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February 3, 2016					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 16-01

**CARGO AGENTS, INC, INTERNATIONAL TRANSPORT MANAGEMENT CORP.,
AND RCL AGENCIES, INC., ON BEHALF OF THEMSELVES
AND ALL OTHERS SIMILARLY SITUATED**

v.

**NIPPON YUSEN KABUSHIKI KAISHA, NYK LINE (NORTH AMERICA) INC.,
MITSUI O.S.K. LINES, LTD., MITSUI O.S.K. BULK SHIPPING (USA) INC.,
WORLD LOGISTICS SERVICE (U.S.A.), INC., KAWASAKI KISEN KAISHA LTD.,
“K” LINE AMERICA, INC., EUKOR CAR CARRIERS INC.,
WALLENIUS WILHELMSSEN LOGISTICS AS, WALLENIUS WILHELMSSEN
LOGISTICS AMERICAS LLC, COMPAÑIA SUD AMERICANA DE VAPORES S.A.,
CSAV AGENCY NORTH AMERICA, LLC, HÖEGH AUTOLINERS HOLDINGS AS,
HÖEGH AUTOLINERS AS, HÖEGH AUTOLINERS, INC., AUTOTRANS AS,
ALLIANCE NAVIGATION LLC, AND NISSAN MOTOR CAR CARRIER CO., LTD.**

**ORDER ON COMPLAINANTS' MOTION FOR EXTENSION OF TIME TO ANSWER
RESPONDENTS' CONSOLIDATED MOTION TO STAY PROCEEDINGS**

On January 7, 2016, the Commission issued a Notice of Filing of Complaint and Assignment indicating that a private party complaint had been filed and that Complainants sought certification to proceed as a class action. On January 25, 2016, Respondents filed a motion seeking to stay the proceeding pending a related federal court class action between the parties (“Motion to Stay”). Respondents’ motion to stay proposed the extension of a number of deadlines by agreement of the parties, including extending the time for Complainants to respond to Respondents’ motion to stay. Motion to Stay at 10 n.4. On January 29, 2016, Complainants filed a motion seeking an extension of time to February 16, 2016, to respond to Respondents’ motion to stay proceedings.

Under the Commission Rules, the presiding officer has the authority to “regulate the course of the hearing” and to “fix the time for filing briefs, motions, and other documents to be filed in connection with hearings and the administrative law judge’s decision thereon.” 46 C.F.R. § 502.147(a). The authority of courts to control their dockets is well settled. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962); *United States v. Hughey*, 147 F.3d 423, 429 (5th Cir. 1998). Moreover, “[p]arties cannot control an agency’s docket or procedures through agreement among themselves.” *Simmons v. United States*, 698 F.2d 888, 893 (7th Cir. 1983). All requests for extensions must be clearly filed as motions and, although agreement of the parties will be considered, such agreements will not guarantee approval of proposed deadlines.

Complainants indicate that they require additional time to respond to the motion to stay due to the significant issues involved and recent severe weather events. Given these arguments and the lack of objection by the opposing parties, the deadline for Complainants’ response to Respondents’ motion to stay will be extended to February 16, 2016.

Complainants bring their complaint on behalf of themselves and all those similarly situated. Complaint at 33. The Shipping Act of 1984 authorizes the Commission to award reparations to complainants. 46 U.S.C. § 41305(b). The Commission does not have a Rule of Practice and Procedure authorizing class actions, which would bind non-parties. Complainants cite Rule 23 of the Federal Rules of Civil Procedure and suggest that the Commission’s decision in *Mar-Mol Co. and CopyCorp. v. Sea-Land Service, Inc.*, 27 S.R.R. 1085, 1090 (FMC 1997), provides the mechanism by which a class action can be undertaken before the Commission. Complaint at 33. In *Mar-Mol*, however, the Commission found it “not appropriate at this final stage of the proceeding to change the nature of the case and let it become a *de facto* class action.” *Mar-Mol*, 27 S.R.R. at 1089-90. Complainants do not cite to any cases where the Commission has permitted a class action.

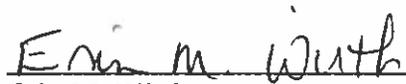
As a federal agency, the Commission only has the powers granted to it by statute. As a preliminary jurisdictional issue, the parties will need to brief whether the Commission has the statutory authority to entertain a class action with the power to bind members of the class who were not parties in a private party complaint proceeding. In their response to the motion to stay, Complainants should address whether this question should be resolved prior to, concurrently with, or after ruling on the motion to stay.

Generally, a reply by the moving party for a non-dispositive motion is not permitted. 46 C.F.R. § 502.71(c). However, in light of the request to discuss the timing of determination of the class action issue, Respondents will be permitted to file a reply brief on or before March 1, 2016.

The parties are also requesting that “Respondents be allowed twenty-one days within which to answer, move or otherwise respond to Complainants’ FMC complaint.” Motion to Stay at 10 n.4. The time to file an answer will be extended to run from the date the motion to stay is decided. Consistent with the parties’ agreement, the Respondents will be provided twenty-one days after the motion to stay is decided to answer or otherwise respond to the complaint.

The parties also request that “Complainants be allowed thirty days within which to answer any motion to dismiss filed by Respondents.” Motion to Stay at 10 n.4. Given the complexity of the issues involved in this proceeding, this request is not unreasonable and will be permitted.

For the above-stated reasons, it is hereby **ORDERED** that Complainants’ Motion for Extension of Time to Answer Respondents’ Consolidated Motion to Stay Proceedings be **GRANTED** and the response be filed by February 16, 2016, and Respondents’ reply be filed by March 1, 2016. It is further **ORDERED** that Respondents be provided twenty-one days after the motion to stay is decided to answer or otherwise respond to the complaint and Complainants be allowed thirty days within which to file an opposition to any motion to dismiss filed by Respondents.



Erin M. Wirth
Administrative Law Judge