

S E R V E D
December 6, 2016
FEDERAL MARITIME COMMISSION

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DOCKET NO. 16-02

D.F. YOUNG, INC.

v.

NYK LINE (NORTH AMERICA) INC.

SCHEDULING ORDER

On December 1, 2016, a pre-hearing conference was held by telephone in this proceeding. Counsel for the parties indicated that discovery is complete and there are currently no pending motions. Both parties reasserted their desire for an oral hearing and indicated that such a hearing would could last up to ten days. They indicated that settlement discussions have not resolved the proceeding, in part due to a disagreement as to legal issues impacting the case. Both parties requested an opportunity to file motions for summary decision, in the hope of resolving the matter without the time and expense of a hearing. The parties requested that briefing begin in January.

In this particular case, summary decision motions may resolve the case without the need for either an oral or paper hearing, provide additional insight into the parties' request for an oral hearing, and facilitate settlement discussions. Accordingly, the request was granted. The parties may file motions for summary decision on or before January 10, 2017. Any opposition briefs will be due on January 24, 2017. Reply briefs are due on January 31, 2017. The parties' motions should include proposed findings of fact (either separately or as part of the motion) and an appendix with evidence relevant to the motion.

To assist the parties in filing their dispositive motions, the guidelines for filing proposed findings of fact, oppositions to proposed findings of fact, appendices, and briefs are as follows:

1. **[Party's] Proposed Findings of Fact.** This document shall set forth proposed findings of fact in numbered paragraphs. Each paragraph shall be limited as nearly as practicable to a single factual proposition. Each factual proposition shall be followed by an exact citation to evidence that the party contends will support the proposed finding of fact; *e.g.*, a page

number in the Appendix.¹ See 46 C.F.R. § 502.221. The party shall provide to each other party *and to the Office of Administrative Law Judges* an electronic copy of its Proposed Findings of Fact with the hard copy of its Proposed Findings of Fact. The electronic copy shall be in a word-processing format (e.g., Microsoft Word or WordPerfect) and provided by disk, flash drive, or email.

2. **[Party's] Opposition to [Party's] Proposed Findings of Fact.** This document shall set forth verbatim each proposed finding of fact in another party's Proposed Findings of Fact, then admit or deny the proposed finding. Each proposed finding of fact that an opposing party denies shall be followed by an exact citation to evidence that the opposing party contends will rebut the evidence the proposing party claims supports the proposed finding of fact. The opposing party shall provide to the party *and to the Office of Administrative Law Judges* an electronic copy of the Reply to [Party's] Proposed Findings of Fact with the hard copies of the Reply to [Party's] Proposed Findings of Fact. The electronic copy shall be in a word-processing format (e.g., Microsoft Word or WordPerfect) and provided by disk, flash drive, or email.
3. **[Party's] Appendix.** The evidence on which a party's Proposed Findings of Fact or reply to another party's Proposed Findings of Fact is based shall be included in an Appendix.
 - a. The cover of the appendix shall identify the party or parties that prepared the appendix;
 - b. The pages of the appendix shall be numbered sequentially, for example CX 1, CX 2, CX 3 or RX 1, RX 2, RX 3, etc. The appendix should be secured in a three-ring binder;
 - c. The appendix must begin with a table of contents identifying the page at which each individual document begins;
 - d. Each party shall ensure that all documents in its appendix are in English and legible; and
 - e. The parties are instructed to cite to a document in an appendix already in the record rather than include the same document in its own appendix. For instance, if Respondent contends that a document included in Complainants' appendix rebuts the evidence Complainant claims supports a proposed finding of fact, Respondent shall cite to Complainants' appendix rather than include a second copy of the same document in its own appendix.

¹ Parties must designate specific facts and provide the court with their location in the record. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 775 (9th Cir. 2002). "General references [to evidence] without page or line numbers are not sufficiently specific." *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003).

4. **[Party's] Brief.** Each party shall file a brief meeting the requirements of Commission Rule 221, 46 C.F.R. § 502.221, with the exception that the proposed findings of fact required by section 502.221(d) shall be included in its Proposed Findings of Fact described above *and shall not count toward the page limit found in Rule 221(f)*.
5. **Service and Filing.** The parties are encouraged to serve and file hard copies of the documents required by this order by overnight delivery service.

The parties are directed to consult with each other to determine the most practicable way to send electronic copies of documents in a word-processing format to each other. The parties are directed to send the electronic copy in a word-processing format of required documents to the Office of Administrative Law Judges at the following email address: judges@fmc.gov.



Erin M. Wirth
Administrative Law Judge