

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**WILH. WILHELMSSEN HOLDING ASA,**

**WILHELMSSEN MARITIME SERVICES  
AS,**

**RESOLUTE FUND II, L.P.,**

**DREW MARINE INTERMEDIATE B.V.,**

**AND**

**DREW MARINE GROUP, INC.,**

Defendants.

Civil Action No. 18-cv-00414-TSC

**CASE MANAGEMENT AND SCHEDULING ORDER**

It is hereby ordered as follows:

- A. **Temporary Restraining Order.** The Court entered the parties' Stipulated Temporary Restraining Order on February 23, 2018. Under that Temporary Restraining Order, the Defendants cannot close their transaction until after 11:59 PM Eastern Time on the third business day after this Court rules on the Plaintiff's motion for preliminary injunction, or the day after dismissal of this action by the Commission, whichever occurs first.
- B. **Answer.** Defendants shall answer or otherwise respond to Plaintiff's Complaint on or before March 9, 2018.

C. **Discovery.**

1. **Fact Discovery.** The parties agreed that fact discovery opened on February 27, 2018. Fact discovery shall be completed April 27, 2018. All discovery requests must be served so as to leave sufficient time to respond before the close of discovery.
2. **Initial Disclosures.** By March 5, 2018, the parties shall serve upon each other lists of persons, other than expert witnesses, likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses. By March 12, 2018, and subject to Paragraph C.5(a) below, the parties also will make a good faith effort to produce copies of all documents in their possession that they may use to support their claims or defenses in this action that are not privileged or otherwise protected by the work product doctrine. To the extent additional documents come to the parties' attention during discovery, they will supplement their disclosures within three days.
3. **Production of Investigative Materials.** By March 9, 2018, Plaintiff and Defendants will make a good-faith effort to produce, initially on an “outside counsel eyes only” basis, and at all times in compliance with any Protective Order that may be entered in this matter, the following Investigation Materials: (a) all documents, data, or transcripts of testimony in their possession, custody, or control that (i) any non-party provided to any party either voluntarily or under compulsory process preceding the filing of this action in the course of the parties' assessment of or inquiries into the competitive effects of the proposed merger or

(ii) any party, including that party's counsel, provided to any non-party (exclusive of agents or consultants of that party retained for the purposes of the investigation but inclusive of agents or consultants of that party retained for business purposes), preceding the filing of this action in the course of the parties' assessment of or inquiries into the competitive effects of the proposed merger; and (b) any witness statements, including affidavits, declarations, transcripts, or letters, whether in hard-copy or electronic form, sent or received by any party, including that party's counsel, to or from any non-party, including that non-party's counsel, preceding the filing of this action in the course of the parties' assessment of or inquiries into the competitive effects of the proposed merger. The parties will conduct good-faith, reasonable, and diligent searches for Investigative Materials (except that this provision is not intended to require Defendants to review and produce materials from non-custodians); if any Investigative Material is withheld as described in this Paragraph, the parties will meet and confer in good faith to agree on a resolution. Nothing in this Order requires the production of any party's attorney work product, confidential attorney-client communications, communications with or information provided to any potentially or actually retained expert, or materials subject to the deliberative-process or any other applicable governmental privilege.

4. Exchange of Lists of Fact Witnesses to Appear at Hearing. The parties shall exchange preliminary party and third-party fact witness lists by 6:00 pm Eastern time on March 13, 2018. Each side shall jointly submit one list. Defendants may supplement their list with up to ten (10) third-parties by 6:00 pm Eastern time on March 22, 2018, no more than six (6) of whom may be individuals who do not

appear on Plaintiff's initial disclosures. Defendants' initial and supplemental lists may not exceed the total number of initial witnesses listed below. Such preliminary fact witness lists shall include a summary of the topics of each witness's anticipated testimony. The preliminary witness lists shall include the name of the employer of the witness and counsel for the witness, if known. The parties may add or delete witnesses from their witness lists by agreement or with leave of the court for good cause shown, and will, in all events, update their preliminary witness lists promptly as they add or delete witnesses, subject to the 25 witness limit described below. Final party and third-party fact witness lists shall be exchanged by 6 pm Eastern time on May 8, 2018, with a summary of the topics of each witness's testimony. Each side shall jointly submit one list. Additional witnesses may be added to the final witness lists after this date only by agreement of the parties or with leave of Court for good cause shown. The number of witnesses who may be included on the preliminary witness list shall not exceed 25 and the number of witnesses who may be included on the final fact witness list shall not exceed ten (10), which shall include any fact witnesses one side may call live or present via deposition video. The opposing party must be given a reasonable opportunity to depose any witness who appears on the final witness list and that opposing party must make a reasonable and good faith effort to schedule and conduct a deposition. All parties will make reasonable and good faith efforts to identify witnesses in a timely manner who may appear on the final witness list, regardless if such witnesses appear on the preliminary witness list. The final witness list may not include additional witnesses not previously listed

on the preliminary witness list unless by consent of the parties, or with leave of the court for good cause shown.

5. Document Production.

- (a) Defendants shall not be required to produce in discovery in this case any documents previously produced in the course of the investigation of the proposed merger between Wilhelmsen and Drew Marine, FTC File No. 171-0161.
- (b) The parties shall file objections to requests for production within ten (10) calendar days and comply with requests for production within 20 calendar days after the date of service (unless objections cannot be worked out and require the Court to become involved), except that for any requests for production served prior to entry of this Order, the parties shall object and comply within the earlier of (i) 30 days from the date of service or (ii) the above deadlines from the date of entry of this Order.
- (c) Document Productions shall be sent to the attention of:
  - (i) To the FTC: Michael Lovinger
  - (ii) To Wilhelmsen: Catherine O'Connor
  - (iii) To Drew Marine: Oral Pottinger

6. Third-Party Discovery. For any third-party subpoena, the parties will not request a return date sooner than seven (7) calendar days after service (unless requested in good faith by the third party). Each side shall copy and produce to the other side materials obtained in discovery from any third party, in the format they were received, within three business days after receipt by the party initiating the

discovery request; except that if a third party produces documents or electronic information that are not Bates-stamped, the party receiving the documents shall Bates-stamp them, if possible, before producing a copy to the other parties, and shall produce the documents or electronic information in a timely manner.

7. Expert Materials Not Subject to Discovery. Expert disclosures and reports shall comply with Fed. R. Civ. P. 26(a)(2), except neither side must preserve or disclose:
  - (a) Any form of communication or work product shared between any of the parties' counsel and their testifying or consulting expert(s), or between such experts themselves, inclusive of agents or consultants of that party retained for the purposes of the litigation or investigation but exclusive of agents or consultants of that party retained for business purposes;
  - (b) Any form of communication or work product shared between an expert(s) and persons assisting the expert(s);
  - (c) Experts' notes, unless they constitute the only record of a fact or assumption relied upon by the expert in arriving at the opinion contained in the final expert report;
  - (d) Drafts of expert reports, analyses, or other work product; or
  - (e) Data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.
  
8. Expert Reports. Plaintiff shall serve its expert reports by April 30, 2018. Defendants shall serve their expert reports by May 11, 2018. Plaintiff shall serve

its rebuttal expert reports by May 21, 2018. The parties are limited to no more than four (4) experts per side.

9. Disclosure of Expert Materials. At the time an expert is first disclosed by a party, that party shall provide: materials fully describing or identifying the background and qualifications of the expert, all publications of the expert within the preceding ten years, and all prior cases in which the expert has been deposed within the previous five years; and transcripts of such testimony in the possession, custody, or control of such producing party or expert, except that transcript sections under seal in a separate proceeding do not need to be produced. With all expert reports, the parties shall:
- (a) Identify all materials upon which the expert(s) relied in formulating an opinion in this case, by Bates number where applicable;
  - (b) Produce copies of any materials upon which the expert(s) relied (except for those excluded above) that were not previously produced and are not readily available through public sources;
  - (c) Produce a list of all commercially-available computer programs used by the expert in the preparation of the report; and
  - (d) Produce all data and programs underlying the expert's calculations for any calculation appearing in an expert report, including all programs and codes necessary to recreate the calculation from the initial ("raw") data files.
10. Expert Depositions. One seven-hour deposition of each expert shall be allowed. Expert depositions must be completed by May 24, 2018.

11. Requests for Admission. The parties shall be limited to 30 requests for admission per side, subject to the following provisions:
- (a) Requests for admission related to the authenticity of documents and/or the admission of evidence will not count against the limit of 30 requests for admission. There will be no limit on the number of requests for admission related to the authenticity of documents and/or the admission of evidence.
  - (b) All documents produced by a Defendant either in response to document requests in this litigation or in the course of the FTC's investigation of the proposed merger (FTC File No. 171-0161) are presumed to be authentic.
  - (c) All documents produced by a Defendant either in response to document requests in this litigation or in the course of the FTC's investigation of the proposed merger (FTC File No. 171-0161) that were generated or authored by a Defendant or any of its employees are presumed to be admissible.
  - (d) Notwithstanding Sections 11(b) and 11(c) of this Order, any party may challenge the authenticity or admissibility of a document for good cause shown.
  - (e) The parties will respond to requests for admission no later than ten (10) calendar days after the date of service, except that for any requests for admission served prior to entry of this Order, the parties shall respond within the earlier of (i) 30 days from the date of service or (ii) ten days from the date of entry of this Order. The parties will meet and confer

regarding any answers they deem insufficient within two business days of receiving the responses.

- (f) Interrogatories. Plaintiff shall be permitted to serve Defendants with **35** interrogatories pursuant to Fed. R. Civ. P. 33. Defendants together shall be permitted to serve Plaintiff with **35** interrogatories. The parties shall comply with interrogatories within 10 calendar days after the date of service, except that for any interrogatories served prior to entry of this Order, the parties shall comply within the earlier of (i) 30 days from the date of service or (ii) 10 days from entry of the Order. The parties will meet and confer regarding any answers they deem insufficient within two business days of receiving the responses.
- (g) For any interrogatories that are contention interrogatories, the issuing party shall identify it as such and the receiving party will then serve objections and responses no later than twenty (20) days after it is served, except that for any contention interrogatories served prior to entry of this Order, the receiving party shall comply within the earlier of (i) thirty (30) days from the date of service or (ii) twenty (20) days from entry of the Order. If the receiving party believes that an interrogatory that is not identified as a contention interrogatory is a contention interrogatory, it will provide notice of this belief no later than five (5) days after it is served, except that for any contention interrogatories served prior to entry of this Order, the parties shall provide notice within the earlier of (i) thirty (30) days from the date of service or (ii) five (5) days from entry of the Order.

The parties will then meet and confer in good faith to resolve the issue.

Subject to the provisions regarding interrogatories served prior to entry of this Order, in no event will the receiving party serve objections and responses later than twenty (“20”) days after an interrogatory is served other than by agreement between the parties. No party shall seek through a deposition of a party attorney information that it could otherwise obtain through a contention interrogatory.

12. Deadline for Issuing Written Discovery to Parties. The parties shall serve requests for admission, interrogatories, and document requests to parties by April 17, 2018, except that requests for admission related to the authenticity of a document and admissibility of evidence shall be served by May 4, 2018.
13. Limitations on Party and Third-Party Declarations. No party may submit as evidence a declaration or affidavit from a party or third-party witness if such declaration or affidavit was executed or served less than one week prior to his or her agreed-to deposition date unless the deposition proceeds. In any event, no party or third-party declaration or affidavit may be submitted as evidence if it was executed or served less than ten (10) calendar days before the close of fact discovery unless it is a supplemental third-party declaration or affidavit related to a previously given third-party declaration or affidavit, in which case the parties agree to not oppose any efforts to depose such declarant or affiant irrespective of any other provisions of this Order.

14. Depositions:

- (a) Each side may take a maximum of four (4) depositions of individuals beyond those listed on the parties' respective preliminary fact witness lists and beyond those who have or do provide a declaration. Each side may depose any individual who is listed on the other side's witness lists or who provides a declaration. The parties shall consult with each other prior to confirming any deposition to coordinate the time and place of the deposition.
- (b) All depositions shall be limited to a maximum of seven hours.
- (c) For any third-party deposition noticed by either Plaintiff or Defendants, the noticing party shall be allocated three and a half (3.5) hours of deposition time for direct and re-direct testimony and the non-noticing side shall be allocated one and a half (1.5) hours of deposition time for cross or re-cross testimony. Any unused time in any party's allocation shall not transfer to the other party. For any third-party deposition noticed by both Plaintiff and Defendants, both sides will have three and a half (3.5) hours of deposition time. To the extent both sides notice a deposition, that notice shall count against each side's respective deposition totals.
- (d) For party witnesses or third-party witnesses retained by any party (e.g., as a consultant, agent, contractor, or representative) in connection with the proposed transaction, the other side will have the opportunity to use seven hours for the deposition. Subject to the limitations noted elsewhere in this

Order, the parties may depose any party witness or third-party witness retained by a party in connection with the proposed transaction, including those for whom the FTC conducted an investigational hearing. The time limits for depositions of witnesses for whom the FTC conducted an investigational hearing will be subject to any additional agreement reached by the parties. Nothing in this provision is intended to limit any party's right to object to any deposition, and all parties expressly reserve that right.

- (e) If a party serves a subpoena on a third party for the production of documents or electronically stored information and a subpoena commanding attendance at a deposition, the deposition date must be at least seven days after the original return date for the document subpoena.
- (f) No deposition notice shall issue after April 20, 2018. However, notwithstanding this provision, the parties may allow for additional notices to be served by agreement or with leave of the court for good cause shown.
- (g) If a third-party deposition is properly noticed pursuant to the above, but the third party's schedule does not reasonably accommodate a deposition before the end of fact discovery, a later deposition may occur.

15. Discovery Uses. Subject to Paragraph C.13 above, all discovery taken in the Administrative Action may be used in this action.

16. Modifications. Notwithstanding any other provisions in this Order, the parties may seek to modify any deadlines in this Paragraph C by mutual agreement, with

court approval. Given the tight deadlines in this matter, the court is not inclined to grant extensions of deadlines for filing briefs or other materials necessary for the court to review in preparation for the hearing.

17. Discovery Disputes. The parties shall meet and confer regarding any discovery dispute, and if the parties reach an impasse, discovery disputes shall be submitted to the Court in accordance with the procedures set forth in the Scheduling Order for Civil Cases Before Judge Tanya S. Chutkan, ¶ 3 unless otherwise requested by the Court.

D. **Briefing Schedule.** Plaintiff's Memorandum In Support of Its Motion for Preliminary Injunction, not to exceed 40 pages, shall be filed on or before May 2, 2018. Defendants' Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction, not to exceed 50 pages, shall be filed on or before May 16, 2018. Plaintiff's Reply Brief, not to exceed 22 pages, shall be filed on or before May 25, 2018.

E. **Date and Length of Preliminary Injunction Hearing.** The preliminary injunction ("PI") hearing shall be held May 29 through June 1, 2018, June 8, 2018, and June 11 through June 14, 2018. Opening and closing statements shall be limited to 45 minutes per party. The hearing time is to be divided equally between Plaintiff and Defendants, but it will be the responsibility of the parties to police division of hearing time. Plaintiff may reserve a portion of its time for rebuttal.

F. **Proposed Findings of Fact and Conclusions of Law.** Proposed findings of fact and conclusions of law shall be due **seven** calendar days after the close of the hearing. Proposed findings of fact and conclusions of law shall not exceed 75 pages.

G. **Other Matters.**

1. Electronic Service. Service of all correspondence and formal papers filed, whether under seal or otherwise, shall be by electronic mail to the following individuals designated by each party:

(a) For Plaintiff:

(i) Tom Dillickrath: [tdillickrath@ftc.gov](mailto:tdillickrath@ftc.gov) (Principal Designee)

(ii) James Rhilinger: [jrhilinger@ftc.gov](mailto:jrhilinger@ftc.gov)

(iii) Llewellyn Davis: [ldavis@ftc.gov](mailto:ldavis@ftc.gov)

(iv) Christopher Caputo: [ccaputo@ftc.gov](mailto:ccaputo@ftc.gov)

(v) Josh Goodman: [jgoodman@ftc.gov](mailto:jgoodman@ftc.gov)

(b) For Defendants:

(i) For Wilhelmsen:

1. Corey Roush: [croush@akingump.com](mailto:croush@akingump.com) (Principal Designee)

2. Paul Hewitt: [phewitt@akingump.com](mailto:phewitt@akingump.com)

3. Fairley Spillman: [fspillman@akingump.com](mailto:fspillman@akingump.com)

4. Catherine O'Connor: [coconnor@akingump.com](mailto:coconnor@akingump.com)

(ii) For Drew:

1. Mark Ryan: [mryan@mayerbrown.com](mailto:mryan@mayerbrown.com)

2. Michael Lackey: [mlackey@mayerbrown.com](mailto:mlackey@mayerbrown.com)

3. Oral Pottinger: [opottinger@mayerbrown.com](mailto:opottinger@mayerbrown.com) (Principal Designee)

In the event that any documents are too voluminous for electronic mail, the parties shall serve an electronic version of the papers on opposing counsel either (a) on a disc by hand at their Washington, D.C. office or (b) via Accellion, an electronic

file transfer platform. The serving party will telephone or email the other side's principal designee when the materials are sent to alert them that the materials are being served. Electronic delivery shall be treated the same as hand delivery for purposes of calculating response times under the Federal Rules of Civil Procedure. Service of correspondence or formal papers by 11:59 PM Eastern Time shall be considered filed on that day.

2. Nationwide Service. Good cause having been shown in view of the geographic dispersion of potential witnesses in this action, the parties will be allowed nationwide service of discovery and trial subpoenas pursuant to Federal Rule of Civil Procedure 45 and 15 U.S.C. § 23, to issue from this Court. The availability of nationwide service of process, however, does not make a witness who is otherwise "unavailable" for purposes of Federal Rule of Civil Procedure 32 available under those rules regarding the use at the hearing of a deposition taken in this action.
3. Exhibit Lists. The parties shall exchange final exhibit lists on or before May 18, 2018. Objections shall be filed on or May 24, 2018. The parties will file their final exhibit lists with the Court on or before May 25, 2018.
4. FRCP 6(a)(1)(C) is to be applied when computing the deadlines in this Order.

#### **KEY DATES**

Event	Deadline
Complaint Filed	Feb. 23, 2018
Discovery Commences	Feb. 23, 2018
Exchange of Initial Disclosures	March 5, 2018

<b>Event</b>	<b>Deadline</b>
Defendants' Answer to Plaintiff's Complaint	March 9, 2018
Final Date for Amending Pleadings	March 12, 2018
Exchanges of Preliminary Fact Witness Lists	March 13, 2018 Def. Supp. March 22, 2018
Close of Fact Discovery	April 27, 2018
Plaintiff's expert report(s) due	April 30, 2018
Plaintiff's Memorandum of Law in Support of Preliminary Injunction Motion	May 2, 2018
Exchange of Final Witness Lists	May 8, 2018
Defendants' expert report(s) due	May 11, 2018
Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction	May 16, 2018
Exchange of final exhibit lists	May 16, 2018
Plaintiff's rebuttal expert report(s) due	May 21, 2018
Close of Expert Discovery	May 24, 2018
Plaintiffs' Reply to Defendants' Opposition to Preliminary Injunction Motion	May 25, 2018
PI Hearing	May 29-June 1, 2018 June 8, 2018 June 11-14, 2018

Date: March 15, 2018

*Tanya S. Chutkan*

TANYA S. CHUTKAN  
United States District Judge