

Federal Maritime Commission

§ 502.209

any document or the truth of any matter as requested under paragraph (a) of this section, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, that party may apply to the presiding officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. Such application must be made to the presiding officer before issuance of the initial decision in the proceeding. The presiding officer shall make the order unless it is found that:

- (1) The request was held objectionable pursuant to paragraph (a) of this section, or
- (2) The admission sought was of no substantial importance, or
- (3) The party failing to admit had reasonable ground to believe that it might prevail on the matter, or
- (4) There was other good reason for the failure to admit. [Rule 207.]

§ 502.208 Use of discovery procedures directed to Commission staff personnel.

(a) Discovery procedures described in §§ 502.202, 502.203, 502.204, 502.205, 502.206, and 502.207, directed to Commission staff personnel shall be permitted and shall be governed by the procedures set forth in those sections except as modified by paragraphs (b) and (c) of this section. All notices to take depositions, written interrogatories, requests for production of documents and other things, requests for admissions, and any motions in connection with the foregoing, shall be served on the Secretary of the Commission.

(b) The General Counsel shall designate an attorney to represent any Commission staff personnel to whom any discovery requests or motions are directed. The attorney so designated shall not thereafter participate in the Commission's decision-making process concerning any issue in the proceeding.

(c) Rulings of the presiding officer issued under paragraph (a) of this section shall become final rulings of the Commission unless an appeal is filed within ten (10) days after date of issuance of such rulings or unless the Commission on its own motion re-

verses, modifies, or stays such rulings within twenty (20) days of their issuance. Replies to appeals may be filed within ten (10) days. No motion for leave to appeal is necessary in such instances and no ruling of the presiding officer shall be effective until twenty (20) days from date of issuance unless the Commission otherwise directs. [Rule 208.]

§ 502.209 Use of depositions at hearings.

(a) *General.* At the hearing, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or duly authorized agent of a public or private corporation, partnership, or association which is a party, may be used by any other party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds:

- (i) That the witness is dead; or
- (ii) That the witness is out of the United States unless it appears that the absence of the witness was procured by the party offering the depositions; or
- (iii) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may require introduction of all

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of it which is relevant to the part introduced, and any party may introduce any other parts.

(5) Substitution of parties does not affect the right to use depositions previously taken; and, when a proceeding in any hearing has been dismissed and another proceeding involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former proceeding may be used in the latter as if originally taken therefor.

(b) *Objections to admissibility.* (1) Except as otherwise provided in this paragraph, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(2) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at the time.

(3) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(4) Objections to the form of written interrogatories submitted under § 502.204 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross interrogatories.

(c) *Effect of taking or using depositions.* A party shall not be deemed to make a person its own witness for any purpose by taking such person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall

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not apply to the use by any other party of a deposition as described in paragraph (a)(3) of this section. At the hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by it or by any other party. [Rule 209.]

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984]

§ 502.210 Refusal to comply with orders to answer or produce documents; sanctions; enforcement.

(a) *Sanctions for failure to comply with order.* If a party or an officer or duly authorized agent of a party refuses to obey an order requiring such party to answer designated questions or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, the presiding officer may make such orders in regard to the refusal as are just, and among others, the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence or an order that with respect to matters regarding which the order was made or any other designated fact, inferences will be drawn adverse to the person or party refusing to obey such order;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereto, or rendering a judgment by default against the disobedient party.

(b) *Enforcement of orders and subpoenas.* In the event of refusal to obey an order or failure to comply with a subpoena, the Attorney General at the request of the Commission, or any party injured thereby may seek enforcement by a United States district court having jurisdiction over the parties. Any action with respect to enforcement of subpoenas or orders relating to depositions,