

S E R V E D  
March 2, 2015  
FEDERAL MARITIME COMMISSION

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**DOCKET NO. 14-04**

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**EDAF ANTILLAS, INC.**

**v.**

**CROWLEY CARIBBEAN LOGISTICS, LLC;  
IFS INTERNATIONAL FORWARDING, S.L.; and  
IFS NEUTRAL MARITIME SERVICES**

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**ORDER FOR COMPLAINANT TO FILE PAPERS AND TO SHOW CAUSE;  
ORDER FOR RESPONDENTS TO FILE SUPPLEMENTAL BRIEFS**

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**I. BACKGROUND.**

The January 14, 2015, Briefing Schedule required Complainant Edaf Antillas, Inc. (Edaf Antillas) to file its proposed findings of fact, brief, and appendix on February 23, 2015. *Edaf Antillas, Inc. v. Crowley Caribbean Logistics, LLC; IFS International Forwarding, S.L.; and IFS Neutral Maritime Services*, FMC No. 14-04 (ALJ Jan. 14, 2015) (January 14, 2015, Briefing Schedule). As of the date of this Order, the Secretary has not received the required filings.

On February 24, 2015, respondents IFS Neutral Maritime Service, Inc. (Neutral) and IFS International Forwarding, S.L. (IFS) (jointly IFS/Neutral) filed a Motion to Dismiss the Action and for Attorney Fees. The motion to dismiss is based on their contention that by failing to comply with the January 14, 2015, Briefing Schedule, Edaf Antillas has failed to prosecute its claim.

Regarding attorney fees, historically, the Shipping Act of 1984 limited an award of attorney fees to a complainant that received a reparation award. "A person may file with the . . . Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation." 46 U.S.C. § 41301(a). "If the complaint was filed within the period specified in section 41301(a) of this title, the . . . Commission shall direct the payment of

reparations to the complainant for actual injury caused by a violation of this part, plus reasonable attorney fees.” 46 U.S.C. § 41305(b).

IFS/Neutral’s motion for attorney fees is based on a December 18, 2014, amendment to the Act. This amendment deleted the phrase “plus reasonable attorney fees” from section 41305(b) and added a new section 41305(e): “*Attorney Fees.* – In any action brought under section 41301, the *prevailing party* may be awarded reasonable attorney fees.” Howard Coble Coast Guard and Maritime Transportation Act of 2014, Public Law No. 113-281, § 402, 128 Stat. 3022 (Dec. 18, 2014) (emphasis added). IFS/Neutral contend that if the Complaint is dismissed, they will be “prevailing part[ies]” entitled to an award of attorney fees.

On February 25, 2015, respondent Crowley Caribbean Logistics, LLC (CCL) filed a motion to dismiss based on Edaf Antillas’s failure to comply with the Briefing Schedule. CCL also contends that Edaf Antillas failed to serve timely responses to discovery and failed to make its accountant available for deposition. CCL included a claim that it should be awarded attorney fees pursuant to the December 18, 2014, amendment to the Act.

## **II. ORDER FOR EDAF ANTILLAS TO FILE PAPERS AND TO SHOW CAUSE WHY ITS COMPLAINT SHOULD NOT BE DISMISSED.**

The January 14, 2015, Briefing Schedule required Edaf Antillas to file its proposed findings of fact, brief, and appendix on February 23, 2015. I take official notice of Commission records showing that on January 14, 2015, the Briefing Schedule was sent by email to Carlos E. Matos, Edaf Antillas’s representative, at carlos@forsapr.com, and that on January 15, 2015, Carlos E. Matos responded by email “Received. Thanks.” Therefore, Edaf Antillas had notice of the requirement that it file its papers.

As noted by the motions to dismiss, Edaf Antillas is currently in default of the obligations imposed on it by the Briefing Schedule and failure to respond to discovery. Commission rules provide that a Commission complaint may be dismissed for failure to prosecute. 46 C.F.R. § 502.72(b). A motion to dismiss is a dispositive motion. 46 C.F.R. § 502.69(g). A party has fifteen days to respond to a motion to dismiss. 46 C.F.R. § 502.70(b). Therefore, Edaf Antillas’s response to IFS/Neutral’s motion is due March 11, 2015, and Edaf Antillas’s response to CCL’s motion is due March 12, 2015. *I sua sponte* enlarge the time for Edaf Antillas to respond to IFS/Neutral’s motion to March 12, 2015. Therefore, the responses to both motions are due March 12, 2015.

There may be some valid reason why Edaf Antillas has failed to file its proposed findings of fact, brief, and appendix and failed to respond to discovery. Therefore, on or before March 12, 2015, Edaf Antillas must explain why it did not file its papers as required by the Briefing Schedule and show cause why its Complaint should not be dismissed for failure to file its papers timely and failure to respond to discovery. Edaf Antillas must also file its proposed findings of fact, brief, and appendix with its explanation of why it did not file them on time. If Edaf Antillas responds as required, Respondents’ responses will be due March 19, 2015. If Edaf Antillas fails to respond to this Order by March 12, 2015, an initial decision dismissing its Complaint with prejudice and granting other remedies may be entered.

### III. ORDER TO FILE SUPPLEMENTAL BRIEFS.

To support their claims for attorney fees, Respondents rely on the December 18, 2014, amendment to the Shipping Act. Edaf Antillas commenced this action on April 28, 2014. Other than the January 14, 2015, Briefing Schedule, the last significant event occurred on December 8, 2014, when the Commission issued a notice that it would not review the November 6, 2014, order dismissing a number of Edaf Antillas's claims. Respondents do not offer any justification supporting a contention that this is a situation where the Commission should "apply the law in effect at the time it renders its decision," *Bradley v. Richmond School Bd.*, 416 U.S. 696, 711 (1974), instead of a situation where "retroactivity is not favored in the law. . . . Congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Therefore, Respondents are ordered to file supplemental briefs to their motions to dismiss addressing the question of whether and why the December 18, 2014, amendment to section 41305 of the Shipping Act should be applied in this proceeding.

### ORDER

For the reasons stated above, it is hereby

**ORDERED** that the time for complainant Edaf Antillas, Inc., to respond to the Motion to Dismiss the Action and for Attorney Fees filed by respondents IFS Neutral Maritime Service, Inc., and IFS International Forwarding, S.L. be enlarged to March 12, 2015, the same date the response is due to the motion to dismiss for failure to prosecute filed by respondent Crowley Caribbean Logistics, LLC. It is

**FURTHER ORDERED** that on or before March 12, 2015, complainant Edaf Antillas, Inc., show cause why an initial decision dismissing its Complaint should not be entered for failure to comply with the January 14, 2015, Briefing Schedule and failure to respond to discovery. The response to this show cause order must include the proposed findings of fact, brief, and appendix required by the Briefing Schedule. It is

**FURTHER ORDERED** that on or before March 19, 2015, respondents IFS Neutral Maritime Service, Inc., and IFS International Forwarding, S.L. and respondent Crowley Caribbean Logistics, LLC, file supplemental briefs addressing the issue of whether and why section 402 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014, Pub. L. No. 113-281, 128 Stat. 3022 (Dec. 18, 2014) amending section 41305 of the Shipping Act should be applied in this proceeding. On or before March 26, 2015, Edaf Antillas may file replies to these briefs.

  
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Clay G. Guthridge  
Administrative Law Judge