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June 4, 2010					
FEDERAL	MARITIME	COMMISSION			

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 10-05

AMERICAN STEVEDORING, INC.

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

NOTICE OF ASSIGNMENT

The undersigned judge will conduct such hearings and conferences as may be necessary to resolve the issues and to issue an Initial Decision or dispositive ruling.

All pleadings and documents pertaining to this proceeding shall be filed with the Secretary of the Commission as required by Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.118, with a courtesy copy to the presiding judge. The parties are encouraged, but not required, to send documents to the Secretary and the presiding judge by USPS priority mail or overnight delivery. Rule 118(b)(3) requires that parties file copies of discovery with the Commission. 46 C.F.R. § 502.118(b)(3). In accordance with Rule 10 (46 C.F.R. § 502.10), that requirement is waived in this case. Therefore, the following discovery requests and responses must not be filed with the Commission until they are used in the proceeding or the court orders filing: (i) depositions, (ii) interrogatories, (iii) requests for production of documents or to permit entry upon land, and (iv) requests for admission. *Compare* Fed. R. Civ. P. 5(d)(1).

In all papers filed in this proceeding, the parties may cite Commission decisions or rulings by reference to the official F.M.C. reporters, Pike & Fischer Shipping Regulation Reports ("S.R.R."), Westlaw, or Commission slip opinions by docket number, title, and date of service. If Westlaw citations are used, the parties shall give the corresponding S.R.R. citation if available, or, if not available, shall give the F.M.C. docket number, the title of the case, and the precise date of the ruling. If a court or other non-F.M.C. case is cited by Westlaw, the decision or ruling shall be transmitted via e-mail to judges@fmc.gov.

In its Notice of Filing of Complaint and Assignment, the Commission stated: "Hearing in this matter . . . shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and *only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution.*" *American Stevedoring, Inc. v. The Port Authority of New York and New Jersey*, FMC No. 10-05, Notice of Filing of Complaint and Assignment at 3 (May 28, 2010) (emphasis added). The Commission has promulgated Rules of Practice and Procedure regarding the use of alternative dispute resolution, settlement, shortened procedure, and any other device that will aid in cutting costs of litigation. *See, e.g.*, 46 C.F.R. §§ 502.1; 502.61(d); 502.91(a); 502.91(d); 502.94(c); 502.147(a); 502.181 - 502.187 (shortened procedure); 502.401 - 502.411 (alternative dispute resolution). *See also Verucci Motorcycles, LLC v. Senator International Ocean, LLC*, FMC No. 06-05, slip op. at 5-6 (May 7, 2008) (Order Reopening the Proceeding) (remanding for further proceedings and directing the administrative law judge to "instruct the parties upon the availability of alternative dispute resolution (ADR), and . . . determine whether the matter should be referred to the Office of Consumer Affairs and Dispute Resolution Services to assist the parties."). Accordingly, the parties are ordered to review the above-cited sections of the Commission's Rules. Each party is ordered to contact Vern W. Hill, Director of the Commission's Consumer Affairs and Dispute Resolution Service, at 202-523-5807, on or before July 16, 2010, to discuss with Mr. Hill or his designee the feasibility of resolving this matter through alternative dispute resolution. *See* 46 C.F.R. § 502.91(d) ("the presiding judge . . . may direct the parties or their representatives to consult with the Federal Maritime Commission Alternative Dispute Resolution Specialist about the feasibility of alternative dispute resolution."). Each party is ordered to advise Mr. Hill in confidence whether it agrees to engage in alternative dispute resolution (ADR). On or before July 16, 2010, the parties shall file a joint status report stating whether each party has contacted Mr. Hill and stating whether the parties have agreed to engage in ADR. If the parties have agreed to engage in ADR, the parties are directed NOT to state the parties' positions on ADR in the joint status report. If the parties have not agreed to engage in ADR, the parties are directed NOT to identify the party or parties that objected to ADR in the joint status report.

The Commission's rules of practice and procedure are available online at <http://www.fmc.gov/home/Regularities.asp>. Commission decisions going back to 1996 are also available online at <http://www.fmc.gov/reading/DocketProceedings.asp>.

Section 205(c)(3) of the E-Government Act of 2002, Public Law 107-347, required the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule developed by the Court goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form. *See* Fed. R. Civ. P. 5.2 ("Privacy Protection For Filings Made with the Court"). *See also* Fed. R. Civ. P. 5.2, advisory committee notes, 2007 adoption. There is no comparable Commission rule. Commission Rules do provide that "[i]n proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice." 46 C.F.R. § 502.12. It is consistent with sound administrative practice to follow the Federal Rules of Civil Procedure governing privacy protection for filings made with the

Commission. Therefore, the parties are ordered to comply with Fed. R. Civ. P. 5.2 when filing documents with the Commission.

Commission Rule 201 states that:

In all proceedings in which the procedures of this subpart are used, it shall be the duty of the parties to meet or confer within fifteen (15) days after service of the answer to a complaint . . . in order to: establish a schedule for the completion of discovery within the 120-day period prescribed in paragraph (c) of this section; resolve to the fullest extent possible disputes relating to discovery matters; and expedite, limit, or eliminate discovery by use of admissions, stipulations and other techniques. The schedule shall be submitted to the presiding officer not later than five (5) days after the conference. Nothing in this rule should be construed to preclude the parties from meeting or conferring at an earlier date.

46 C.F.R. § 502.201(d). The Secretary served the complaint on May 28, 2010. *American Stevedoring v. PANYNJ*, FMC No. 10-05, Notice of Filing of Complaint and Assignment at 5. Therefore, the 120-day period prescribed for discovery ends on September 28, 2010. 46 C.F.R. § 502.201(c). The Commission established May 31, 2011, as the due date for the initial decision of the presiding officer. *American Stevedoring v. PANYNJ*, FMC No. 10-05, Notice of Filing of Complaint and Assignment at 5.

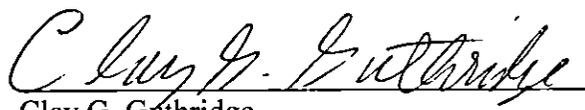
MISCELLANEOUS INSTRUCTIONS REGARDING DISCOVERY

- Compliance with the date set for completion of discovery requires that the parties serve discovery requests sufficiently in advance of the discovery cut-off that all responses and objections will be due on or before that date.
- Answers, responses, and objection to interrogatories and requests for admissions or for production of documents shall identify and quote each interrogatory or request in full immediately preceding the answer, response or objection thereto.
- The parties are directed to provide an electronic copy in a word processing format of discovery with the hard copy of all discovery served.
- Any motion to compel discovery responses must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without Commission action.
- Any motion to compel must set forth verbatim the interrogatory or request, the response that the moving party argues is insufficient, a summary of the moving party's attempts to secure a sufficient response, and the moving party's argument on why the response is insufficient. The moving party is directed to provide an electronic copy in a word processing format of

the motion to compel with the hard copy of the motion. The non-moving party is directed to use the electronic copy of the motion to compel and add any counter-summary of the attempts to secure a sufficient response, then its argument on why the response is sufficient, below the moving party's summary and argument for each response claimed to be insufficient. The non-moving party is directed to provide to the moving party *and to the Commission* an electronic copy in a word processing format of the motion to compel to which it has added its counter-summaries and arguments with the hard copy of this document.

- The parties are ordered to adhere to the provisions of Federal Rule of Civil Procedure 26(a)(2) as restyled by the 2007 amendments for disclosure of information regarding expert testimony.
- Any party that is seeking to withhold documents because of an asserted privilege is ordered to prepare and serve a privilege log that complies with the requirements of Fed. R. Civ. P. 26(b)(5)(A) as restyled by the 2007 amendments.
- The parties are ordered to comply with Rule 34 as restyled by the 2007 amendments with regard to electronically stored information.
- The parties are ordered to conduct depositions pursuant to the requirements of Federal Rule of Civil Procedure 30 as restyled by the 2007 amendments, including duration of depositions, but not including the number of depositions. If the parties agree to limit the number of depositions, they may do so by stipulation filed with the Commission.

To improve efficiency and reduce cost, the parties may elect to receive service of the rulings, orders and decisions in this proceeding through email in lieu of service by U.S. mail. A party opting for electronic service shall advise the presiding judge in writing and provide the email address where the party wishes to receive service.


Clay G. Guthridge
Chief Administrative Law Judge