

ORIGINAL

S E R V E D
May 25, 2010
FEDERAL MARITIME COMMISSION

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WASHINGTON, D.C.

DOCKET NO. 10-01

AMC USA, INC.

v.

INTERNATIONAL FIRST SERVICE S.A. a/k/a IFS S.A.;
INTERNATIONAL FIRST SERVICE ARGENTINA a/k/a AR-IFS;
INTERNATIONAL FIRST SERVICE USA, INC. a/k/a IFS USA, INC.;
GLOBAL WINE LOGISTICS USA INC. a/k/a GWL USA, INC.;
ANITA McNEIL; and IPSEN LOGISTICS GmbH

**ORDER ON MOTIONS TO DISMISS, MOTION TO STRIKE, AND
REQUEST FOR STAY OF DISCOVERY DEADLINE**

On January 22, 2010, AMC USA, Inc. ("AMC") filed a complaint with the Federal Maritime Commission ("Commission"). On March 8, 2010, respondent Ipsen Logistics GmbH ("Ipsen") filed a motion to dismiss; respondents Global Wine Logistics USA Inc. ("GWL") and Anita McNeil filed a separate motion to dismiss; and respondents Ipsen, GWL, Anita McNeil, International First Service S.A., and International First Service USA, Inc. filed a motion to strike improperly translated documents. On May 10, 2010, complainant AMC filed a notice of dismissal of respondents Ipsen and GWL. On May 13, 2010, the parties submitted a joint status report.

In the joint status report, AMC indicates that it does not oppose the motion to strike all documents written in foreign languages for which AMC failed to submit dully verified English translations pursuant to 46 C.F.R. § 520.7. The parties have agreed that the documents may be resubmitted with appropriate translations. The parties' agreement is reasonable and consistent with Commission Rules. Accordingly, the March 8, 2010, motion to strike will be granted without prejudice.

Complainant AMC filed a notice to voluntarily dismiss with prejudice respondents Ipsen and GWL pursuant to Federal Rule of Civil Procedure 41(a)(1). The Commission does not have a similar rule specifically permitting a voluntary dismissal. In this case, however, because there are pending motions to dismiss whose response was due on the date the joint status report was filed, the notice of dismissal will be treated as a consent or agreement to the pending motions to dismiss as to these respondents.

In the first motion to dismiss, respondent Ipsen argues that the Commission has no personal jurisdiction or subject matter jurisdiction; AMC failed to state a claim against Ipsen; and Ipsen was not sufficiently served. In the second motion to dismiss, respondents GWL and Anita McNeil argue that AMC failed to state a claim for violation of the Shipping Act and the Commission does not have personal or subject matter jurisdiction. AMC has agreed to the dismissal of Ipsen and GWL and has not addressed the motion as it applies to Anita McNeil. After reviewing the pleadings, the motions, the notice to dismiss, and the joint status report, and with due consideration that the parties have negotiated the dismissal of these two respondents, good cause for the dismissal is stated. The case will continue against the remaining respondents. Accordingly, the request for dismissal will be granted as to Ipsen and GWL. AMC shall respond to the pending motion to dismiss Anita McNeil on or before June 25, 2010.

The parties have decided to engage the services of the Office of Consumer Affairs and Dispute Resolution Services (CADRS) and request that discovery be stayed during the negotiations. While a short delay in discovery is acceptable, it is anticipated that during the negotiations the parties will diligently work toward narrowing legal and factual issues so that discovery may be completed in a timely fashion. Specifically, the parties are reminded that in the February 4, 2010, notice of complaint and assignment, the Commission stated that, pursuant to 46 C.F.R. § 502.61, the initial decision shall be issued by February 4, 2011. Moreover, pursuant to 46 C.F.R. § 502.201(c), 120 days are permitted to complete discovery. Therefore, in the event that the parties are unable to resolve their dispute, they should be prepared to proceed with the case within these time frames.

Accordingly, the parties will be given a brief stay to pursue alternative dispute resolution. However, if the parties have not resolved the dispute, on or before June 25, 2010, they shall file a joint status report including a joint proposed schedule that completes discovery by October 22, 2010, and completes briefing by November 26, 2010. Further extensions of time will only be granted with demonstration of good cause, even if the parties agree on the requested extension.

For the above stated reasons, it is hereby **ORDERED** that the March 8, 2010, motion to strike be **GRANTED WITHOUT PREJUDICE**.

It is **FURTHER ORDERED** that the March 8, 2010, motions to dismiss respondents Ipsen Logistics GmbH and Global Wine Logistics USA Inc. be **GRANTED** and Ipsen Logistics GmbH and Global Wine Logistics USA Inc. be **DISMISSED WITH PREJUDICE**.

It is **FURTHER ORDERED** that on or before June 25, 2010, the parties file a joint status report including a joint proposed schedule that completes discovery by October 22, 2010, and completes briefing by November 26, 2010, and that AMC responds to the pending motion to dismiss Anita McNeil.

Erin M. Wirth

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Administrative Law Judge