

Pt. 502, Subpt. E, Exh. 2

46 CFR Ch. IV (10-1-06 Edition)

10. Care should be exercised to differentiate between the measure of damages required in cases where prejudice or preference is charged, where the illegality of rates is charged and other situations.

11. Where a filed agreement or conduct under the agreement is challenged, all necessary provisions of the shipping statute involved must be specifically cited, showing in detail how a section was violated and how the conduct or agreement injures complainant. The complaint should be thorough and clear as to all relief complainant is requesting.

[49 FR 44369, Nov. 6, 1984; 49 FR 47394, Dec. 4, 1984, as amended at 55 FR 28400, July 11, 1990; 64 FR 7808, Feb. 17, 1999]

EXHIBIT NO. 2 TO SUBPART E [§ 502.64] OF PART 502—ANSWER TO COMPLAINT

Before the Federal Maritime Commission

Answer

v. _____
[Complainant] [Respondent]
Docket No. _____

The above-named respondent, for answer to the complaint in this proceeding, states:

I. [State in this and subsequent paragraphs to be numbered II, III, etc., appropriate and responsive admissions, denials, and averments, specifically answering the complaint, paragraph by paragraph.]

Wherefore respondent prays that the complaint in this proceeding be dismissed.

[Name of respondent]

By _____

[Title of Officer]

[Office and post office address]

[Signature of attorney or agent]

[Post office address]

Date _____, 19____.

VERIFICATION

[See form for verification of complaint in Exhibit No. 1 to this subpart and § 502.112.]

CERTIFICATE OF SERVICE

[See § 502.114.]

EXHIBIT NO. 3 TO SUBPART E [§ 502.72] OF PART 502—PETITION FOR LEAVE TO INTERVENE

Before the Federal Maritime Commission

Petition for Leave To Intervene

_____ v. _____ Docket No. _____.

Your _____ petitioner,

_____ respectfully represents that he (she) has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is [State whether an association, corporation, firm, or partnership, etc., as in Exhibit No. 1 to this subpart, and nature and principal place of business].

II. [Here set out specifically position and interest of petitioner in the above-entitled proceeding and other essential averments in accordance with Rule 72 (46 CFR 502.72).]

Wherefore said _____ requests leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

[If affirmative relief is sought, insert appropriate request here.]

Dated at _____, this _____ day of _____, 19____.

Petitioner's signature]

[Office and post office address]

[Signature of agent or attorney of petitioner]

[Post office address]

VERIFICATION AND CERTIFICATE OF SERVICE
[See Exhibits Nos. 1 and 2 to this subpart.]

Subpart F—Settlement; Prehearing Procedure

§ 502.91 Opportunity for informal settlement.

(a) Parties are encouraged to make use of all the procedures of this part which are designed to simplify or avoid formal litigation, and to assist the parties in reaching settlements whenever

Federal Maritime Commission

§ 502.94

it appears that a particular procedure would be helpful.

(b) Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

(c) No stipulation, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. [Rule 91.]

(d) As soon as practicable after the commencement of any proceeding, the presiding judge shall direct the parties or their representatives to consider the use of alternative dispute resolution, including but not limited to mediation, and may direct the parties or their representatives to consult with the Federal Maritime Commission Alternative Dispute Resolution Specialist about the feasibility of alternative dispute resolution.

(e) Any party may request that a mediator or other neutral be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will appoint a mediator or other neutral who is acceptable to all parties, coordinating with the Federal Maritime Commission Alternative Dispute Resolution Specialist. The mediator or other neutral shall convene and conduct one or more mediation or other sessions with the parties and shall inform the presiding judge, within the time prescribed by the presiding judge, whether the dispute resolution proceeding resulted in a resolution or not, and may make recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling. All such dispute resolution proceedings shall be subject to the provisions of subpart U.

(f) Any party may request that a settlement judge be appointed to assist the parties in reaching a settlement. If such a request or suggestion is made and is not opposed, the presiding judge will advise the Chief Administrative Law Judge who may appoint a settlement judge who is acceptable to all parties. The settlement judge shall

convene and preside over conferences and settlement negotiations and shall report to the presiding judge within the time prescribed by the Chief Administrative Law Judge, on the results of settlement discussions with appropriate recommendations as to future proceedings. If settlement is reached, it shall be submitted to the presiding judge who shall issue an appropriate decision or ruling. [Rule 91].

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 38649, July 19, 1993; 64 FR 7808, Feb. 17, 1999; 66 FR 43513, Aug. 20, 2001]

§ 502.92 [Reserved]

§ 502.94 Prehearing conference.

(a)(1) Prior to any hearing, the Commission or presiding officer may direct all interested parties, by written notice, to attend one or more prehearing conferences for the purpose of considering any settlement under § 502.91, formulating the issues in the proceeding and determining other matters to aid in its disposition. In addition to any offers of settlement or proposals of adjustment, there may be considered the following:

- (i) Simplification of the issues;
- (ii) The necessity or desirability of amendments to the pleadings;
- (iii) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (iv) Limitation on the number of witnesses;
- (v) The procedure at the hearing;
- (vi) The distribution to the parties prior to the hearing of written testimony and exhibits;
- (vii) Consolidation of the examination of witnesses by counsel;
- (viii) Such other matters as may aid in the disposition of the proceeding.

(2) The presiding officer may require, prior to the hearing, exchange of exhibits and any other material which may expedite the hearing. He or she shall assume the responsibility of accomplishing the purposes of the notice of prehearing conference so far as this may be possible without prejudice to the rights of any party.