

**§ 502.201 Duty to disclose; general provisions governing discovery.**

(a) *Applicability.* Unless otherwise stated in subpart S, T, or any other subpart of this part, the procedures described in this subpart are available in all adjudicatory proceedings under the Shipping Act of 1984.

(b) *Initial disclosures.* Except as otherwise stipulated or ordered by the Commission or presiding officer, and except as provided in this subpart related to disclosure of expert testimony, all parties must, within 7 days of service of a respondent's answer to the complaint or Order of Investigation and Hearing and without awaiting a discovery request, provide to each other:

(1) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(2) A copy, or a description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(3) An estimate of any damages claimed by the disclosing party who must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which the estimate is based, including materials bearing on the nature and extent of injuries suffered.

(c) *For parties served or joined later.* A party that is first served or otherwise joined after the answer is made must make the initial disclosures within seven (7) days after an order of intervention is granted, unless a different time is set by stipulation or order of presiding officer. All parties must also produce to the late-joined party any initial disclosures previously made.

(d) *Disclosure of expert testimony.* (1) *In general.* A party must disclose to the other parties the identity of any witness it may use in the proceeding to present evidence as an expert.

(2) *Witnesses who are required to provide a written report.* Unless otherwise

stipulated or ordered by the presiding officer, if the witness is one retained or specially employed to provide expert testimony in the proceeding or one whose duties as the party's employee regularly involve giving expert testimony, the disclosure must be accompanied by a written report, prepared and signed by the witness. The report must contain:

(i) A complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) The facts or data considered by the witness in forming them;

(iii) Any exhibits that will be used to summarize or support them;

(iv) The witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) A list of all other proceedings or cases in which, during the previous 4 years, the witness testified as an expert in a trial, an administrative proceeding, or by deposition; and

(vi) A statement of the compensation to be paid for the study and testimony in the proceeding.

(3) *Witnesses who are not required to provide a written report.* Unless otherwise stipulated or ordered by the presiding officer, if the witness is not required to provide a written report under paragraph (d)(2) of this section, the disclosure must state:

(i) The subject matter on which the witness is expected to present evidence as an expert; and

(ii) Summary of the facts and opinions to which the witness is expected to testify.

(4) *Time to disclose expert testimony.* The time for disclosure of expert testimony must be addressed by the parties when they confer as provided in paragraph (h) of this section and, if applicable, must be included in the proposed discovery schedule submitted to the presiding officer.

(e) *Scope of discovery and limits.* (1) Unless otherwise limited by the presiding officer, or as otherwise provided in this subpart, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents

or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the presiding officer may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at hearing if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Limitations on frequency and extent.*

(i) *Specific limitations on electronically stored information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the presiding officer may nonetheless order discovery from such sources if the requesting party shows good cause. The presiding officer may specify conditions for the discovery.

(ii) *When required.* On motion or on its own, the presiding officer may limit the frequency or extent of discovery otherwise allowed by these rules if the presiding officer determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(B) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(C) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the proceeding, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(f) *Scope of discovery and limits—experts.* (1) A party may depose any person who has been identified as an expert whose opinions may be presented in a proceeding. If a report is required of the witness, the deposition may be conducted only after the report is provided.

(2) Drafts of any report or disclosure required by these rules are not discoverable regardless of the form in which the draft is recorded.

(3) Communications between the party's attorney and any expert witness required to provide a report are not discoverable regardless of the form of communications, except to the extent that the communications relate to compensation for the expert's study or testimony; identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(4) A party may not by interrogatories or deposition discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for a proceeding and who is not expected to be presented as a witness; provided, however, that the presiding officer may permit such discovery and may impose such conditions as deemed appropriate upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(g) *Completion of discovery.* Discovery must be completed within 150 days of the service of a respondent's answer to the complaint or Order of Investigation and Hearing.

(h) *Duty of the parties to confer.* In all proceedings in which the procedures of this subpart are used, it is the duty of the parties to confer within 15 days after receipt of a respondent's answer to a complaint or Order of Investigation and Hearing in order to: establish a schedule for the completion of discovery, including disclosures and discovery related to experts, within the 150-day period prescribed in paragraph (g) 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 parties must submit the schedule to the presiding officer not later than 5 days after the conference.

Nothing in this rule should be construed to preclude the parties from conducting discovery and conferring at an earlier date.

(i)(1) *Conferences by order of the presiding officer.* The presiding officer may at any time order the parties or their attorneys to participate in a conference at which the presiding officer may direct the proper use of the procedures of this subpart or make such orders as may be necessary to resolve disputes with respect to discovery and to prevent delay or undue inconvenience.

(2) *Resolution of disputes.* After making every reasonable effort to resolve discovery disputes, a party may request a conference or rulings from the presiding officer on such disputes. If necessary to prevent undue delay or otherwise facilitate conclusion of the proceeding, the presiding officer may order a hearing to commence before the completion of discovery.

(j) *Protective orders.* (1) *In general.* A party or any person from whom discovery is sought may move for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without Commission or presiding officer action. The Commission or presiding officer may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) Forbidding the disclosure or discovery;

(ii) Specifying terms, including time and place, for the disclosure or discovery;

(iii) Prescribing a discovery method other than the one selected by the party seeking discovery;

(iv) Forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(v) Designating the persons who may be present while the discovery is conducted;

(vi) Requiring that a deposition be sealed and opened only on Commission or presiding officer order;

(vii) Requiring that a trade secret or other confidential research, develop-

ment, or commercial information not be disclosed or be disclosed only in a specified way; or

(viii) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the Commission or presiding officer directs.

(2) *Ordering discovery.* If a motion for a protective order is denied in whole or in part, the Commission or presiding officer may, on just terms, order that any party or person provide or permit discovery.

(k) *Supplementing responses.* A party who has made a disclosure under paragraph (b) or (d) of this section, or who has responded to an interrogatory, request for production, or request for admission, must supplement or correct its disclosure or response:

(1) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in written communication; or

(2) As ordered by the presiding officer.

(1) *Stipulations.* Unless the presiding officer orders otherwise, the parties may stipulate that other procedures governing or limiting discovery be modified, but a stipulation extending the time for any form of discovery must have presiding officer's approval if it would interfere with the time set for completing discovery, for adjudicating a motion, or for hearing. [Rule 201.]

[49 FR 44369, Nov. 6, 1984, as amended at 78 FR 45071, July 26, 2013; 80 FR 57307, Sept. 23, 2015]

#### § 502.202 Persons before whom depositions may be taken.

(a) *Within the United States.* (1) *In general.* Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(i) An officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(ii) A person appointed by the Commission or the presiding officer to administer oaths and take testimony.