

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-04

EDAF ANTILLAS, INC.

v.

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

RESPONDENT CCL'S RESPONSE TO IFS REQUEST FOR RELIEF

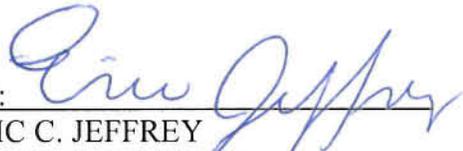
On January 30, 2015, Respondent IFS requested relief regarding the repeatedly postponed deposition of Salvador Lugo Cosme. The only stated basis for this relief was the concern that Mr. Cosme might provide testimony in this matter, through an affidavit or similar statement attached to the briefs to be submitted by Complainant Edaf.

CCL believes that the request for relief should be denied as moot, because testimony in the form of new affidavits or similar means is not contemplated by the Presiding Judge's Scheduling Order or by the Commission's rules of practice and procedure. The January 14, 2015 Scheduling Order includes the filing of Appendices containing "documentary evidence." Documentary evidence is evidence that presents already recorded information on paper (or other media on which information is preserved) and that is presented solely for the examination of its contents— such as contracts, wills, photographs, emails, etc. It does not include testimony, either oral or written. Moreover, the FMC rules provide specific methods and procedures for use of written testimony, which does not contemplate their exchange as part of the subsequent briefing process. 46 C.F.R. 502.157.

Attaching written testimony to briefs would also be inconsistent with the Administrative Procedure Act and due process, especially to the extent submitted with Complainant's reply brief, as it would contravene the requirement that a respondent be allowed to know and respond to the evidence against it.¹

CCL understands the frustration faced by IFS, and would have supported a request for appropriate relief. But inasmuch as the request for relief is premised solely on possible testimony by Mr. Cosme, it should be denied as unnecessary for the reasons given above.

Respectfully submitted,

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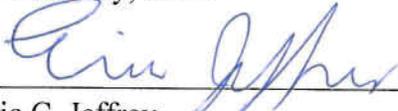
February 6, 2015

¹ See, e.g., *Chernekov v. United States*, 219 F.2d 721, 723 (9th Cir. 1955) (“The fair hearing essential to meet minimum requirements of any accepted notion of due process includes the opportunity to know of adverse evidence and to be heard concerning its truth, relevancy, and significance.”); *Robbins v. United States Railroad Retirement Board*, 594 F.2d 448, 451 (5th Cir. 1979) (statutory requirement of fair hearing mandates that party be given “an opportunity to know what evidence is to be used against him and to rebut it if he can”).

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record by e-mailing a copy to each person.²

Dated at Washington, DC, this 6th day of February, 2015.



Eric C. Jeffrey
Counsel for Crowley Caribbean Logistics, LLC

² The Parties agreed in the August 11, 2014 Joint Status Report that service among them would be effectuated by email, to reduce both delays and costs.