

S	E	R	V	E	D
March 10, 2015					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

v.

AMOY INTERNATIONAL, LLC

**ORDER ON COMPLAINANT'S MOTION TO COMPEL AND REQUEST FOR ORAL
ARGUMENT AND ON RESPONDENT'S OBJECTION TO EXHIBIT**

On February 9, 2015, Complainant Econocaribe Consolidators, Inc. ("Econocaribe") filed a motion seeking to compel discovery ("Motion"). On February 17, 2015, Respondent Amoy International, LLC ("Amoy") filed its opposition to the motion ("Opposition"). Amoy also filed an objection to website printouts in exhibit 1 of Complainant's motion to compel ("Objection to Exh. 1"). On February 25, 2015, Econocaribe submitted a letter requesting oral argument on the motion to compel. On February 25, 2015, Amoy submitted a letter responding to Econocaribe's letter from earlier that day.

Motion to Compel

Econocaribe seeks personnel files of two of Amoy's former employees, arguing that their rights to privacy are not shielded from discovery; the personnel files are directly relevant to Econocaribe's claims; the information sought is not otherwise readily obtainable; and the requests are narrowly tailored to Econocaribe's claims. Motion at 3-6.

Amoy states that it has no objection, if ordered, to providing "information related to disciplinary actions, admission after incidents of misdeclaration, involvement in prior litigation, etc." for Ms. Lee but not Ms. Reynolds. Opposition at 2. Amoy contends that seeking the complete employment file of an employee is overbroad on its face, the request for Ms. Reynold's personnel records is a fishing expedition, and exhibit 1 is inadmissible based on a lack of foundation. Opposition at 2-5, Objection to Exh. 1 at 1-2.

The Commission's Rules permit discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding." 46 C.F.R. § 502.201(h). However, the Commission Rules also permit the presiding officer to "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." 46 C.F.R. § 502.201(i).

"It is fundamental that the scope of discovery is not limitless and is restricted by the concepts of relevancy." *American President Lines, Ltd. v. Cyprus Mines Corp. and Cyprus Minerals Co.*, 26 S.R.R. 1227, 1234 (FMC 1994). As Amoy concedes, information related to disciplinary actions and involvement in prior litigation is relevant to the proceeding. Although it appears that Ms. Reynold's role in the transaction at issue in this proceeding was not as significant as the role played by Ms. Lee, they both participated in the shipment. Therefore, discovery will be permitted regarding information related to any reprimand, disciplinary action, or involvement in prior litigation in the personnel records of Ms. Lee and Ms. Reynolds.

Objection to Exhibit

Amoy objects to exhibit 1 of Complainant's motion to compel, based on a lack of foundation or authentication of the website printouts. Objection to Exh. 1 at 1. Pursuant to Commission Rule 156 and the Administrative Procedure Act, "all evidence which is relevant, material, reliable and probative, and not unduly repetitious or cumulative, shall be admissible." 46 C.F.R. § 502.156; 5 U.S.C. § 556(d). The website printouts will be admitted and the parties' arguments will be considered in determining the weight given to them.

Request for Oral Argument

In addition to the motion and opposition, the parties filed additional letter motions, including a request for oral argument on the motion to compel. Econocaribe indicates that the "issues may be better addressed at oral argument" after identifying and discussing the issues it wishes to address. Amoy contends that the request for oral argument "is in fact a reply to Amoy's response and in violation of 46 C.F.R. 502.210(a)(4)."

Econocaribe has not established that an oral hearing on the motion to compel is required. In addition, Econocaribe has not moved to file a reply and has not established extraordinary circumstances to reply to the opposition. In the future, if a party wishes to file a response beyond that authorized by the Commission's rules, it must file a motion requesting leave demonstrating extraordinary circumstances. Requests made by letter will not be accepted.

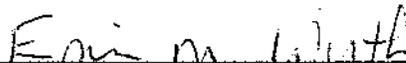
For the above-stated reasons, it is hereby

ORDERED that Complainants' motion to compel be **DENIED IN PART** and **GRANTED IN PART**. It is

FURTHER ORDERED that on or before March 19, 2015, Amoy produce information related to any reprimand, disciplinary action, or involvement in prior litigation in the personnel records of Ms. Lee and Ms. Reynolds. It is

FURTHER ORDERED that Respondent's objection to exhibit 1 of the motion to compel be **DENIED**. It is

FURTHER ORDERED that Complainant's request for oral argument be **DENIED**.



Erin M. Wirth
Administrative Law Judge