

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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OJ COMMERCE, LLC,

Complainant,

**DOCKET NO. 21-11**

v.

HAMBURG SÜDAMERIKANISCHE  
DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S & CO KG

and

HAMBURG SUD NORTH AMERICA, INC.,

Respondents.

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**COMPLAINANT’S MOTION JUSTIFYING CONFIDENTIAL TREATMENT**

Pursuant to 46 C.F.R. §§502.141(j)(1) and 502.5(b), Complainant OJ Commerce, LLC (“Complainant” or “OJC”) hereby moves for confidential treatment of certain materials included with or referred to in Complainant’s Brief and Reply, Proposed Findings of Fact, Response to Respondents’ Proposed Findings of Fact, Appendix, and Appendix-Supplement.

On April 26, 2022, the Presiding Officer issued an Order Entering Confidentiality Stipulation and Proposed Protective Order, which Order was amended by the June 22, 2022 Order Entering Amended Confidentiality Stipulation and Protective Order (“Confidentiality Agreement”). The Confidentiality Order provides for the confidential treatment of certain materials produced in discovery in this proceeding (“Confidential Information”). The Confidentiality Agreement contemplates the use of Confidential Information in connection with briefing on the merits and requires that Confidential Information disclosed to the Commission and

the Administrative Law Judge in papers, including exhibits, shall be labeled in accordance with 46 CFR §502.5 and that “(t)he ALJ shall order an appropriate procedure for the use of the Confidential Information at or during the course of the Proceeding pursuant to 46 CFR §502.141(j)(1).”

Pursuant to the foregoing, OJC moves for the continued confidential treatment of the categories of evidence set forth below, for the reasons indicated.

1. OJC’s expert witness, Mr. Richard Berning, testified regarding non-public financial and business activities of OJC. OJC has designated the entirety of the transcript of Mr. Berning’s deposition as Confidential. Several of the exhibits thereto have also been designated as “Confidential” or “AEO.” Respondents do not object to such treatment.

2. Exhibits 100-110 and Exhibits 200 and 201 (the expert reports of Richard C. Berning) that OJC filed under seal with its Brief, Reply, Findings of Fact, Responses to Findings of Fact, Appendix, and Appendix-Supplement are or contain Highly Confidential Trade Secrets that are not generally known or otherwise ascertainable from outside sources. Access to these confidential documents, including financial-related documents, projections, sales records, container numbers, and the related calculations is strictly limited to OJC employees and attorneys on a need-to-know basis. As a private company, these documents and the information contained herein are not known outside of OJC, unless disclosed, as they were in this case, under the Confidentiality Agreement with Respondents. Any public disclosure of OJC’s private, proprietary information, or to those outside of the Parties to this litigation and the FMC, would be extremely and irreparably damaging to OJC and would allow its competitors and others to review OJC’s most valuable business secrets. They should be sealed and not publicly filed. (*See* CX476-477.) Respondents have not objected to such treatment.

Dated: February 6, 2023

Respectfully Submitted,

By: /s/ Shlomo Y. Hecht  
Shlomo Y. Hecht  
Florida State Bar No.: 127144  
Shlomo Y. Hecht, P.A.  
4538 NW 85th Ave.  
Coral Springs, FL 33065  
Phone: (954) 861-0025  
Email: sam@hechtlawpa.com  
*Attorneys for OJ Commerce, LLC*