

ORIGINAL

S E R V E D
January 4, 2010
FEDERAL MARITIME COMMISSION

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WASHINGTON, D.C.

DOCKET NO. 09-08

**SSA TERMINALS, LLC and
SSA TERMINALS (OAKLAND), LLC**

v.

**THE CITY OF OAKLAND, ACTING BY AND THROUGH
ITS BOARD OF PORT COMMISSIONERS**

NOTICE OF ASSIGNMENT

This proceeding is assigned to the Honorable Erin M. Wirth who will conduct such hearings and conferences as may be necessary to resolve the issues and to issue an Initial Decision or dispositive ruling.

All pleadings and documents pertaining to this proceeding shall be filed with the Secretary of the Commission as required by Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.118, with a courtesy copy to the presiding judge. Rule 118(b)(3) requires that parties file copies of discovery with the Commission. 46 C.F.R. § 502.118(b)(3). In accordance with Rule 10 (46 C.F.R. § 502.10), that requirement is waived in this case. Therefore, the following discovery requests and responses must not be filed with the Commission until they are used in the proceeding or the court orders filing: (i) depositions, (ii) interrogatories, (iii) requests for production of documents or to permit entry upon land, and (iv) requests for admission. *Compare* Fed. R. Civ. P. 5(d)(1).

In all papers filed in this proceeding, the parties may cite Commission decisions or rulings by reference to the official F.M.C. reporters, Pike & Fischer Shipping Regulation Reports ("S.R.R."), Westlaw, or Commission slip opinions by docket number, title, and date of service. If Westlaw citations are used, the parties shall give the corresponding S.R.R. citation if available, or, if not available, shall give the F.M.C. docket number, the title of the case, and the precise date of the

ruling. If a court or other non-F.M.C. case is cited by Westlaw, the decision or ruling shall be transmitted via e-mail to judges@fmc.gov.

In its Notice of Filing of Complaint and Assignment, the Commission stated: "Hearing in this matter . . . shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and *only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution.*" *SSA Terminals, LLC v. City of Oakland*, FMC No. 09-08, Notice of Filing of Complaint and Assignment at 3 (Dec. 24, 2009) (emphasis added). The Commission has promulgated Rules of Practice and Procedure regarding the use of alternative dispute resolution, settlement, shortened procedure, and any other device that will aid in cutting costs of litigation. *See, e.g.*, 46 C.F.R. §§ 502.1; 502.61(d); 502.91(a); 502.91(d); 502.94(c); 502.147(a); 502.181 - 502.187 (shortened procedure); 502.401 - 502.411 (alternative dispute resolution). *See also Verucci Motorcycles, LLC v. Senator International Ocean, LLC*, FMC No. 06-05, slip op. at 5-6 (May 7, 2008) (Order Reopening the Proceeding) (remanding for further proceedings and directing the administrative law judge to "instruct the parties upon the availability of alternative dispute resolution (ADR), and . . . determine whether the matter should be referred to the Office of Consumer Affairs and Dispute Resolution Services to assist the parties."). Accordingly, the parties are ordered to review the above-cited sections of the Commission's Rules. The parties are also ordered to contact Zoraya De La Cruz, Acting Director of the Commission's Consumer Affairs and Dispute Resolution Service, at 202-523-5807, on or before January 15, 2010, to discuss with Ms. De La Cruz or her designee the feasibility of resolving this matter through alternative dispute resolution. *See* 46 C.F.R. § 502.91(d) ("the presiding judge . . . 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."). Each party is ordered to advise Ms. De La Cruz in confidence whether it agrees to engage in alternative dispute resolution. Ms. De La Cruz is requested to advise the Office of Administrative Law Judges in writing: (1) whether each party has complied with the directive to consult with the Commission's Alternative Dispute Resolution Specialist; and (2) whether the parties agree to engage in alternative dispute resolution.

The Commission's rules of practice and procedure are available online at <http://www.fmc.gov/home/Regularities.asp>. Commission decisions going back to 1996 are also available online at <http://www.fmc.gov/reading/DocketProceedings.asp>.

Section 205(c)(3) of the E-Government Act of 2002, Public Law 107-347, required the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule developed by the Court goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form. *See* Fed. R. Civ. P. 5.2 ("Privacy Protection For Filings Made with the Court"). *See also* Fed. R. Civ. P. 5.2, advisory committee notes, 2007 adoption. There is no comparable Commission rule. Commission Rules do provide that "[i]n proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice." 46 C.F.R. § 502.12. It is consistent with sound administrative practice to

follow the Federal Rules of Civil Procedure governing privacy protection for filings made with the Commission. Therefore, the parties are ordered to comply with Fed. R. Civ. P. 5.2 when filing documents with the Commission.

Commission Rule 201 states that:

In all proceedings in which the procedures of this subpart are used, it shall be the duty of the parties to meet or confer within fifteen (15) days after service of the answer to a complaint . . . in order to: establish a schedule for the completion of discovery within the 120-day period prescribed in paragraph (c) of this section; resolve to the fullest extent possible disputes relating to discovery matters; and expedite, limit, or eliminate discovery by use of admissions, stipulations and other techniques. The schedule shall be submitted to the presiding officer not later than five (5) days after the conference. Nothing in this rule should be construed to preclude the parties from meeting or conferring at an earlier date.

46 C.F.R. § 502.201(d).

MISCELLANEOUS INSTRUCTIONS REGARDING DISCOVERY

- Answers, responses, and objection to interrogatories and requests for admissions or for production of documents shall identify and quote each interrogatory or request in full immediately preceding the answer, response or objection thereto.
- The parties are directed to provide an electronic copy in a word processing format of discovery with the hard copy of all discovery served.
- Any motion to compel discovery responses must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without Commission action.
- Any motion to compel must set forth verbatim the interrogatory or request, the response that the moving party argues is insufficient, a summary of the moving party's attempts to secure a sufficient response, and the moving party's argument on why the response is insufficient. The moving party is directed to provide an electronic copy in a word processing format of the motion to compel with the hard copy of the motion. The non-moving party is directed to use the electronic copy of the motion to compel and add any counter-summary of the attempts to secure a sufficient response, then its argument on why the response is sufficient, below the moving party's summary and argument for each response claimed to be insufficient. The non-moving party is directed to provide to the moving party *and to the Commission* an electronic copy in a word processing format of the motion to compel to which it has added its counter-summaries and arguments with the hard copy of this document.

- The parties are ordered to adhere to the provisions of Federal Rule of Civil Procedure 26(a)(2) as restyled by the 2007 amendments for disclosure of information regarding expert testimony.
- Any party that is seeking to withhold documents because of an asserted privilege is ordered to prepare and serve a privilege log that complies with the requirements of Fed. R. Civ. P. 26(b)(5)(A) as restyled by the 2007 amendments.
- The parties are ordered to comply with Rule 34 as restyled by the 2007 amendments with regard to electronically stored information.
- The parties are ordered to conduct depositions pursuant to the requirements of Federal Rule of Civil Procedure 30 as restyled by the 2007 amendments, including duration of depositions, but not including the number of depositions. If the parties agree to limit the number of depositions, they may do so by stipulation filed with the Commission.

To improve efficiency and reduce cost, the parties may elect to receive service of the rulings, orders and decisions in this proceeding through email in lieu of service by U.S. mail. A party opting for electronic service shall advise the presiding judge in writing and provide the email address where the party wishes to receive service.



Clay G. Guthridge
Acting Chief Administrative Law Judge