Complainants claim that UTi charged Complainants rates greater than it charged other shippers. Assuming they prevail on this claim, although the difference between what UTi charged Complainants and what UTi charged other shippers may be a measure of damage for Complainants, the difference between what the downstream carrier charged UTi and what UTi charged the other shippers on those shipments is not a measure of damages for Complainants. Third, Complainants claim that they suffered actual injury from UTi's failure to publish a tariff. Assuming they prove actual injury from this failure, the difference between what UTi charged other shippers on their shipments and what the downstream carriers charged UTi would not be a measure of Complainant's injury. Therefore, the amount UTi paid downstream carriers for shipments by other shippers does not appear to be relevant.

**4. Streak's Second Set of Document Requests.**

*Document Request No. 1: All documents reflecting amounts paid to carriers for shipments transported by UTi on behalf of Streak.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request because it seeks confidential and proprietary business information that is not relevant to the claims or factual allegations now at*

*issue in this action. UTi does not intend to produce non-relevant, confidential and proprietary business information.*

*Streak's Argument: Streak objects to UTi's refusal to provide responsive documents on relevance grounds. As reflected above, binding Commission authority recognizes that to the extent that a carrier had no published tariff, as it contends, reparations could be awarded to a shipper based on that failure and that under those circumstances, damages might be calculated based upon whatever it paid the NVOCC, less whatever payments were made by the NVOCC that the shipper would otherwise have had to pay. Accordingly, the documents sought are clearly relevant.*

*UTi's Response: UTi incorporates its prior objections herein. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a showing of need. In addition to being overbroad, this request seeks the production of non-relevant, confidential and business proprietary information belonging to third parties (carriers) not involved in this litigation. If this information were produced, it would jeopardize the competitive interests of UTi and the affected carriers.*

**RULING: Motion to compel granted.**

Regarding UTi's contention that the amount it paid to downstream carriers for shipments by Streak and SYX Distribution is not relevant, these rates may be relevant the Streak/SYX Distribution claim or UTi's defenses, or appears reasonably calculated to lead to the discovery of admissible evidence. To the extent that the documents contain confidential and proprietary business information, unless and until the information is used in the proceeding, the parties may stipulate what protection they can agree on, including attorneys' eyes only. Because SYX Distribution was not a complainant at that time discovery was served, UTi was not asked to provide documents reflecting amounts paid to carriers for shipments transported by UTi on behalf of SYX Distribution. In its responses to the questions filed on April 3, 2014, UTi states that it provided shipment services to SYX Distribution. Therefore, UTi is ordered to supplement its response by providing documents reflecting amounts paid to carriers all shipments transported by UTi on behalf of Streak and SYX Distribution.

*Document Request No. 2: All invoices for shipments transported by UTi on behalf of Systemax and/or its affiliates, including but not limited to Global Equipment, from 2003 to the present.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent it seeks documents that are not relevant to the claims or factual allegations now at issue in this action. UTi further objects to this request to the extent it seeks confidential and proprietary business*

*information of third parties. In addition, UTi objects to this request as vague and ambiguous with respect to "Global Equipment," which is not defined herein and identified only as a Systemax affiliate, and Systemax's "affiliates." UTi lacks sufficient knowledge regarding the corporate structure of Systemax to determine the scope or application of this document request. UTi does not intend to produce non-relevant, confidential and proprietary business information of its third-party customers. Subject to and without waiving these objections, UTi states that it has already produced all non-privileged documents relating to Streak and Systemax.*

*Streak's Argument: Streak objects to UTi's response to the document request on the grounds that it is flatly contrary to the documented facts. UTi has billed Streak and its affiliates for transportation services provided dating back for numerous years. In its document production, UTi has produced documents only dating back to 2010. Thus, its statement that it has already identified all shipments transported on behalf of Streak, Systemax and its affiliates is untrue.*

*UTi's Response: UTi incorporates its prior objections herein. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a showing of need. In addition to being overbroad, this request seeks the production of non-relevant, confidential and business proprietary information belonging to third parties (carriers and UTi customers) not involved in this litigation. If this information were produced, it would jeopardize the competitive interests of UTi and the affected third parties. UTi's maintains that this request is: (1) vague and ambiguous with respect to "Global Equipment" and unspecified Systemax affiliates, and (2) seeks information unrelated to Streak's Verified Complaint. UTi simply lacks sufficient knowledge to identify the other "affiliates" that Streak thinks are relevant to this proceeding, and is not familiar with "Global Equipment," which Streak fails to define. It is not UTi's responsibility to speculate as to the information sought by Complainant's discovery requests. If Streak wishes to seek discovery related to a certain affiliate, it is well within Streak's ability to properly identify and define that affiliate.*

*Finally, UTi strongly objects to Streak's characterization that "the statement that [UTi has already identified all shipments transported on behalf of Streak, Systemax, and its affiliates is untrue." Your Honor will note from the above repeated discourse that UTi clearly did not represent that it has identified all shipments on behalf of Streak affiliates. In fact, UTi has repeatedly stated that it cannot deduce the meaning of Streak's reference to "affiliates."*

**RULING: Motion to compel denied.**

For the reasons stated in the ruling on Second Interrogatory No. 3, the motion to compel is denied.

*Document Request No. 3: All documents reflecting amounts paid to carriers for shipments transported by UTi on behalf of Systemax and/or its affiliates, including but not limited to Global Equipment, from 2003 to the present.*

*RESPONSE: UTi incorporates into this response its General Objections set forth above. UTi also objects to this request to the extent it seeks documents that are not relevant to the claims or factual allegations now at issue in this action. UTi further objects to this request to the extent it seeks confidential and proprietary business information of third parties. In addition, UTi objects to this request as vague and ambiguous with respect to "Global Equipment," which is not defined herein and identified only as a Systemax affiliate, and Systemax's "affiliates." UTi lacks sufficient knowledge regarding the corporate structure of Systemax to determine the scope of this document request. UTi does not intend to produce non-relevant, confidential and proprietary business information of its third-party customers. Subject to and without waiving these objections, UTi states that it has already produced all non-privileged documents relating to Streak and Systemax.*

*Streak's Argument: Streak objects to UTi's refusal to provide responsive documents on relevance grounds. As reflected above, binding Commission authority recognizes that to the extent that a carrier had no published tariff, as it contends, reparations could be awarded to a shipper based on that failure and that under those circumstances, damages might be calculated based upon whatever it paid the NVOCC, less whatever payments were made by the NVOCC that the shipper would otherwise have had to pay. Accordingly, the information sought is clearly relevant.*

*UTi's Response: UTi incorporates its prior objections herein. Due to the dangers associated with the production of confidential and proprietary information, such disclosure is considered inherently burdensome and should not be ordered absent a showing of need. In addition to being overbroad, this request seeks the production of non-relevant, confidential and business proprietary information belonging to third parties (carriers and UTi customers) not involved in this litigation. If this information were produced, it would jeopardize the competitive interests of UTi and the affected third parties. UTi maintains that this request is: (1) vague and ambiguous with respect to "Global Equipment" and unspecified Systemax affiliates, and (2) seeks information unrelated to Streak's Verified Complaint. UTi simply lacks sufficient knowledge to identify the other "affiliates" that Streak thinks are relevant to this proceeding, and is not familiar with "Global Equipment," which Streak fails to define. It is not UTi's responsibility to speculate as to the information sought by Complainant's discovery requests. If Streak wishes to seek discovery related to a*

*certain affiliate, it is well within Streak's ability to properly identify and define that affiliate.*

**RULING: Motion to compel denied.**

For the reasons stated in the ruling on Second Interrogatory No. 3, the motion to compel is denied.

**IV. STREAK'S REQUEST FOR ATTORNEY'S FEES IS DENIED.**

Streak requests an award of attorney's fees based on UTi's alleged failure to "engage in a good faith effort to provide meaningful responses to discovery." (Motion to Compel at 5, *citing* Fed. R. Civ. P. 37(a)(5)(A) and several federal court cases.) Federal Rules of Civil Procedure are only applicable in Commission proceedings "for situations which are not covered by a specific Commission rule." 46 C.F.R. § 502.12. The Commission has a specific rule covering sanctions for failure to respond to discovery. 46 C.F.R. § 502.210. Commission Rule 210 does not provide for an award of attorney's fees for failure to respond to discovery. *Compare* 46 C.F.R. § 502.210 with Fed. R. Civ. P. 37. Furthermore, "[b]efore an agency may order a litigant to bear his adversary's expenses, 'it must be granted clear statutory power by Congress.'" *Congressional Research Service: Awards of Attorneys' Fees by Federal Courts and Federal Agencies*, at 24 (updated June 20, 2008) (available at <http://www.fas.org/sgp/crs/misc/94-970.pdf>, last visited Apr. 4, 2014) (*quoting* *Turner v. F.C.C.*, 514 F.2d 1354, 1355-1356 (D.C. Cir. 1975)). Although the Shipping Act grants the Commission the power to award attorney's fees in connection with a reparation award, 46 U.S.C. § 41305, it does not grant the Commission the power to award attorney's fees in connection with a discovery dispute. Therefore, the request for attorney's fees is denied.

**ORDER**

Upon consideration of Streak Products, Inc.'s Motion to Compel UTi, United States, Inc. to Respond to Discovery Requests, the opposition thereto, the record herein, and for the reasons stated above, it is hereby

**ORDERED** that the motion be **GRANTED IN PART** and **DENIED IN PART**. On or before April 21, 2014, respondent UTi, United States, Inc., must supplement its responses to discovery served by Streak Products, Inc., as set forth above.



Clay G. Guthridge  
Administrative Law Judge