

Federal Maritime Commission

§ 502.254

she files in writing an election not to participate. [Rule 243.]

Subpart O—Reparation

§ 502.251 Proof on award of reparation.

If many shipments or points of origin or destination are involved in a proceeding in which reparation is sought (See § 502.63), the Commission will determine in its decision the issues as to violations, injury to complainant, and right to reparation. If complainant is found entitled to reparation, the parties thereafter will be given an opportunity to agree or make proof respecting the shipments and pecuniary amount of reparation due before the order of the Commission awarding reparation is entered. In such cases, freight bills and other exhibits bearing on the details of all shipments, and the amount of reparation on each, need not be produced at the original hearing unless called for or needed to develop other pertinent facts. [Rule 251.]

§ 502.252 Reparation statements.

When the Commission finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant shall immediately prepare a statement in accordance with the approved reparation statement in Exhibit No. 1 to this subpart, showing details of the shipments on which reparation is claimed. This statement shall not include any shipments not covered by the findings of the Commission. Complainant shall forward the statement, together with the paid freight bills on the shipments, or true copies thereof, to the respondent or other person who collected the charges for checking and certification as to accuracy. Statements so prepared and certified shall be filed with the Commission for consideration in determining the amount of reparation due. Disputes concerning the accuracy of amounts may be assigned for conference by the Commission, or in its discretion referred for further hearing. [Rule 252.]

§ 502.253 Interest in reparation proceedings.

Except as to applications for refund or waiver of freight charges under § 502.271 and claims which are settled by agreement of the parties, and absent fraud or misconduct of a party, interest granted on awards of reparation in complaint proceedings instituted under the Shipping Act of 1984 will accrue from the date of injury to the date specified in the Commission order awarding reparation. Compounding will be daily from the date of injury to the date specified in the Commission order awarding reparation. Normally, the date specified within which payment must be made will be fifteen (15) days subsequent to the date of service of the Commission order. Interest shall be computed on the basis of the average monthly secondary market rate on six-month U.S. Treasury bills commencing with the rate for the month that the injury occurred and concluding with the latest available monthly U.S. Treasury bill rate at the date of the Commission order awarding reparation. The monthly secondary market rates on six-month U.S. Treasury bills for the reparation period will be summed up and divided by the number of months for which interest rates are available in the reparation period to determine the average interest rate applicable during the period. [Rule 253.]

[64 FR 7810, Feb. 17, 1999]

§ 502.254 Attorney's fees in reparation proceedings.

(a) *Scope.* The Commission shall, upon petition, award the complainant reasonable attorney's fees directly related to obtaining a reparations award in any complaint proceeding under section 11 of the Shipping Act of 1984. For purposes of this section, "attorney's fees" includes the fair market value of the services of any person permitted to appear and practice before the Commission in accordance with subpart B of this part, and may include compensation for services rendered the complainant in a related proceeding in Federal court that is useful and necessary to the determination of a reparations award in the complaint proceeding.

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(b) *Content of petitions.* Petitions for attorney's fees under this section shall specify the number of hours claimed by each person representing the complainant at each identifiable stage of the proceeding, and shall be supported by evidence of the reasonableness of hours claimed and the customary fees charged by attorneys and associated legal representative in the community where the petitioner practices. Requests for additional compensation must be supported by evidence that the customary fees for the hours reasonably expended on the case would result in an unreasonable fee award.

(c) *Filing of petition.* (1) Petitions for attorney's fees shall be filed within 30 days of a final reparation award:

(i) With the presiding officer where the presiding officer's decision awarding reparations became administratively final pursuant to §502.227(a)(3) and §502.304(g); or

(ii) With the Commission, if exceptions were filed to, or the Commission reviewed, the presiding officer's reparation award decision pursuant to §502.227 of this part.

(2) For purposes of this section, a reparation award shall be considered final after a decision disposing of the merits of a complaint is issued and the time for the filing of court appeals has run or after a court appeal has terminated.

(d) *Replies to petitions.* Within 20 days of filing of the petition, a reply to the

petition may be filed by the respondent, addressing the reasonableness of any aspect of the petitioner's claim. A respondent may also suggest adjustments to the claim under the criteria stated in paragraph (b) of this section.

(e) *Ruling on petitions.* Upon consideration of a petition and any reply thereto, the Commission or the presiding officer shall issue an order stating the total amount of attorney's fees awarded. The order shall specify the hours and rate of compensation found awardable and shall explain the basis for any additional adjustments. An award order shall be served within 60 days of the date of the filing of the reply to the petition or expiration of the reply period; except that in cases involving a substantial dispute of facts critical to the award determination, the Commission or presiding officer may hold a hearing on such issues and extend the time for issuing a fee award order by an additional 30 days. The Commission or the presiding officer may adopt a stipulated settlement of attorney's fees.

(f) In cases where the presiding officer issues an award order, appeal of that order and Commission review of that order in the absence of appeal shall be governed by the procedures of §502.227 of this part. [Rule 254.]

[52 FR 6331, Mar. 3, 1987, as amended at 58 FR 27211, May 7, 1993; 64 FR 7811, Feb. 17, 1999]

EXHIBIT NO. 1 TO SUBPART O [§ 502.252] OF PART 502—REPARATION STATEMENT TO BE FILED PURSUANT TO RULE 252

Claim of _____ under the decision of the Federal Maritime Commission in Docket No. _____.

Date of B/L	Date of delivery or tender of delivery	Date charges paid	Vessel	Voyage No.	Port of origin	Destination port	Route	Commodity	Weight or measurement	As charged		Should be		Reparation	Charges paid by*
										Rate	Amount	Rate	Amount		

*Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

Total amount of reparation \$ _____.

The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date _____.

_____, Steamship Company, Collecting Carrier Respondent,

By _____, Auditor

By _____, *Claimant*

_____, *Attorney*

(address and date)