

ORIGINAL

S E R V E D
December 16, 2008
FEDERAL MARITIME COMMISSION

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WASHINGTON, D.C.

DOCKET NO. 02-04

ANCHOR SHIPPING CO.

v.

**ALIANÇA NAVEGAÇÃO E LOGÍSTICA LTDA.,
COLUMBUS LINE, INC.,
HAMBURG SÜDAMERIKANISCHE
DAMPFSCHIFFFAGARTS-GESELLSCHAFT KG, and
CROWLEY AMERICAN TRANSPORT LINE, INC.**

**ORDER DISMISSING COMPLAINT FOR FAILURE TO COMPLY WITH THE
COMMISSION'S RULES OF PRACTICE AND PROCEDURE AND
ORDERS ENTERED IN THIS PROCEEDING¹**

On August 27, 2008, I ordered complainant Anchor Shipping Co. (Anchor) to file its Rule 95 Statement and other documents on or before October 24, 2008. *Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, FMC No. 02-04 (ALJ Aug. 27, 2008) (August 27, 2008, Procedural Order).² Anchor failed to comply with this Order. On November 4, 2008, I issued an order for Anchor to show cause why its complaint should not be dismissed or other sanction imposed for failing to file its Rule 95 Statement and other documents. *Anchor v. Aliança* (ALJ Nov. 4, 2008) (Order for Complainant Anchor Shipping Co. to Show Cause Why Complaint Should not be Dismissed). The Order required Anchor to respond on or before November 18, 2008, and “show

¹ Complainant has the right to file an appeal to the Commission within 22 days of date of service of this order. *See* 46 C.F.R. § 502.227(b)(1).

² For convenience, I will use a short form citation of *Anchor v. Aliança* without the docket number to orders issued by administrative law judges.

cause why its complaint should not be dismissed or other sanctions imposed for failure to comply with the Commission's Rules of Practice and Procedure or the orders entered in this proceeding." *Id.* As of close of business on November 25, 2008, Anchor had not responded to the November 4, 2008, order to show cause or filed the Rule 95 Statement and other papers that the August 27, 2008, Procedural Order required Anchor to file on or before October 24, 2008. Because of the potential severity of the sanction, *I sua sponte* enlarged the time for Anchor to respond to December 8, 2008. As of close of business on December 15, 2008, Anchor had not responded to the November 4, 2008, order to show cause or the November 26, 2008, order enlarging the time for Anchor to respond to the order to show cause, or filed the Rule 95 Statement and other papers that the August 27, 2008, Procedural Order required Anchor to file on or before October 24, 2008. Anchor has failed to comply with the Commission's Rules of Practice and Procedure and orders entered in this proceeding. Therefore, Anchor's complaint is dismissed with prejudice.

BACKGROUND

I. PROCEDURAL HISTORY.

Anchor is (or was) a non-vessel-operating common carrier (NVOCC). Respondent Aliança Navegação E Logística Ltda. (Aliança) is an ocean common carrier. Anchor and Aliança were parties to one or more service contracts during the period from April 29, 1999, to May 6, 2000. (Amended Complaint at 3.)

Prior to the commencement of this proceeding, Anchor initiated arbitration as required by the terms of the service contract. Anchor was represented by an attorney (Anchor's first attorney) in the arbitration. An arbitrator from the Society of Maritime Arbitrators conducted the arbitration. After reviewing the evidence, the arbitrator issued a decision addressing issues under the service contract and issues under the Shipping Act. The arbitrator found in favor of Anchor, deducted an amount for freight charges and interest due Aliança, and awarded Anchor a net of \$381,880.59 in damages, interest, legal expenses, and "Allowance for Party costs leading to the interim Award." *Arbitration between Anchor and Aliança Under Service Contract EC99-0511*, Decision and Final Award at 57 (July 31, 2001). Aliança paid Anchor the amount awarded by the arbitrator.

On March 7, 2002, Anchor commenced this proceeding by filing a Complaint with the Commission. Apparently, the first attorney who represented Anchor during the arbitration declined to represent Anchor before the Commission as the Complaint was filed *pro se* and signed by Alfred Hernandez, Anchor's president. (Complaint at 10.) *See* 46 C.F.R. § 502.21(a) ("A party may appear in person or by an officer, partner, or regular employee of the party, or by or with counsel or other duly qualified representative, in any proceeding under the rules in this part."). Anchor's original Complaint alleged that Aliança caused injury to Anchor through misconduct in violation of the Shipping Act of 1984 (Shipping Act), now codified at 46 U.S.C. §§ 40101-41309. The Complaint alleged that Aliança violated numerous sections of the Shipping Act during the course of its service

contract with Anchor for essentially the same conduct that had been presented to the arbitrator. Anchor sought reparations in the amount of \$1,000,000.00.

Aliança moved to dismiss the Complaint for failure to state a claim. Aliança also asserted the affirmative defense of issue preclusion or collateral estoppel, arguing that Anchor should be precluded from bringing the Complaint before the Commission as the contentions in the Complaint had been resolved in the binding arbitration.

After Aliança filed its motion to dismiss, Anchor filed a motion for leave to file an Amended Complaint adding three additional respondents that it claimed were affiliated with Aliança and were involved in the activities about which it complains. In its motion to amend, Anchor identified these additional respondents as "Crowley American Transport, Inc., Columbus Line, Inc., and Hamburg Südamerikanische Dampfschiffahrt," and described them as "essential parties to the complaint." (Motion to Amend at 2.) Anchor revised the caption of the Amended Complaint to identify the following entities as respondents:

Aliança Maratima Ltda. & CIA., and Aliança Transportes Marítimos S.A., d/b/a., Aliança Lines and Aliança Lines Inc., Hamburg-Südamerikanische Dampfschiffahrt, d.b.a., Hamburg-Südamerikanische-Dampfschiffahrt-Gesellschaft Eggbert & Amsinck, HSAC Logistices Inc. and HSAC Logistics, Inc. a.k.a. Hamburg Süd, d.b.a. Crowley American Transport, Inc., Crowley American Transport Line, Inc. as successors of Crowley Liner Service, Inc. formally Crowley American Transport Inc., formally Trailer Marine Transport Corporation, Hamburg-Südamerikanische Dampfschiffahrt, d.b.a., Columbus Line, Columbus Line, Inc., Columbus Line USA, Inc., and HSAC Logistics, Inc., formally Columbus Line USA, Inc., Columbus Line Incorporated and Columbus Line, Inc., as successors of Columbus Line USA, Inc.

(Amended Complaint at 1.) In the body of the Amended Complaint, these entities are described as Aliança, Crowley, Columbus, and Hamburg Süd. (Amended Complaint at 1-2.) Crowley, Columbus, and Hamburg Süd are or were ocean common carriers.

On May 2, 2002, the presiding administrative law judge granted Aliança's motion to dismiss. The administrative law judge applied the test set forth in *Cargo One, Inc. v. COSCO Container Lines Co., Ltd.*, 28 S.R.R. 1635 (2000), to dismiss Anchor's Complaint:

However, we find it inappropriate and contrary to the intent of the statute that section 8(c) bar any Shipping Act claim which bears some similarity to, overlaps with, or is couched in terms suggesting that the remedy may be available in a breach of contract action. We believe the more appropriate test is whether a complainant's allegations are inherently a breach of contract claim, or whether they also involve elements peculiar to the Shipping Act. We find that as a general matter, allegations essentially comprising contract law claims should be dismissed unless the party

alleging the violations successfully rebuts the presumption that the claim is no more than a simple contract breach claim. In contrast, where the alleged violation raises issues beyond contractual obligations, the Commission will likely presume, unless the facts as proven do not support such a claim, that the matter is appropriately before the agency. (Footnote omitted.) (Emphasis added.)

Anchor Shipping Co. v. Aliança Navegação E Logística Ltda., 29 S.R.R. 1047, 1054 (ALJ 2002) (quoting *Cargo One, Inc. v. COSCO Container Lines Co., Ltd.*, 28 S.R.R. at 1645). Based on the circumstances, the administrative law judge found that “the presumption that some of the claims are inherently Shipping Act matters that should be heard by the Commission has been rebutted” and dismissed the complaint. *Id.* at 1055. The administrative law judge also denied Anchor’s motion to amend the Complaint. *Id.* at 1061.

Anchor appealed the administrative law judge’s decision to the Commission. On May 10, 2006, the Commission vacated the dismissal, granted Anchor’s motion to amend “in part,” and remanded the case for further adjudication. The Commission agreed with the administrative law judge that the case is controlled by the *Cargo One* test, but disagreed with the administrative law judge’s application of the test. The Commission held that the fact the service contract between the parties required arbitration:

does not outweigh the Commission’s duty to protect the public by ensuring that service contracts are implemented in accordance with the Shipping Act. . . . To preclude Anchor from proceeding with its complaint solely because a private arbitrator previously issued a ruling would be inconsistent with our statutory mandate to hear such complaints.

Anchor Shipping Co. v. Aliança Navegação E Logística Ltda., 30 S.R.R. 991, 998 (2006). The Commission stated that “[o]n remand, we direct the ALJ to address only those allegations involving Shipping Act violations, and any disputes previously addressed by the Arbitrator that are based upon common law breach of contract claims shall remain binding upon the parties.” *Id.*, at 999-1000.

After the remand, on June 7, 2006, the Secretary served the Amended Complaint on Aliança, Columbus, Hamburg Süd, and Crowley. The ensuing litigation has not gone smoothly.

On July 11, 2006, Aliança and Hamburg Süd filed answers to the Amended Complaint, Aliança filed a Counter-Complaint, and Columbus filed a motion to dismiss. Crowley did not file any response. On August 7, 2006, Anchor moved *pro se* for an extension of time to respond to the motion to dismiss, and on August 18, 2006, an attorney (Anchor’s second attorney, not the attorney who represented Anchor during the arbitration) entered an appearance for Anchor. The attorney filed a supplemental motion for extension of time, and on September 8, 2006, the motion was granted. On September 23, Anchor filed a motion to dismiss Aliança’s Counter-Complaint and a reply to Columbus’s motion to dismiss, and on October 19, a Motion for Default Against Hamburg Süd, Successor to Crowley American Transport, Inc.

On January 26, 2007, I issued a memorandum and order on the pending motions. I denied the motions to dismiss filed by Anchor and Columbus and ordered them to respond to the Counter-Complaint and Amended Complaint respectively, denied the motion for default against Hamburg Süd, and directed the parties to commence discovery. Because Crowley's status as a party was not clear, I did not require it to file a response, expecting that its status would be clarified through discovery. *Anchor v. Aliança*, slip op. at 8-9 (ALJ Jan. 26, 2007) (Order on Pending Motions and Discovery).

On April 10, 2007, Anchor filed a motion seeking intervention by the Commission's Bureau of Enforcement (BOE) and seeking appointment of a mediator or settlement judge. Respondents opposed the motion. On April 19, 2007, I issued an order denying the motion for appointment of a mediator or settlement judge as Commission regulations require that both parties agree to such an appointment. I referred the motion for BOE intervention to the Commission as it sought relief that is beyond my authority to grant. *Anchor v. Aliança* (ALJ Apr. 19, 2007) (Memorandum and Order on Complainant's Motion for Bureau of Enforcement Intervention and Appointment of Mediator or Settlement Judge).

On April 12, 2007, Respondents filed a Partial Motion to Dismiss and/or for Summary Judgment. On April 20, Anchor filed a motion for enlargement of time to May 14 to respond to Respondents' motion and to June 1 to respond to discovery. In their reply, Respondents consented to the enlargement of time to respond to the motion. They also suggested that resolution of their motion could dispose of a number of issues and that discovery responses should be postponed until sixty days after a ruling on the motion. On May 1, I issued an order enlarging the time for Anchor to respond to the Respondents' motion to May 17 and vacated the discovery due date pending further order. *Anchor v. Aliança* (ALJ May 1, 2007) (Memorandum and Order on Complainant's Motion for Enlargement of Time).

On May 1, 2007, Anchor's second attorney filed a Motion for Leave to Withdraw as Counsel for Complainant. The same day, Anchor filed a *pro se* Motion for Enlargement of Time to Make Substitution of Counsel and Reply to Respondent(s) Motion for Partial Dismissal and/or Summary Judgment, followed soon thereafter by an amended motion for enlargement of time. On June 1, I granted Anchor's second attorney's motion for leave to withdraw and Anchor's motion for enlargement of time to reply to Respondents' motion for partial summary judgment. I imposed deadlines on Anchor, requiring it to notify the Commission by June 29, 2007, whether it had retained counsel or would be continuing *pro se*, and established July 23, 2007, as the due date for Anchor's reply to the motion for partial summary judgment whether Anchor was represented by counsel or was *pro se*. *Anchor v. Aliança* (ALJ June 1, 2007) (Memorandum and Order on Complainant's Motion for Enlargement of Time).

On July 16, 2007, Anchor filed a Motion for Administrative Law Judge to Appoint Legal Counsel for Complainant. In the motion, Anchor identified two attorneys whom it claimed it had contacted and asked me to direct the attorneys to make themselves available to Anchor. The motion

did not indicate that the two attorneys had been provided notice of the motion. Respondents opposed the motion. On July 18, I issued an order denying the motion for appointment of counsel because no authority permits me to appoint counsel for a party. *Anchor v. Aliança* (ALJ July 18, 2007) (Memorandum and Order on Complainant's Motion for Administrative Law Judge to Appoint Legal Counsel for Complainant).

Anchor filed its *pro se* reply to the motion for partial summary judgment on July 23, 2007, followed by a supplement with additional affidavits served on July 24, 2007. On August 8, 2007, Anchor filed Complainant's Motion for Enlargement of Time to File Documents and to Amend Pleadings. I denied the motion because "[i]t cannot be determined from Anchor's motion for enlargement of time what other motion, if any, would require an enlargement of time." *Anchor v. Aliança* (ALJ Aug. 17, 2007) (Memorandum and Order on Complainant's Motion for Enlargement of Time to File Documents and to Amend Pleadings).

On September 13, 2007, Anchor's third attorney entered an appearance.

On September 27, 2007, I entered an order granting Respondents' motion for partial summary judgment in part and denying the motion in part. I dismissed two claims in the Amended Complaint: (1) the claim seeking imposition of civil penalties, because private complainants do not have standing to seek civil penalties; and (2) the claim that Respondents had violated sections 6, 7, and 9 of the Shipping Act, because those sections do not impose obligations on Respondents. I denied the remainder of Respondents' motion. *Anchor v. Aliança* (ALJ Sept. 27, 2007) (Memorandum and Order on Respondents' Partial Motion for Dismissal and/or for Summary Judgment). On November 1, 2007, the Commission issued a notice that it had determined it would not review the dismissals. *Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, FMC No. 02-04 (Nov. 1, 2007) (Notice).

On September 27, 2007, I also entered a procedural order directing Anchor's new (third) attorney and counsel for Respondents to meet or confer to establish a procedural schedule for the completion of discovery, including depositions, and the filing of Rule 95 statements. I directed counsel to submit the schedule by October 10, 2007.

On October 4, 2007, Respondents filed a Limited Motion for Reconsideration asking that I reconsider the denial of their motion to dismiss the portions of the Amended Complaint alleging violations of 10(c)(1) and 10(a)(2) and (3). The basis for the motion was claimed to be "misinterpretation of facts [as] ground for reconsideration." I denied the motion without prejudice, stating that the issue would be addressed in the Initial Decision. *Anchor v. Aliança* (ALJ Oct. 26, 2007) (October 26, 2007, Procedural Order). I also directed the parties to submit information regarding the various entities that Anchor had named as Respondents. *Id.*

On October 10, 2007, Anchor's third attorney filed a Notice of Withdrawal of Counsel for Complainant. The attorney contended that irreconcilable differences had developed between Anchor's principal and the law firm with respect to litigation strategy for pursuing Anchor's

Amended Complaint. On October 9, 2007, Anchor had served a *pro se* Motion for Enlargement of Time to Substitute Legal Counsel and File Documents and Exceptions. Anchor stated that on October 9, 2007, it notified its third attorney that it wanted him to withdraw, and in its "Supplement to Complainant's Motion for Enlargement of Time to Substitute Counsel, File and Amend Documents and File Exceptions, (and) [sic]" asked that the third attorney's motion for leave to withdraw be granted. Accordingly, on October 26, I granted Anchor's third attorney's motion for leave to withdraw. *Anchor v. Aliança* (ALJ Oct. 26, 2007) (October 26, 2007, Procedural Order).

In its Motion for Enlargement of Time, etc., filed October 9, 2007, and its "Supplement to Complainant's Motion for Enlargement of Time to Substitute Counsel, File and Amend Documents and File Exceptions, (and) [sic]" filed October 16, 2007, Anchor sought an enlargement of time to November 26, 2007, to reply to Respondents' Limited Motion for Reconsideration and to file its own exceptions to the order of September 27, 2007. As grounds for the motion, Anchor stated that it had retained the third attorney on September 12, 2007, but that Anchor now believed that the attorney's "oral plan and recommended objectives were inconsistent with the retainer agreement and Anchor's objectives and that he could at least potentially be in the middle of a conflict of interests." (Motion for Enlargement of Time at 1.) Respondents opposed the motion. I noted that deadlines had been extended a number of times for Anchor to attempt to retain counsel. When I granted the motion to withdraw filed by Anchor's second attorney and extended the dates for Anchor to respond to a motion, I stated that "**NO FURTHER CONTINUANCES FOR THIS PURPOSE WILL BE GRANTED.**" *Anchor v. Aliança*, slip op. at 9 (ALJ June 1, 2007) (Memorandum and Order on Complainant's Motion for Enlargement of Time) (emphasis in original). I reaffirmed that order and denied Anchor's Motion for Enlargement of Time to Substitute Legal Counsel and File Documents and Exceptions. I noted that Anchor remained free to retain counsel to enter an appearance in this proceeding, but that Anchor and any new counsel would be subject to the schedule established by the order. I denied the motion for extension of time to file exceptions to the September 27, 2007, Order. *Anchor v. Aliança* (ALJ Oct. 26, 2007) (October 26, 2007, Procedural Order).

As required by the earlier order, on October 10, 2007, Respondents' counsel submitted a schedule for discovery and filing of Rule 95 statements based on an agreement reached by Respondents' counsel and Anchor's third attorney before the third attorney had been notified that Anchor wanted him to withdraw from the case. Respondents also submitted a proposed protective order setting forth terms on which counsel for Respondents and Anchor's third attorney had agreed before the third attorney had been notified that Anchor wanted him to withdraw from the case. On October 11, 2007, Anchor submitted a *pro se* "Motion to Suppress Fabricated Pleadings from Entering into Record" claiming that the schedule for discovery and the protective order submitted by Respondents had been "fabricated" and that Anchor and its third attorney "may have had conflicting objectives." (Motion to Suppress Fabricated Pleadings at 1.) Anchor also submitted its own proposed schedule. I denied the "motion to suppress" the schedule and the protective order submitted by Respondents because Anchor's third attorney had agreed to them at a time he represented Anchor and a party is bound by its attorney's agreements. Furthermore, the terms of the protective order were unremarkable. I entered a procedural schedule that differed from the proposals of both parties. *Anchor v. Aliança* (ALJ Oct. 26, 2007) (October 26, 2007, Procedural Order).

Among other requirements, the order required a party that believed the responses to discovery already served were insufficient to file a motion to compel additional responses to the discovery and for the parties to “submit any agreement to take additional discovery OR file any motion seeking leave to take additional discovery on or before December 21, 2007.” *Id.* I determined that consideration of a motion to dismiss or for summary judgment would serve to delay issuance of an initial decision, so prohibited the parties from filing these motions. *Id.*

Confusion about the identity of the “Crowley” entity remained. Therefore, I ordered Anchor to file a Statement Regarding Respondents by November 6, 2007, setting forth the full name and address for each of the entities named in the caption of the Amended Complaint, including in that statement: (1) its understanding of the entity’s relationship to the four respondents identified in the body of the Amended Complaint; (2) what actions the entity took that Anchor contends violated the Shipping Act; (3) the section of the Shipping Act that Anchor contends the entity violated when it took those actions; and (4) the sections and subsections of the Amended Complaint that relate to each entity. I ordered Respondents to file a response to that statement on or before November 21, 2007. *Id.* at 10-11. On January 3, 2008, I entered an order based on the parties’ filings about Crowley required by the Procedural Order. I determined that it was clear that Anchor did not intend to name Crowley American Transport, Inc., of Jacksonville, Florida, as a respondent. Respondents stated that Crowley American Transport Line, Inc., is a defunct entity that had been an affiliate of Respondents. I changed the caption of this proceeding to include Crowley American Transport Line, Inc., instead of Crowley American Transport, Inc., as a respondent and deemed Hamburg Süd’s answer to be the answer of Crowley American Transport Line, Inc. *Anchor v. Aliança* (ALJ Jan. 3, 2008) (January 3, 2008, Order Regarding Crowley American Transport, Inc.).

On November 7, 2007, a fourth attorney entered his appearance as counsel for Anchor. On December 19, 2007, the fourth attorney filed Complainant’s Counsel’s Motion to Withdraw and Enlarge Time. *Inter alia*, the motion stated, “[o]n information and belief, Complainant is disappointed with the undersigned’s decision but does not oppose it.” (Complainant’s Counsel’s Motion to Withdraw and Enlarge Time at 3.) I ordered Anchor and Respondents to respond to the Motion on or before December 28, 2007, and suspended the requirements that a party file a motion to compel responses to discovery already served within fifteen days of service of the responses to that discovery, and the requirement that the parties submit any agreement to take additional discovery or file any motion seeking leave to take additional discovery on or before December 21, 2007. *Anchor v. Aliança* (ALJ Dec. 20, 2007) (December 20, 2007, Order to Respond to Complainant’s Counsel’s Motion to Withdraw and Enlarge Time). Anchor filed a response to the motion to withdraw asking for an order compelling the fourth attorney to continue his representation of Anchor. (Complainant’s Response to Counsel’s Motion to Withdraw and Enlarge Time at 2.) As contrary to the fourth attorney’s belief, Anchor did oppose the motion to withdraw, I determined that I needed more information from the fourth attorney before deciding the motion. Accordingly, I entered an order requiring the attorney to respond to the “motion to compel” set forth in Complainant’s Response to Counsel’s Motion to Withdraw and Enlarge Time. *Anchor v. Aliança* (ALJ Jan. 3, 2008) (January 3, 2008, Order for [Anchor’s fourth attorney] to Respond to Complainant’s Response to Counsel’s Motion to Withdraw and Enlarge Time).

On January 8, 2008, Anchor's fourth attorney filed his response to the order essentially restating the argument set forth in his motion. More significantly, on January 11, 2008, the fourth attorney filed Complainant's Counsel's Supplemental Response to January 3, 2008 Order. In this supplement, the fourth attorney stated:

6. On January 10, 2008, the undersigned received notice from the Florida Bar that [Anchor's representative] had filed an Inquiry/Complaint, dated December 31, 2007 and received by the Bar on January 2, 2008, against the undersigned's license to practice law. The Inquiry/Complaint stems from this case. [Anchor's representative] had not advised the undersigned that [Anchor's representative] had submitted such a document.

7. In twenty-one years of law practice, the undersigned never before has had any complaint filed against his license. [Anchor's representative's] submission of the Inquiry/Complaint reveals the depth of the difficulty the undersigned has had in working with this client. Under the circumstances, continuation of this attorney/client relationship would be contrary to the interests of the attorney and the client.

(Complainant's Counsel's Supplemental Response to January 3, 2008 Order.) On January 11, 2008, Anchor's president sent by email a (Supplement) Complainant's Motion for Reconsideration and/or Leave to Appeal & Comment on Counsel's Motion to Withdraw. With regard to the fourth attorney's motion to withdraw, Anchor reiterated its contention that the motion should be denied. Anchor further stated that "[a]s much as Complainant regrets having to admit it, Anchor actually needs [the fourth attorney] to finish the case." I entered an order stating that "[w]hatever the outcome on [the fourth attorney's] motion for leave to withdraw as counsel might have been absent Anchor's complaint to [the] Florida Bar, that complaint by itself provides good cause to grant the motion" and granted leave for the fourth attorney to withdraw as counsel for Anchor. *Anchor v. Aliança* (ALJ Jan. 18, 2008) (Memorandum and Order on Complainant's Counsel's Motion to Withdraw and Enlarge Time).

In the period after the fourth attorney filed his motion for leave to withdraw and before I granted his motion, Anchor filed several *pro se* motions and other documents. I addressed these filings in a second order issued January 18, 2008. *Anchor v. Aliança* (ALJ Jan. 18, 2008) (Memorandum and Order on Pending Motions and Revised Procedural Order). In a Supplemental/Refined Statement Regarding Respondents [filed December 26, 2007], Anchor sought to supplement its Statement Regarding Respondents providing information that would clarify the identity of and allegations against the eleven or more respondents named in the caption of the Amended Complaint. *See supra* at 8. I found that the information in the Supplemental/Refined Statement did not affect the January 3, 2008, ruling. *Anchor v. Aliança*, slip op. at 3 (ALJ Jan. 18, 2008) (Memorandum and Order on Pending Motions and Revised Procedural Order). Complainant's Response to Respondents' Discovery Response [filed December 26, 2007] stated Anchor's demand that Respondents send a copy of their December 6, 2007, discovery responses directly to Anchor's

president. Since Anchor was represented by counsel on December 6, Respondents properly did not send the responses directly to Anchor, but to Anchor's attorney. I found that this filing did not require any action on my part. *Id.* Anchor's Supplement to Complainant's Response to Respondents' Discovery Requests and Motion for Reconsideration [filed December 26, 2007] appeared to be intended to supplement Anchor's response to Respondents' discovery served by Anchor's counsel. I found that it did not require any action on my part. The filing also incorporated a motion to reconsider the denial of Anchor's motion to dismiss Aliança's Counter-Complaint in the order issued January 26, 2007. *See Anchor v. Aliança*, slip op. at 5-7 (ALJ Jan. 26, 2007) (Order on Pending Motions and Discovery). Anchor did not establish that the Order should be reconsidered. Therefore, I denied the motion to reconsider. *Anchor v. Aliança*, slip op. at 3 (ALJ Jan. 18, 2008) (Memorandum and Order on Pending Motions and Revised Procedural Order).

Complainant's Exceptions to ALJ's Memorandum & Order, and Partial Order of Dismissal [filed December 26, 2007] in part noted exceptions to the Administrative Law Judge's September 27, 2007, Memorandum and Order, the October 26, 2007 Procedural Order, the Commission's November 8, 2007 Order Denying Complainant's April 9, 2007 Motion for Bureau of Enforcement, and the Commission's November 1, 2007 Notice that it had decided not to review the dismissal of the claims for civil penalties and alleged violation of sections 6, 7, and 9 of the Act. The September 27 order had granted Respondents' motion to dismiss the claims in the Amended Complaint seeking imposition of civil penalties and the allegations that Respondents had violated sections 6, 7, and 9 of the Shipping Act. *Anchor v. Aliança* (ALJ Sept. 27, 2007) (Memorandum and Order on Respondents' Partial Motion for Dismissal and/or for Summary Judgment). On October 9, Anchor had filed a motion for enlargement of time to file exceptions to the dismissals. I denied this motion on October 26. *Anchor v. Aliança* (ALJ Oct. 26, 2007) (October 26, 2007, Procedural Order). In retrospect, I determined that the request for enlargement of time to file exceptions should have been referred to the Commission, not decided by the administrative law judge who entered the partial dismissal. Therefore, I vacated the portion of the October 26, 2007, Procedural Order that denied Anchor's motion for enlargement of time to file exceptions to the September 27, 2007, Order dismissing the parts of Anchor's Amended Complaint seeking imposition of civil penalties and alleging that Respondents violated sections 6, 7, and 9 of the Shipping Act, and referred the motion for enlargement of time to the Commission. *Anchor v. Aliança*, slip op. at 4-6 (ALJ Jan. 18, 2008) (Memorandum and Order on Pending Motions and Revised Procedural Order). On January 24, the Commission served notice that it rescinded its November 1, 2007, Notice that it would not review the September 27 order. *Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, FMC No. 02-04 (Jan. 24, 2008) (Notice to Rescind). Anchor's December 26 Exceptions also sought reconsideration of the Commission's denial of the motion to order BOE intervention, which I referred to the Commission. I treated the rest of Anchor's memorandum as a motion for reconsideration of various orders and denied the motion. *Anchor v. Aliança*, slip op. at 6-8 (ALJ Jan. 18, 2008) (Memorandum and Order on Pending Motions and Revised Procedural Order).³

³ On July 31, 2008, the Commission issued an Order granting additional time for Anchor to submit to the Commission exceptions to the dismissals and time for Respondents to reply to Anchor's submission. *Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, FMC No.

Anchor's Supplement to Complainant's Motion for Reconsideration [signed December 28, 2007] referred to "Anchor's Motion for Reconsideration of this date, December 28, 2007." (Supplement to Complainant's Motion for Reconsideration.) I treated this supplement as a nullity since the Office of the Secretary did not have a record of a motion for reconsideration signed by Anchor on December 28, 2007. *Id.* at 8.

Complainant's Motion for Reconsideration [filed January 9, 2008] and (Supplement) Complainant's Motion for Reconsideration and/or Leave to Appeal & Comment on Counsel's Motion to Withdraw [filed January 11, 2008] sought reconsideration of the January 3, 2008, Order Regarding Crowley American Transport, Inc., or leave to appeal the Order. I denied both motions. *Id.* at 8-10.

The January 18, 2008, order included an amended procedural order as well. This Order required the following acts by February 1, 2008: (1) Anchor serve and file its response to Respondents' motion to compel discovery; and (2) the parties file motions to compel responses to discovery already served. The Order reiterated the October 26 Order's restrictions on service of additional discovery and imposed February 1, 2008, as the deadline to submit any agreement to take additional discovery OR file any motion seeking leave to take additional discovery and imposed a deadline of March 6, 2008, for the completion of all discovery. The Order reiterated the October 26 Order's bar on motions to dismiss or motions for summary judgment. Finally, the Order set forth a schedule for filing Rule 95 statements and proposed findings of fact. *Id.* at 13-14.

On February 1, 2008, Anchor served and filed Complainant's Motion to Compel Discovery and/or to Take Additional Discovery. On February 5, 2008, I entered an order striking the motion from the record as it did not comply with the requirements of the October 26, 2007, Procedural Order. I required Anchor to file any revised motion by February 19, 2008. *Anchor v. Aliança* (ALJ Feb. 5, 2008) (Memorandum and Order Striking Complainant's Motion to Compel Discovery and/or to Take Additional Discovery).

On February 4, 2008, Anchor served and filed Complainant's Motion to Bifurcate and Partially Stay Proceedings seeking order bifurcating the proceeding to litigate Anchor's Amended Complaint and Aliança's Counter-Complaint separately. I denied the motion to bifurcate because Anchor's Amended Complaint and Aliança's Counter-Complaint are based on essentially the same course of conduct between the same parties, and I concluded that bifurcation would worsen, rather than further, expedition and economy. *Anchor v. Aliança* (ALJ Feb. 11, 2008) (Memorandum and Order on Complainant's Motion to Bifurcate and Partially Stay Proceedings; Complainant's Motion for Commission to Appoint Legal Counsel). Anchor included within the motion a "Motion for

02-04 (July 31, 2008) (Order Granting Additional Time for Filing Exceptions and Denying Complainant's Motion for Bureau of Enforcement Intervention). Anchor and Respondents have submitted their responses to this Order. The arguments in those submissions are directed to the Commission and are not addressed here.

Commission to Appoint Legal Counsel.” With regard to the motion for appointment of counsel, I stated:

This is the second time that Anchor has filed a motion asking the Commission to appoint counsel to represent it. As explained in the order denying the first motion, the Commission does not have the authority to appoint counsel to represent a litigant before it. [*Anchor v. Aliança*] (ALJ July 18, 2007) (Memorandum and Order on Complainant’s Motion for Administrative Law Judge to Appoint Legal Counsel for Complainant).

Anchor complains that it has not been properly represented by the three attorneys who have entered their appearance on behalf of Anchor at various stages in this proceeding.

The general rule in civil cases is that the ineffective assistance of counsel is not a basis for appeal or retrial. *MacCuish v. United States*, 844 F.2d 733, 735 (10th Cir. 1988). If a client’s chosen counsel performs below professionally acceptable standards, with adverse effects on the client’s case, the client’s remedy is not reversal, but rather a legal malpractice lawsuit against the deficient attorney. *Id.* at 735-736; *Link v. Wabash R.R. Co.*, 370 U.S. 626, 634 n.10, 82 S. Ct. 1386, 8 L. Ed.2d 734 (1962).

Nelson v. Boeing Co., 446 F.3d 1118, 1119 (10th Cir. 2006). *See also Stanciel v. Gramley*, 267 F.3d 575, 581 (7th Cir. 2001). Anchor’s complaints about the quality of its attorneys’ efforts, even if true, do not create the authority for the Commission to appoint an attorney to represent it. Therefore, the Motion for Commission to Appoint Legal Counsel must be denied.

Anchor v. Aliança, slip op. at 3 (ALJ Feb. 11, 2008) (Memorandum and Order on Complainant’s Motion to Bifurcate and Partially Stay Proceedings; Complainant’s Motion for Commission to Appoint Legal Counsel).

I also construed the motion as a motion to strike Respondents’ answers to the Amended Complaint on the ground that they were not timely filed. I explained that the record reflected that the answers were timely filed and denied the motion. *Id.* at 3-5.

On February 4, 2008, Anchor served and filed Complainant’s Motion for Leave to Appeal and Notice of Exceptions seeking leave to appeal the order entered January 18, 2008. *Anchor v. Aliança* (ALJ Jan. 18, 2008) (Memorandum and Order on Pending Motions and Revised Procedural Order) (January 18 Order). I found that the rulings to which Anchor sought relief are all unappealable interlocutory orders. Therefore, I denied the motion. *Anchor v. Aliança*, slip op. at 2-10 (ALJ Feb. 11, 2008) (Memorandum and Order on Complainant’s Motion for Leave to Appeal and

Notice of Exceptions). I construed the Notice of Exception/Reconsiderations as a motion for reconsideration of the January 18 order and denied the motion. *Id.* at 10-11.

On February 14, 2008, Anchor served and filed Complainant's Motion for Reconsideration to Limited Exceptions and Appeals (and) Motion to Enlarge Time. I inferred from the context that Anchor wanted me to reconsider or permit Anchor to appeal three rulings: (1) Complainant's Motion to Appoint Legal Counsel; (2) Complainant's Motion to Bifurcate and Partially Stay Proceeding; and (3) Complainant's Motion for BOE Intervention (and) the Appointment of a Settlement Judge or Mediator. I denied the motions for reconsideration on the grounds that they did not set forth reasons justifying reconsideration. I denied the motions to appeal as they challenged unappealable interlocutory orders. *Anchor v. Aliança*, slip op. at 1-4 (ALJ Feb. 20, 2008) (Memorandum and Order on Complainant's February 14, 2008, Motion for Reconsideration to Limited Exceptions and Appeals (And) Motion to Enlarge Time). Anchor also sought enlargement of time to February 29 to file a motion to compel discovery responses. Since Anchor filed a motion to compel on February 19, this motion was moot. I enlarged the time to February 29 for Anchor to file a motion for leave to take additional discovery. *Id.* at 5.

On March 27, 2008, I entered an order vacating the filing dates for Rule 95 statements and related documents established by the January 24 order because of pending motions to compel discovery responses that would have to be decided before the parties could file those papers. *Anchor v. Aliança* (ALJ Feb. 20, 2008) (Order Vacating Dates for Filing Rule 95 Statements and Related Papers).

On May 16, 2008, Anchor filed Complainant's Motion to Compel Bureau of Enforcement Intervention asking that "the Full-Commission [*sic*] and the Administrative Law Judge . . . arrange for the Bureau of Enforcement to become a party to this Complaint." (Complainant's Motion to Compel Bureau of Enforcement Intervention at 1.) I held that it is beyond my authority to "arrange for [BOE] to become a party to this Complaint;" therefore, I referred the motion to the Commission to decide what, if any, action to take on the motion. *Anchor v. Aliança* (ALJ May 20, 2008) (Order Referring Complainant's Motion to Compel Bureau of Enforcement Intervention to the Commission). On July 31, 2008, the Commission denied this motion. *See n.3, supra.*

On August 27, 2008, I issued two orders setting forth rulings on several motions that Anchor had filed after the March 27, 2008, order vacating the Rule 95 filing dates. One order addressed the following motions not related to discovery:

- Complainant's Motion to Enlarge Time to File Documents (received April 18, 2008)
- Complainant's Motion to Supplement the (Amended) Complaint (served May 19, 2008);
- Complainant's Motion to Supplement the (Amended) Complaint to Include Necessary Parties and Causes of Action (served June 19, 2008);

- [Anchor's] Motion to Supplement, Request Reconsideration and Exceptions, Bifurcate and Reapportion Issues, in Amended Complaint, and Motion for (Partial [Sic] Summary Judgment (served June 19, 2008);
- [Respondents'] Motion under Rule 11 of the Federal Rules of Civil Procedure in Opposition to Motion to Supplement the (Amended) Complaint and Other Anchor Requests (served July 1, 2008);
- Complainant's Motion to Stay (Limited) Issues and Refer Arbitrable Issues to Arbitration (served July 1, 2008);
- Complainant's Motion to Supplement, Amend and Refine (Limited) Pleadings (served June 30, 2008);
- Complainant's Motion to Enter Facts Into Official Record, and Motion for New Trial (served July 3, 2008);
- Complainant's Motion to Enlarge Time to Supplement (Antitrust) Pleadings, File Supplemental Pleadings or Exceptions, and to Compel (Expedited) FMC Records and Referral of (Limited) Issues to Arbitration (served July 22, 2008).

I denied or dismissed each of these motions. *Anchor v. Aliança* (ALJ Aug. 27, 2008) (August 27, 2008, Memorandum and Order on Pending Motions).

The second order issued on August 27, 2008, addressed the following motions related to discovery:

- Complainant's Motion to Compel Responses to Interrogatories (served February 19, 2008);
- Complainant's Motion to Compel Responses to Requests for Production of Documents (served February 19, 2008);
- Complainant's Motion to Compel Responses to Requests for Admission (served February 21, 2008);
- Complainant's Motion to Take Additional Discovery and Enlarge Time to Complete Discovery (served February 29, 2008);
- Complainant's Brief in Support of Motion(s) to compel Discovery and Motion to Compel Responses to Complainant's Motion to Take Additional Discovery (served March 13, 2008);
- Aliança Motion to Compel Responses to Discovery (served December 20, 2007);

- Aliança Further Motion to Compel Responses to Discovery (served March 17, 2008);
- Anchor's Motion to Strike Respondents' Further Motion to Compel Discovery Responses and Supplemental Response to Respondents' Motion to Compel Discovery (served March 19, 2008);
- Complainant's Request for Expedited Commission Records and/or Motion for Commission to Subpoena Discovery (served June 2, 2008).

I granted some of the relief sought by Anchor, denied other relief sought by Anchor, and struck Anchor's Motion to Take Additional Discovery and Enlarge Time to Complete Discovery and Complainant's Brief in Support of Motion(s) to Compel Discovery and Motion to Compel Responses to Complainant's Motion to Take Additional Discovery for Anchor's failure to comply with the Commission's Rules and orders entered in this proceeding. I deferred ruling on Aliança's motions. *Anchor v. Aliança* (ALJ Aug. 27, 2008) (August 27, 2008, Memorandum and Order on Discovery Motions).

The third order issued on August 27, 2008, established the due dates and procedures to be followed for the submission of Rule 95 statements and other documents that would lead to an Initial Decision. *Anchor v. Aliança* (ALJ Aug. 27, 2008) (August 27, 2008, Procedural Order). This order required Anchor to file its Rule 95 Statement and other documents on or before October 24, 2008. On November 3, 2008, when I learned that Anchor had not filed its Rule 95 Statement and other documents by close of business that day, I issued an order for Anchor to show cause on or before November 18, 2008, why its complaint should not be dismissed or other sanctions imposed for failure to comply with the Commission's Rules of Practice and Procedure or the orders entered in this proceeding. *Anchor v. Aliança* (ALJ Nov. 4, 2008) (Order for Complainant Anchor Shipping Co. to Show Cause Why Complaint Should not be Dismissed). When I learned that Anchor had not filed the documents required by the August 27 order or responded to the order to show cause by close of business on November 25, 2008, I issued an order enlarging the time for Anchor to respond to the show cause order to December 8, 2008. *Anchor v. Aliança* (ALJ Nov. 26, 2008) (Order Enlarging Time for Anchor Shipping Co. to Respond to November 4, 2008, Order for Complainant Anchor Shipping Co. to Show Cause Why Complaint Should not be Dismissed). Service of this order was by Federal Express, overnight delivery, and to Anchor's email address of record. As of close of business on December 15, 2008, Anchor had not filed its Rule 95 Statement and other documents and had not responded to the show cause order.

II. ANCHOR'S FAILURE TO FILE REQUIRED DOCUMENTS OR RESPOND TO THE SHOW CAUSE ORDER.

As summarized above, on October 26, 2007, I entered a procedural order addressing several motions, setting forth a schedule for discovery, and establishing a schedule for filing of Rule 95

statements and other papers necessary to establish a record on which an Initial Decision could be based. With regard to the Rule 95 statements and other papers, the order stated:

On or before February 25, 2008, Anchor shall file the statement required by Commission Rule 95. 46 C.F.R. § 502.95. Anchor shall include with its Rule 95 statement a document entitled Anchor's Proposed Findings of Fact. This document shall set forth proposed findings of fact in numbered paragraphs with a citation to evidence in the form of affidavits and/or copies of documents that Anchor contends supports the proposed finding of fact. With this Proposed Findings of Fact, Anchor shall provide to the other parties *and to the Commission* an electronic copy of the Proposed Findings of Fact. The electronic copy shall be in a word-processing format (e.g., Microsoft Word 2003 or earlier or WordPerfect 10 or earlier) and provided by compact disk or email. The parties can see an example of the format required for the Proposed Findings of Fact at <http://www.fmc.gov/reading/Dockets.asp> in the proceeding *Clutch Auto, Ltd. v. International Touch Consolidator, Inc.*, FMC No. 1880(F), ("Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact"). The affidavits and/or copies of documents on which the Proposed Findings of Fact are based shall be included in the Appendix described below.

Anchor is seeking reparations in this proceeding. Anchor is reminded that it has the burden of proving entitlement to reparations. *See [Anchor v. Aliança]*, slip op. at 14-18 (ALJ Sept. 27, 2007) and cases cited therein. Accordingly, Anchor is directed to file a Reparations Statement, *see* 46 C.F.R. Subpart O, with its Rule 95 statement and Proposed Findings of Fact. Anchor shall set forth the following information in its Reparations Statement:

- A. The action of a Respondent or Respondents that Anchor claims violates the Shipping Act;
- B. A statement of whether that alleged action also violated the service contract between Anchor and a Respondent or Respondents;
- C. The actual injury to Anchor caused by the alleged violation of the Shipping Act;
- D. How the alleged violation of the Shipping Act caused the claimed injury;
- E. The pecuniary loss caused by the alleged violation of the Shipping Act;
- F. How that pecuniary loss is distinguished from the damages awarded by the arbitrator in Arbitration between Anchor and Aliança Under Service Contract EC99-0511, Decision and Final Award (July 31, 2001).

Anchor v. Aliança (ALJ Oct. 26, 2007) (October 26, 2007, Procedural Order) (emphasis added).

Because of delays in discovery and other matters caused by withdrawal of Anchor's fourth attorney, on January 18, 2008, I extended this date and ordered Anchor to file its Rule 95 Statement and other papers on or before April 4, 2008. *Anchor v. Aliança* (ALJ Jan. 18, 2008) (Memorandum and Order on Pending Motions and Revised Procedural Order). By March 28, the parties had filed several motions regarding discovery disputes. Therefore, I issued an order vacating the Rule 95 Statement filing requirement and stated that a new date would be established in a later order. *Anchor v. Aliança* (ALJ Mar. 28, 2008) (Order Vacating Dates for Filing Rule 95 Statements and Other Papers).

On August 27, 2008, I issued three orders. One order set forth rulings on a number of pending motions unrelated to discovery, *Anchor v. Aliança* (ALJ Aug. 27, 2008) (August 27, 2008, Memorandum and Order on Pending Motions), and the second order set forth rulings on motions to compel discovery and other discovery issues. *Anchor v. Aliança* (ALJ Aug. 27, 2008) (August 27, 2008, Memorandum and Order on Discovery Motions). The third Order established the due dates and procedures to be followed for the submission of Rule 95 statements and other documents that would lead to an Initial Decision:

On or before October 24, 2008, complainant Anchor Shipping Company (Anchor) shall file the statement required by Commission Rule 95. 46 C.F.R. § 502.95. Anchor shall include with its Rule 95 statement a document entitled Anchor'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 a citation to evidence in the form of affidavits and/or copies of documents that Anchor contends will support the proposed finding of fact. See 46 C.F.R. § 502.221. The parties can see an example of the format required for the Proposed Findings of Fact at <http://www.fmc.gov/reading/Dockets.asp> in the proceeding *Clutch Auto, Ltd. v. International Touch Consolidator, Inc.*, FMC No. 1880(F), ("Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact"). Anchor shall provide to Respondents and to the Commission an electronic copy of Anchor's Proposed Findings of Fact with the hard copy of Anchor's Proposed Findings of Fact. The electronic copy shall be in a word-processing format (e.g., Microsoft Word 2003 or earlier or WordPerfect 10 or earlier) and provided by compact disk or email. The evidence on which Anchor's Proposed Findings of Fact are based shall be included in the Appendix described below. Anchor shall also include with its Rule 95 statement 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 Anchor's Proposed Findings of Fact described above.

Anchor is seeking reparations in this proceeding. Anchor is reminded that it has the burden of proving entitlement to reparations. *See [Anchor v. Aliança]*, slip op. at 14-18 (ALJ Sept. 27, 2007) (Memorandum and Order on Respondents' Partial Motion to Dismiss and/or for Summary Judgment) and cases cited therein. Accordingly, Anchor is directed to file a Reparations Statement, *see* 46 C.F.R. Subpart O, with its Rule 95 statement and Proposed Findings of Fact. Anchor shall include the following information in its Reparations Statement:

- A. Each alleged action of a Respondent or Respondents that Anchor claims violates the Shipping Act;
- B. A statement of whether that alleged action also violated the service contract between Anchor and a Respondent or Respondents;
- C. The actual injury to Anchor that Anchor claims was caused by the alleged violation of the Shipping Act;
- D. How the alleged violation of the Shipping Act caused the claimed injury;
- E. The pecuniary loss caused by the alleged violation of the Shipping Act;
- F. How that pecuniary loss is distinguished from the damages awarded by the arbitrator in *Arbitration between Anchor and Aliança Under Service Contract EC99-0511, Decision and Final Award* (July 31, 2001).

Anchor shall provide to Respondents *and to the Commission* an electronic copy of Anchor's Reparations Statement with the hard copy of Anchor's Reparations Statement. The electronic copy shall be in a word-processing format (*e.g.*, Microsoft Word 2003 or earlier or WordPerfect 10 or earlier) and provided by compact disk or email. The evidence on which Anchor's Reparations Statement is based shall be included in the Appendix described below.

Anchor is cautioned to limit its submissions to the issues raised in the Amended Complaint; that is, alleged violations of the Shipping Act of 1984 by respondents Aliança Navegação E Logística Ltda., Columbus Line, Inc., Hamburg Südamerikanische Dampfschiffahrt-Gesellschaft KG, and Crowley American Transport Line, Inc. Inclusion of allegations of violations of other laws or regulations or allegations of wrongdoing by persons or entities that are not parties to this proceeding may result in an order striking Anchor's filings.

Anchor v. Aliança (ALJ Aug. 27, 2008) (August 27, 2008, Procedural Order) (emphasis in original).

The three orders issued on August 27 were served by email. Anchor was served at the email address (ascancla@aol.com) that Anchor has used throughout this proceeding to receive service of orders issued by this Office. Attachment A (email dated August 27, 2008, from Juanita Hutchins to ascancla@aol.com and others). On September 2, 2008, Anchor responded asking whether the orders were also served by US mail. Attachment B (email dated September 02, 2008 from Juanita Hutchins to ASCANCLA@aol.com responding to email dated September 02, 2008, from ASCANCLA@aol.com to Juanita Hutchins and others). Ms. Hutchins responded that they were mailed on August 29, 2008. *Id.* On September 5, 2008, Anchor responded:

Dear Ms. Hutchins;

The 3 Orders from August 27, 2008 were received today. The August 27 submission was irretrievable via e-mail .

THANK YOU,
Al Hernandez

See Attachment C (email dated September 5, 2008, from ASCANCLA@aol.com to Juanita Hutchins and others).

I was advised by the Office of the Secretary that as of close of business on November 3, 2008, it had not received the Rule 95 Statement and other documents that the August 27, 2008, Procedural Order required Anchor to file on or before October 24, 2008. Commission Rule 95 provides: "Failure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances." 46 C.F.R. § 502.95(c). Therefore, on November 4, 2008, I issued an order requiring Anchor to show cause on or before November 18, 2008, why its complaint should not be dismissed or other sanctions imposed for failure to comply with the Commission's Rules of Practice and Procedure or the orders entered in this proceeding. I also vacated the order requiring Respondents to file their Rule 95 Statement and other documents on or before December 12, 2008. *Anchor v. Aliança* (ALJ Nov. 4, 2008) (Order for Complainant Anchor Shipping Co. to Show Cause Why Complaint Should not be Dismissed). The November 4 Order was served on Anchor at its email address ascancla@aol.com. Attachment D (email dated November 4, 2008, from Juanita Hutchins to ascancla@aol.com and others). Anchor did not "provide a brief statement acknowledging receipt" of the email as requested by the email serving the show cause order.

I was advised by the Office of the Secretary that as of close of business on November 25, 2008, it had not received a response to the November 4 order to show cause or the Rule 95 Statement and other documents that the August 27, 2008, Procedural Order required Anchor to file on or before October 24, 2008. In the interest of justice, I determined that it would be necessary to serve the order to show cause a second time:

The show cause order was served by email to the email address Anchor has used throughout this proceeding and to which prior orders have been served: ascancla@aol.com. See Attachment [D]. Anchor did not “provide a brief statement acknowledging receipt” of the email as requested by the email serving the show cause order. The show cause order required Anchor to respond on or before November 18, 2008.

I have been advised by the Office of the Secretary that as of close of business on November 25, 2008, it had not received a response to the November 4, 2008, order to show cause or the Rule 95 Statement and other papers that the August 27, 2008, Procedural Order required Anchor to file on or before October 24, 2008. Therefore, it may be appropriate to impose sanctions at this time. Because of the potential severity of the sanction and as there is no proof that Anchor received the order to show cause, I am *sua sponte* enlarging the time for Anchor to respond. This order enlarging time and its attachments will be served on Anchor by Federal Express, overnight delivery.

Anchor v. Aliança (ALJ Nov. 26, 2008) (Order Enlarging Time for Anchor Shipping Co. to Respond to November 4, 2008, Order for Complainant Anchor Shipping Co. to Show Cause Why Complaint Should not be Dismissed). The order enlarged the time to December 8, 2008, for Anchor to respond to the order to show cause. *Id.*

The November 26 Order was served on Anchor at its email address ascancla@aol.com. Attachment E (email dated December 2, 2008, from Juanita Hutchins to ascancla@aol.com and others). The November 26 Order was also sent by Federal Express, overnight delivery, to 6050 N.W. 3d Street, Miami, FL 33126, Anchor’s current address of record in this proceeding. See Attachment F (FedEx US Airbill 863412696633). See also Attachment G (Affidavit of Alfred Hernandez ¶ 1). When Federal Express attempted delivery, however, the “Office manager refused envelope—because recipient no longer works there.” Attachment H (FedEx Exception/Send Again).

My assistant instructed Federal Express to attempt delivery to Anchor at 1031 Ives Dairy Road, Suite 228, North Miami, Florida 33179, Anchor’s address at the time it filed its Complaint in this proceeding. (Complaint at 1.) When Federal Express attempted delivery at that address, again it was told that “recipient no longer work.” Attachment H (FedEx Exception/Send Again). Therefore, Federal Express returned the envelope and its contents to this Office.

I have been advised by the Office of the Secretary that as of close of business on December 15, 2008, it had not received a response to the order to show cause or the Rule 95 Statement and other documents that the August 27, 2008, Procedural Order required Anchor to file on or before October 24, 2008.

III. RELATED PROCEEDING.

I take official notice (46 C.F.R. § 502.226) that on October 3, 2008, Alfred Hernandez, Anchor's president and representative in this proceeding, commenced an action in the United States District Court for the Southern District of Florida against the Respondents in this proceeding, attorneys who have represented Anchor in this proceeding and in the arbitration that preceded it, attorneys who have represented Respondents in this proceeding and in the arbitration that preceded it, and several Federal Maritime Commission officials, including the undersigned. *Alfred Hernandez, as President/Owner of Anchor Shipping Co. v. Jorge Espinosa, et al.*, No. 08-22768-CIV-JORDAN (S.D. Fla. Oct. 8, 2008) (Order Dismissing Complaint Without Prejudice and Closing Case), *appeal docketed*, No. 08-16116 (11th Cir. Oct. 24, 2008). The fact that Hernandez named me as a defendant in this action does not require my recusal in this proceeding. *In re Taylor*, 417 F.3d 649, 652 (7th Cir.2005); *United States v. Studley*, 783 F.2d 934, 939-940 (9th Cir. 1986). See also *Agrawal v. Briley*, No. 02 C 6807, 2008 WL 4449862, at *2 (N.D. Ill. Sept. 30, 2008) (citing cases).⁴

DISCUSSION AND CONCLUSION

I. ANCHOR'S NOTICE OF ORDERS REQUIRING FILING.

A. Anchor's Notice of the Requirement to File the Rule 95 Statement and Other Documents.

As noted above, Anchor responded that it had received three orders issued August 27, 2008, including the August 27, 2008, Procedural Order. *Supra* at 19. Furthermore, on September 5, 2008, Anchor submitted Complainant's Protest to the ALJ's August 27, 2008 and September 4, 2008 Orders, and Motion for Mistrial and Referral to Arbitration (or) Reassignment to the US District Court.⁵ This Protest refers to the "final Procedural Schedule." Attachment I (Complainant's Protest to the ALJ's August 27, 2008 and September 4, 2008 Orders, and Motion for Mistrial and Referral to Arbitration (or) Reassignment to the US District Court at 4). Therefore, I find that Anchor received the August 27, 2008, Procedural Order setting forth the requirement to file its Rule 95 Statement and other documents on or before October 24, 2008, and knew of its obligation to file these documents.

⁴ While I am aware that Hernandez filed this complaint and named me as a defendant, I have not read the complaint and do not have knowledge of its specific allegations.

⁵ I understand this document to be addressed to the Commission as exceptions to rulings I have made in this proceeding. Therefore, I have not issued an order on it.

B. Anchor's Notice of the Order to Show Cause.

The November 4, 2008, order to show cause and the November 26, 2008, order enlarging the time to respond to the order to show cause were served on Anchor by email to ascancla@aol.com. See Attachments D and E. As noted above, Anchor did not "provide a brief statement acknowledging receipt" of either of these emails as it had done in for earlier orders served by email.

Anchor has used ascancla@aol.com as its email address throughout this proceeding. As recently as December 5, 2008, Anchor used this email address to transmit an email regarding the case Anchor's president filed in the United States District Court for the Southern District of Florida. See Attachment J (email dated December 05, 2008, from ASCANCLA@aol.gov to usafls-citizencompla@usdoj.gov and others). Based on these facts, I find that when this Office served the November 4 and November 26 orders on Anchor at ascancla@aol.com, this email address was an active account for Anchor. Therefore, I find that Anchor received the November 4 and November 26 emails and the orders attached to those emails and had actual knowledge of the November 4 order for it to show cause why its complaint should not be dismissed or other sanctions imposed for failure to comply with the Commission's Rules of Practice and Procedure or the orders entered in this proceeding. Compare Fed. R. Civ. P. 5(b)(2)(E).

Even if the email record did not establish a foundation for finding that Anchor received the order to show cause and the order enlarging the time to respond to the order to show cause, service by Federal Express of the November 26 order with the November 4 order to show cause attached to it provides a basis for this order. The November 26 order was sent to the last know address used by Anchor in this proceeding. I take official notice that 6050 N.W. 3d Street is the also the address of record for the case filed in the Southern District of Florida, see Attachment K (Civil Docket for Case #: 1:08-cv-22768-AJ) and the appeal of that case to the Eleventh Circuit. See Attachment L (docket for Docket Number 08-16116-CG, Alfred Hernandez v. Jorge T. Espinosa).

Since the office manager at 6050 N.W. 3d Street refused delivery, it is true that Anchor did not receive the hard copy of the November 26 Order sent by Federal Express. It is well-settled that in federal agency cases,

[t]he mails may be used to effectuate service of process if the notice reasonably conveys the required information and affords a reasonable time for response and appearance. *E.g., Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800, 103 S. Ct. 2706, 2712, 77 L. Ed. 2d 180 (1983). Due process does not require actual notice. If an agency employs a procedure reasonably calculated to achieve notice, successful achievement is not necessary to satisfy due process requirements. *Day v. J. Brendan Wynne, Inc.*, 702 F.2d 10, 11 (1st Cir. 1983); *Stateside Mach. Co. v. Alperin*, 591 F.2d 234, 241 (3d Cir. 1979). EPA's service of the complaint by registered mail with return receipt requested, as well as its substantial efforts to contact Katzson over a sixteen-month period, satisfies these due process concerns.

Katzson Bros., Inc. v. EPA, 839 F.2d 1396, 1400 (10th Cir. 1988). Cf. *Olin Industries v. NLRB*, 192 F.2d 799 (5th Cir. 1951) (service of NLRB charges by regular mail when agency regulations required certified mail did not affect substantial rights and should be disregarded).

Using Federal Express to send the November 26 order with the attached November 4 order to show cause was reasonably calculated to achieve notice to Anchor at its address of record and complies with due process requirements.

II. ANCHOR HAS FAILED TO COMPLY WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE AND ORDERS ENTERED IN THIS PROCEEDING.

I have been advised by the Office of the Secretary that as of close of business on December 15, 2008, it had not received a response to the order to show cause issued on November 4, 2008, or the Rule 95 Statement and other papers that the August 27, 2008, Procedural Order required Anchor to file on or before October 24, 2008. With the exceptions of the three periods described above when attorneys entered their appearance, Anchor has been represented in this proceeding by its president, Alfred Hernandez, who is not an attorney. I recognized that pleadings of *pro se* litigants are held to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 n.2 (D.C. Cir. 2000). The Supreme Court's instruction in *Haines* is construed to encompass all filings submitted by *pro se* litigants, not just their pleadings. See, e.g., *Richardson v. United States*, 193 F.3d 545, 548 (D.C. Cir. 1999) ("[c]ourts must construe *pro se* filings liberally"); *Voinche v. Federal Bureau of Investigation*, 412 F. Supp. 2d 60, 70 (D.D.C. 2006) (observing that "[t]his Court gives *pro se* parties the benefit of the doubt and may ignore some technical shortcomings of their filings" and applying the *Haines* rule to a plaintiff's summary judgment motion); *Calloway v. Brownlee*, 366 F. Supp. 2d 43, 55 (D.D.C. 2005) (the Court "must take pains to protect the rights of *pro se* parties against the consequences of technical errors") (citing *Haines*, 404 U.S. at 520). Nevertheless, a *pro se* litigant must comply with procedural rules and orders. *Saeid B. Maralan (aka Sam Bustani), Possible Violations*, 28 S.R.R. 931, 945 (ALJ 1999).

Anchor has failed to comply with the Commission's Rules of Practice and Procedure and orders entered in this proceeding requiring it to file its Rule 95 Statement and other documents, and has failed to respond to the order to show cause why its complaint should not be dismissed or other sanctions imposed for its failure to file its Rule 95 Statement and other documents despite being given two opportunities to do so. Commission Rules provide that "[f]ailure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances." 46 C.F.R. § 502.95(c). Commission precedent establishes that:

[A party's] decision to ignore this proceeding and the various orders and rulings served on [its] last-known business address . . . does not serve to immunize [it] from

the rulings and orders served in this proceeding. It was [the party's] obligation to keep the Commission . . . informed as to [its] current address, which duty [it] failed to observe, and [it] must suffer the adverse consequences.

Go/Dan Industries, Inc. v. Eastern Mediterranean Shipping Corp. d/b/a Atlantic Ocean Lines, 28 S.R.R. 788 n.3 (ALJ 1998).

Anchor is the complainant in this proceeding and has the burden of demonstrating that Respondents have violated the Shipping Act. The proceeding could not go forward without its Rule 95 Statement and other documents. Anchor has ignored three orders requiring it to file its Rule 95 Statement or show cause why a sanction should not be imposed for its failure to file the Rule 95 Statement. Given these facts, a remedy less severe than dismissal would be ineffective; therefore, I will dismiss Anchor's complaint with prejudice for its failure to comply with the Commission's Rules of Practice and Procedure and orders entered in this proceeding.

ORDER

Upon consideration of the record herein and for the reasons stated above, it is hereby

ORDERED that the complaint filed by Anchor Shipping Company be **DISMISSED** with prejudice for failure to comply with the Commission's Rules of Practice and Procedure and orders entered in this proceeding.



Clay G. Guthridge
Administrative Law Judge

Anchor Shipping Co. v. Aliança Navegação E Logística Ltda., FMC 02-04

Order Dismissing Complaint for Failure to Comply with the Commission's Rules of Practice and Procedure and Orders Entered in this Proceeding (Dec. 16, 2008)

ATTACHMENTS

Attachment A (email dated August 27, 2008, from Juanita Hutchins to ascancla@aol.com and others)

Attachment B (email dated September 02, 2008 from Juanita Hutchins to ASCANCLA@aol.com responding to email dated September 02, 2008, from ASCANCLA@aol.com to Juanita Hutchins and others)

Attachment C (email dated September 5, 2008, from ASCANCLA@aol.com to Juanita Hutchins and others)

Attachment D (email dated November 4, 2008, from Juanita Hutchins to ascancla@aol.com and others)

Attachment E (email dated December 2, 2008, from Juanita Hutchins to ascancla@aol.com and others)

Attachment F (FedEx US Airbill 863412696633)

Attachment G (Affidavit of Alfred Hernandez, recorded 04/28/2008, Harvey Ruvin, Clerk of Court, Miami-Dade County, Florida) (pages 1 and 6 of 6)

Attachment H (FedEx Exception/Send Again)

Attachment I (Complainant's Protest to the ALJ's August 27, 2008 and September 4, 2008 Orders, and Motion for Mistrial and Referral to Arbitration (or) Reassignment to the US District Court) (pages 1 and 4 of 4)

Attachment J (email dated December 05, 2008, from ASCANCLA@aol.gov to usafis-citizencompla@usdoj.gov and others)

Attachment K (Civil Docket for Case #: 1:08-cv-22768-AJ) (page 1 of 3)

Attachment L (docket for Docket Number 08-16116-CG, Alfred Hernandez v. Jorge T. Espinosa) (page 3 of 5)

Clay Guthridge

From: Juanita Hutchins
Sent: Wednesday, August 27, 2008 4:01 PM
To: 'nmayer@hmc-law.com'; 'pcoleman@hmc-law.com'; 'ascancla@aol.com'
Cc: Clay Guthridge
Subject: Re: Docket No. 02-04
Attachments: Document (1).pdf; Document (2).pdf; Document (3).pdf

Good Afternoon,

Please see attached an "August 27, 2008, Memorandum and Order on Pending Motions", an "August 27, 2008, Memorandum and Order on Discovery Motions", and an "August 27, 2008, Procedural Order" being served today in Docket No. 02-04. Please provide a brief statement acknowledging receipt of the attached documents. A copy of the following documents will also be provided to you by U.S. postage.

Thank you,

*Juanita M. Hutchins
Office Assistant
Office of Administrative Law Judges
Federal Maritime Commission
(202) 523-5750 (office)
(202) 566-0042 (fax)*

Clay Guthridge

From: Juanita Hutchins
Sent: Tuesday, September 02, 2008 2:41 PM
To: 'ASCANCLA@aol.com'
Cc: 'nmayer@hmc-law.com'; 'pcoleman@hmc-law.com'; Harold Creel; Joseph Brennan; Clay Guthridge; Secretary
Subject: RE: Docket No. 02-04

Our office was short staffed and the hard-copies did not go out until 8/29/08, due to the absence of the office secretary. However, because of the holiday delivery may also have been delay as well.

*Juanita M. Hutchins
Office Assistant
Office of Administrative Law Judges
Federal Maritime Commission
(202) 523-5750 (office)
(202) 566-0042 (fax)*

From: ASCANCLA@aol.com [mailto:ASCANCLA@aol.com]
Sent: Tuesday, September 02, 2008 2:15 PM
To: Juanita Hutchins; nmayer@hmc-law.com; pcoleman@hmc-law.com; Harold Creel; Joseph Brennan
Cc: Clay Guthridge; Secretary
Subject: Re: Docket No. 02-04

Please confirm whether "hard-copies" of the (3) three different August 27, 2008 Orders were actually submitted to Anchor via US Mail and mailing date.

Thank you,
Anchor Shipping Co.

It's only a deal if it's where *you* want to go. Find your travel deal [here](#).

Clay Guthridge

From: ASCANCLA@aol.com
Sent: Friday, September 05, 2008 1:41 PM
To: Juanita Hutchins; nmayer@hmc-law.com; pcoleman@hmc-law.com
Cc: Clay Guthridge; Secretary
Subject: Re: Docket No. 02-04

Dear Ms. Hutchins;

The 3 Orders from August 27, 2008 were received today. The August 27 submission was irretrievable via e-mail.

THANK YOU,
Al Hernandez

It's only a deal if it's where *you* want to go. Find your travel deal [here](#).

Clay Guthridge

From: Juanita Hutchins
Sent: Tuesday, November 04, 2008 3:58 PM
To: 'nmayer@hmc-law.com'; 'pcoleman@hmc-law.com'; 'ascancla@aol.com'
Cc: Clay Guthridge
Subject: Re: Docket No. 02-04
Attachments: Document.pdf

Good Afternoon,

Please see attached an "Order for Complainant Anchor Shipping Co. to Show Cause Why Complaint Should Not Be Dismissed", issued by the Honorable Judge Clay G. Guthridge, being served today in Docket No. 02-04. Please provide a brief statement acknowledging receipt of this document.

Thank you,

*Juanita M. Hutchins
Office Assistant
Office of Administrative Law Judges
Federal Maritime Commission
(202) 523-5750 (office)
(202) 566-0042 (fax)*

Clay Guthridge

From: Juanita Hutchins
Sent: Tuesday, December 02, 2008 11:48 AM
To: 'nmayer@hmc-law.com'; 'pcoleman@hmc-law.com'; 'ascancla@aol.com'
Cc: Clay Guthridge
Subject: Re: Docket No. 02-04
Attachments: Document.pdf; Attachment A.pdf; Attachment B.pdf

Good Morning,

Please see attached an "Order Enlarging Time for Anchor Shipping Co. to Respond to November 4, 2008, Order for Complainant Anchor Shipping Co. to Show Cause Why Complaint Should Not Be Dismissed along w/attachments A and B", which was issued by the Honorable Clay G. Guthridge, and was served on November 26, 2008. You should have already received a copy of this document along with attachments by U.S. postage as well and a copy of this document was sent to Mr. Hernandez by FedEx. Please provide a brief statement acknowledging that you did receive this document.

Thank you,

*Juanita M. Hutchins
Office Assistant
Office of Administrative Law Judges
Federal Maritime Commission
(202) 523-5750 (office)
(202) 566-0042 (fax)*

FedEx US Airbill
Express

FedEx Tracking Number

8634 1269 6633



1 From Please print and press hard.
Date 11/26/08 Sender's FedEx Account Number 1506-1272-1
Sender's Name Judge Clay G. Guthridge Phone (202) 523-5750
Company FEDERAL MARITIME COMMISSION
Address 800 N CAPITOL ST NW STE 926
City WASHINGTON State DC ZIP 20002-4244

2 Your Internal Billing Reference
First 24 characters will appear on invoice.

3 To
Recipient's Name Alfred Hernandez Phone (305) 480-8303
Company Anchor Shipping Co.
Recipient's Address 6050 NW 3rd St.
City Miami State FL ZIP 33126
Re: DKT No. 0204 0369752314

Schedule a pickup at fedex.com
Simplify your shipping. Manage your account. Access all the tools you need.

4a Express Package Service Packages up to 150 lbs.
 FedEx Priority Overnight Next business morning. * Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
 FedEx Standard Overnight Next business afternoon. Saturday Delivery NOT available.
 FedEx First Overnight Earliest next business morning delivery to select locations. Saturday Delivery NOT available.
 FedEx 2Day Second business day. * Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
 FedEx Express Saver Third business day. Saturday Delivery NOT available.

4b Express Freight Service Packages over 150 lbs.
 FedEx 1Day Freight* Next business day. * Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
 FedEx 2Day Freight Second business day. * Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
 FedEx 3Day Freight Third business day. * Saturday Delivery NOT available.

5 Packaging
 FedEx Envelope* **FedEx Pak*** Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak. **FedEx Box** **FedEx Tube** **Other**
* Declared value limit \$500.

6 Special Handling Include FedEx address in Section 3.
 SATURDAY Delivery NOT Available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
 HOLD Weekday at FedEx Location NOT Available for FedEx First Overnight.
 HOLD Saturday at FedEx Location Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.
Does this shipment contain dangerous goods?
 No **Yes** As per attached Shipper's Declaration. **Yes** Shipper's Declaration not required. **Dry Ice** Dry Ice, 9, UN 1845 **Cargo Aircraft Only**
Dangerous goods (including dry ice) cannot be shipped in FedEx packages.

7 Payment Bill to: Enter FedEx Acct. No. or Credit Card No. below.
 Sender Acct. No. in Section 1 will be billed. **Recipient** **Third Party** **Credit Card** **Cash/Check**

FedEx Acct. No. _____ Exp. Date _____
Credit Card No. _____
Total Packages _____ **Total Weight** _____ **Total Declared Value*** \$ _____ .00

*Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

8 Residential Delivery Signature Options If you require a signature, check Direct or Indirect.
 No Signature Required Package may be left without obtaining a signature for delivery. **Direct Signature** Someone at recipient's address may sign for delivery. Fee applies. **Indirect Signature** If no one is available at recipient's address, someone at a neighboring address may sign for delivery. Fee applies. **519**

ATTACHMENT F



CFN 2008R0345894
OR Bk 26348 Pgs 3053 - 3058; (6pgs)
RECORDED 04/28/2008 16:01:10
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

**BEFORE THE
FEDERAL MARITIME COMMISSION**

ALZ

WASHINGTON, D.C.

FEDERAL MARITIME COMMISSION
RECEIVED
APR 28 2008

**ANCHOR SHIPPING CO.,
Complainant,**

v.

**HAMBURG SUDAMERIKANISCHE
DAMPFSCHIFFAGARTS-GESELLSCHAFT KG,
Mr. Paul D. Coleman, P. A.,
Mr. Jorge T. Espinosa, P. A.,
Mr. Peter W. Fudali, P. A.,
Mr. Stephen H. Vengrow, P. A., and
Mr. Kimberly L. King, P. A., including successors, assigns,
predecessors, any alias, a.k.a., d.b.a., jointly and severally,
Respondents**

AFFIDAVIT OF ALFRED HERNANDEZ

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

BEFORE ME, personally appeared the undersigned, Alfred Hernandez, who after being duly sworn deposes and says:

1. My name is Alfred Hernandez, President of Anchor Shipping Co., 6050 NW 3rd Street, Miami, FL 33126, (Anchor).
2. Anchor is a Florida Corporation, established since April 16, 1996.
3. Anchor was licensed by The Federal Maritime Commission, as an Ocean Transportation Intermediary, (OTI).
4. Anchor carried the required \$100,000.00 Surety-Bond, and also carried optional "General Liability Insurance", and optional "Errors and Omission Insurance" with "First Dollar Defense".
5. Anchor and the undersigned had almost (20) twenty years worth of goodwill investments in the customers, the agents and a series of other trading



1
ATTACHMENT G
Per Court

50. The Respondents have significantly conspired to suppress Anchor's "Class Action" right to prosecution in combination with the other (11) eleven or more OTI's which ADMITTEDLY had the same or a similar S/C which were also injured and had their rights to reparations and other relief deliberately concealed from the Government and the individual OTI.

51. The Respondents' are jointly and severally responsible for Extortion, Corruption and Racketeering, the Obstruction of Justice, Threats, Bribery, Aiding and Abetting, and for personally, directly and indirectly being an accessory to approximately 1,500 companies like mine from closing-down between 1999 and 2002.

52. I trusted my (4) four attorneys and (various) governmental agencies which are responsible for monitoring these activities and achieving justice for myself and for the general public, however I still have not been able to find the proper department and/or agency that can help.

53. To the best of my knowledge, the applicable laws are; (A) 46 USC Chapter 36, Sections 1701 through 1719, (B) The Shipping Act of 1984, as amended, Sections 2 through 20, (C) The Sherman Antitrust Act of 1890, (D) The Racketeer Influenced and Corrupt Organizations Act, (E) 15 USC, various sections, (F) 18 USC, various sections, (G) 46 USC, various sections, (H) The Federal Arbitration Act, (I) The Federal Trade Commission Act, (J) The Clayton Act, (K) The Rules of The Federal Maritime Commission (46 CFR 500), (L) The Federal Rules of Civil Procedure, and the various US Code and/or (various) Acts associated with same.

54. I firmly believe that due to the (aliner) Respondents' commercial leverage, political influence, financial leverage, lobby power, and over-all standing, I should definitely be represented by legal counsel, therefore will continue trying to retain viable counsel.

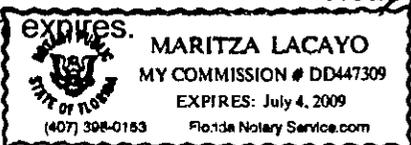
55. I firmly believe that in due time, I will either find viable legal counsel, and the proper government agency and/or department to assist me with the proper enforcement of the law.

FURTHER AFFIANT SAYETH NOT.


ALFRED HERNANDEZ

SWORN TO AND SUBSCRIBED before me this 28 day of April 2008, by alfred Hernandez, who personally known { }, produced DAVID LUCAS as identification.


Notary Public

My commission expires.  MARITZA LACAYO
MY COMMISSION # DD447309
EXPIRES: July 4, 2009
(407) 398-0183 Florida Notary Service.com

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that this is a true COPY of the original filed in this office on April 20 2008
of the 28 day of April A.D. 2008
MARILEY RUVIN, CLERK of Circuit and County Courts D.C.



FedEx Express EXCEPTION / SEND AGAIN
Customer's Package/Shipments was delayed due to:

FOR IN STATION USE ONLY

Package Researched Date: 12/1/08 Initial:

Comments: OFFICE MANAGER REFUSED ENVELOPE - BECAUSE RECIPIENT NO LONGER WORKS THERE!

UPDATE ALL INFORMATION AND POD INTO COSMOS

- Address is correct/Recipient no longer at this address
- Incorrect recipient address/Incomplete recipient address
- Need apartment or suite number
- Recipient moved and left no forwarding address or phone number
- Not in / Business closed / Not authorized to leave shipment without a signature
 - 1st Attempt
 - 2nd Attempt
 - 3rd Attempt
- Signature required, please contact shipper for disposition
- Holiday - Closed
- Package not attempted (reason): OFFICE MANAGER 228
- Refused (reason): OFFICE MANAGER 228
- Future delivery. Reattempt on (date):
- Recipient requested hold for pickup
- Collect on Delivery. Payment not available. Reattempt to be made on (date):

RECP REFUS 01DEC08 17:55
Refused: RECIPIENT NO LONGER WORK
Recept Addr: 1031 IVES DAIRY RD
Pkg Trk#: 863412696633

RT 369 A 6633
FZ 12.02

Supplies by sunset
Convention, typical
International Air W.
Want more in
Go to fedex.com for international sh
© 2005 FedEx 155477 RI

35750

6633 0215

4a Express Package Service
 FedEx Priority Overnight
 FedEx Standard Overnight
 FedEx First Overnight
 FedEx Express Saver
 FedEx 2Day
 FedEx 1Day Freight
 FedEx Freight Service

5. Packaging
 FedEx Pak*
 FedEx
 Other

Name: Steve
 Company: [Blank]
 Address: 1031 Ives Dairy Rd
 City, State, Zip: 3311719
 Telephone: [Blank]

Signature: [Blank]
 Title: [Blank]
 No Signature Required
 Direct Signature
 Indirect Signature

FedEx
 TRK# 8634 1269 6633
 32 TMBA
 FRI - 28 NOV A1
 PRIORITY OVERNIGHT
 33179
 FL-US
 FLL



Exp# 199758 01DEC08 ATUA

REMOVE LABEL BEFORE DELIVERY

117465 M-0025 01/01 RRD

RT 794 B
 FZ
 66
 11

ATTACHMENT H

BEFORE THE
FEDERAL MARITIME COMMISSION

RECEIVED

2008 OCT 13 PM 1:12

DEPT. OF JUSTICE
FEDERAL MARITIME COMMISSION

ANCHOR SHIPPING CO.
Complainant

DOCKET NO. 02-04

v

ALIANCA NAVEGACAO E
LOGISTICA LTDA, et al
Respondents

COMPLAINANT'S PROTEST TO THE ALJ'S AUGUST 27, 2008 and
SEPTEMBER 4, 2008 ORDERS, and MOTION FOR MISTRIAL and REFERRAL
TO ARBITRATION (OR) REASSIGNMENT TO US DISTRICT COURT

In accordance with the Commission's Rules of Practice and Procedure, Subparts A through W, the Federal Rules of Civil Procedure (FRCP), the applicable statutes (US Code), the UNITED STATES Constitution and Bill of Rights, Complainant (Anchor Shipping Co.) hereby PROTEST'S the entire handling of the Formal Complaint by the Federal Maritime Commission in general.

As stated in previous proceedings, including those which are still unaccounted for and those which the Commission and the ALJ continue to suppress and deliberately not mention for the record, i.e., (Exhibits #1 - #132) and (Request For Expedited FMC Records) there are still several proceedings which are not accounted for or which are not seriously being taken in genuine consideration or which are not being transparently made part of the proceedings. Apparently (obviously) there is nothing that Complainant can do, prove or say to prevail before the FMC. As also stated in previous proceedings to include Complainant's August 14, 2008 Response to the Commission's July 31, 2008 Order to file exceptions to the ALJ's September 26, 2007 Memo and Order, which Complainant rightfully rejected, the recent actions by the FMC are perfect examples of why this proceeding is going on 10 ten years from the contract date.

In addition to Anchor taking General Exception under Subpart J of the Commission Rules, (46 CFR 502.141 through 169) Complainant (Anchor Shipping Co.) has clearly stated the various grounds for mistrial and a new trial to include; (1) a (PROCEDURAL) MISTRIAL, (2) a mistrial due to conflicts of interest, (3) a mistrial on the basis of statutory hearing and trial, (4) a mistrial on

ATTACHMENT I

Acts, as with the (Arbitration Act) Arbitration Clause, plus their obvious obligation to abide by their very own rules (46 CFR Part 500), particularly the rules of practice and procedure. Irrespective of the outcome, Complainant can only be made sufficiently whole in the sense of financial compensation.

For the FMC to finally present Complainant with an alleged final Procedural Schedule after waiting 4 years on appeal for a complaint which already had a (July 10, 2001) Title 9 USC ARBITRATION DECISION in favor of Anchor, plus an additional 27 months of additional litigation time without a reasonable justification for not even holding a preliminary hearing, is completely contrary to the Commission's rules of practice and procedure, the US Statutes (Title 5 USC, Title 15 USC & Title 46 USC, and alike) and the US Constitution. The ALJ, BOE and GC, etc, knew that besides the Arbitration Decision, the Discovery was technically concluded under rules of discovery through the Respondents' refusal to provide discovery and/or disclosures, plus the fact that former Legal Counsel had not already succeeded discovery, albeit their empowerment to subpoena discovery on their authority as legal counsel. Moreover, FMC knowing that Anchor was correct from their own records on the carriers, and the fact Complainant had sufficient evidence on its own, after having received Exhibits #1 through #132, and Complainant's affidavits and other attachments to proceedings, which were clearly not produced to the arbiter by former arbitration counsel, though it would have clearly influenced the arbiter's (2001) findings, decisions and award by over \$1,000,000.00 plus PUNITIVE DAMAGES pursuant with section 1710 (g), Title 46 USC, Chapter 36. **The ALJ has not and CANNOT ADDRESS the merits of the Arbitration Decisions, Amended Complaint and/or the Antitrust and Restraint of Trade Evidence (Exhibits 1 through 132) and alike, without being compelled to issue a Reparation Award and the appropriate order for payment of civil penalties.**

WHEREFORE, Complainant's Motion to stay the carrier misconduct (civil penalties) issues before the FMC, pending PUBLISHING and the outcome of the Fraud, Extortion, Restraint of Trade, Obstruction of Justice, and Corruption issues before the Arbitration Society (or) the US District Court, Miami, Florida, must be Granted and cannot be DENIED. Whereby an appropriate Order should be issued accordingly, and same should be served on the all of the parties to the subject complaints.

This motion is not intended for the purpose of causing delays nor is it intended to cause unjust legal expenses to the parties. This motion does not unjustly broaden the issues and is merely intended to achieve justice, and is not intended for any other purpose other than for the remedies and other relief sought through this and other motions which are presently before the FMC.

Dated: September 5, 2008

Submitted by: Alfred Hernandez, President
ANCHOR SHIPPING CO.

 9/5/08

Alfred Hernandez, Date

From: ASCANCLA@aol.com [mailto:ASCANCLA@aol.com]

Sent: Friday, December 05, 2008 11:13 AM

To: usafis-citizencompla@usdoj.gov; ag.mccollum@myfloridalegal.com; antitrust.complaints@usdoj.gov

Cc: jespinoza@ETIPLaw.com; pcoleman@hmc-law.com; General Counsel Office; Bruce.Love@Crowley.com; ASCANCLA@aol.com

Subject: Hernandez v Espinosa, et al, US Dist Case #08-22768-Jordan, Appeal #08-16116-GG

ATTENTION ATTORNEYS GENERAL

Dear Sirs:

Please see attached, "APPELLANT'S WRIT of MANDAMUS" and "MOTION to BIFURCATE" the "CRIMINAL CLASS ACTION" from the "CRIMINAL ACTION", and an "EMERGENCY HEARING", which was filed, submitted and served on December 2, 2008 via US Mail.

Please allow us to clarify and kindly take note, that we (Amended) Page 2, due to the fact that we inadvertently failed to edit-out "Opposing Counsel" and "FMC OFFICIALS" from the SECOND introductory paragraph located at the TOP of PAGE 2.

This paragraph was intended to coincide with Paragraphs 50 through 56, at Pages 11 and Page 12, which outlined the fundamental basis and set forth the legal grounds in support of BIFURCATING the CASE'S into 2 (SEPERATE) TRIALS.

Respectfully,

Alfred Hernandez, Appellant

Cc: US District Court, Steven M. Larimore, Clerk, via Fax: 305-

Cc: US Court of Appeals, Thomas K. Kahn, Clerk, via Fax: 202-

Make your life easier with all your friends, email, and favorite sites in one place. [Try it now.](#)

ATTACHMENT J

APPEAL, CMM, RECOUT

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:08-cv-22768-AJ**

Hernandez v. Espinosa et al
Assigned to: Judge Adalberto Jordan
Demand: \$4,000,000
Cause: 15:0015 Antitrust Litigation

Date Filed: 10/03/2008
Date Terminated: 10/09/2008
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

Alfred Hernandez

represented by **Alfred Hernandez**
6050 NW 3rd Street
Miami, FL 33126
305 534-4244
Fax: 534-7241
PRO SE

V.

Defendant

Jorge T. Espinosa

Defendant

Peter W. Fudali

Defendant

Kimberly L. King

Defendant

Paul D. Coleman

Defendant

Stephen H. Vengrow

Defendant

Paul M. Keane

Defendant

Neal M. Mayer

Defendant

Clay G. Guthridge

Defendants-Appellees.



**United States Court OF Appeals
FOR the Eleventh Circuit**

56 Forsyth Street, N.W.
Atlanta, GA 30303-2289
(404) 335-6100

08-16116-GG

Alfred Hernandez v. Jorge T. Espinosa

Appellant	Appellant Attorney
<p><i>PRO SE</i> Alfred Hernandez 6050 NW 3RD ST MIAMI, FL 33126-4665 (305) 534-4244 <i>No Briefing Information Found.</i> <i>Fees: Paid on 10/24/2008</i></p>	
Appellee	Appellee Attorney
<p>Jorge T. Espinosa Address Not On File</p>	<p><i>No Briefing Information Found.</i></p>
<p>Peter Wieler Fudali Attorney at Law 100 SE 2nd Street Suite 2600 Miami, FL 33131 (305) 358-5665</p>	<p><i>No Briefing Information Found.</i></p>
<p>Kimberly L. King Address Not On File</p>	<p><i>No Briefing Information Found.</i></p>
<p>Paul D. Coleman Address Not On File</p>	<p><i>No Briefing Information Found.</i></p>
<p>Stephen H. Vengrow Address Not On File</p>	<p><i>No Briefing Information Found.</i></p>
Initial Service	
<p>Jorge Espinosa Espinosa, Trueba, P.L. 3001 SW 3RD AVE MIAMI, FL 33129-2709</p>	